

# Chapter 3

## Legal Aid Services Commission

### Public Trustee Services

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# Legal Aid Services Commission

## Public Trustee Services

### Introduction

**3.1** Public Trustee Services, a section of the New Brunswick Legal Aid Services Commission, provides trustee and guardianship services to some of the most vulnerable New Brunswick residents. The Public Trustee “*protects the financial and personal interests of the elderly, the mentally challenged, children, missing or deceased persons, when there is no one else able and willing to do so.*”<sup>1</sup>

### Why we did this audit

**3.2** The New Brunswick Legal Aid Services Commission requested we complete a performance audit of Public Trustee Services. We believe this topic should be of interest to legislators and the public for the following reasons:

- The Public Trustee’s clients are extremely vulnerable. The program has a significant social impact; it is needed as it is the last resort for its clients;
- Delays in the initial legal process to obtain authority to act as Public Trustee for an individual affect hospital bed usage, costing the Province money and increasing hospital wait times;
- The client base will continue to grow with New Brunswick’s aging population;

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<sup>1</sup> *Legal Aid Services Commission Annual Report 2013-2014*

- Net client assets held in trust total \$9.96 million<sup>2</sup> at March 31, 2015;
- Previously in planning our annual financial audit of Trusts under the Administration of the Public Trustee, we identified there is an elevated risk of fraud due to control weaknesses; and
- There have been cases of fraud for significant amounts of money at other jurisdictions' Public Trustee.

### **Audit Objectives**

#### **3.3** The objectives of our audit were:

1. *To determine whether the Public Trustee properly safeguards and administers client assets held in trust.*
2. *To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.*
3. *To determine whether the Public Trustee publicly reports on the performance of its services.*

### **Conclusions**

#### **3.4** Our conclusions were:

1. We concluded the Public Trustee did not safeguard and administer client assets held in trust to the standard we expected. In recent years we found efforts to improve performance and noted no incidence of fraud. However continued improvements are needed to address:
  - Out of date or incomplete policies;
  - The lack of a functioning investment policy;
  - Inadequate information system;
  - Inadequate controls over electronic receipt of revenue;
  - The lack of a process for supervisory review of files; and
  - The lack of an internal audit function.
2. We concluded the Public Trustee's processes for

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<sup>2</sup> Audited financial statements of Trusts under the Administration of the Public Trustee, March 31, 2015

making care decisions on behalf of its clients were in accordance with legislation and policies. However, improvements are needed to properly document care decisions.

3. We concluded the Public Trustee has not publicly reported on the performance of its services since 2011.

**Results in Brief**

- 3.5 Results in brief are presented in Exhibit 3.1.

**Recommendations**

- 3.6 A summary of our recommendations are in Exhibit 3.2.

*Exhibit 3.1 - Results in Brief*

## Public Trustee Services

### Why Is This Important?

- Public Trustee Services, a section of the New Brunswick Legal Aid Services Commission, provides trustee and guardianship services to some of the most vulnerable New Brunswick residents.
- The program has a significant social impact; it is the last resort for its clients.
- Net client assets held in trust total \$9.96 million at March 31, 2015.
- Client base will continue to grow with NB's aging population.

### What We Found

#### Overall Conclusions

- Public Trustee did not safeguard and administer client assets held in trust to the standard we expected.
- Processes for making care decisions on behalf of clients were in accordance with legislation and policies. However, improvements are needed to properly document care decisions.
- Public Trustee has not publicly reported on the performance of its services since 2011.

#### Improvements needed to safeguard and administer client assets

- Outdated and incomplete policies
- Investment policy not implemented
- Inadequate controls over electronic receipt of revenue
- Lack of a process for supervisory review of client files
- Inadequate case management information system

#### Need for Public Reporting

- No annual report prepared since 2011.
- No audited financial statements for trusts made public since 2011.

#### Issues Requiring Legislation Changes

- Lengthy process to obtain authority to act as Public Trustee for a client
- Loss of authority upon death of a client
- Limitations in fees that can be charged to clients
- Inability to distribute unclaimed property

Exhibit 3.2 - Summary of Recommendations

Recommendation	Department's response	Target date for implementation
<b>Safeguarding and administering client assets held in trust</b>		
<p><b>3.39</b> We recommend the Public Trustee develop comprehensive policies and procedures for trust officers to assist trust officers in their work, to help in training new trust officers, and to ensure consistency of client files.</p>	<p><i>A full review of policies commenced and many policies were developed or revised in the fiscal year ended March 31, 2016. Work is ongoing to further develop additional policies and refine existing ones to reflect the current environment, assist staff, and ensure consistency in administration of client files.</i></p>	<p><i>FY 2017 and FY 2018 Bulk of policies to be completed by end of FY 2018 with ongoing work continuing as the program evolves</i></p>
<p><b>3.40</b> We recommend the Public Trustee amend and implement the investment policy for client funds.</p>	<p><i>Investment policy to be amended and implemented, with the Commission's Board of Directors approval.</i></p>	<p><i>FY 2017</i></p>
<p><b>3.41</b> We recommend the Public Trustee upgrade or replace its current case management information system in order to meet user needs.</p>	<p><i>Public Trustee Services is currently working with the SNB IT group to incorporate enhancements to existing software and are continuing to network with other Public Trustee programs in an effort to identify alternatives. Currently there are no suitable commercial or custom applications available for procurement.</i></p>	<p><i>Ongoing</i></p>
<p><b>3.42</b> We recommend the Public Trustee review its insurance coverage to ensure client assets are adequately insured.</p>	<p><i>Public Trustee Services reviewed the insurance policy in detail with the insurance broker and implemented appropriate measures to ensure clients assets are adequately covered.</i></p>	<p><i>Completed</i></p>

Exhibit 3.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<b>3.43</b> We recommend the Public Trustee implement regular supervisory review of client files.	<i>A more structured process around regular supervisory review of client files will be implemented.</i>	FY 2017
<b>3.44</b> We recommend the Public Trustee implement an internal audit function.	<i>Public Trustee Services will meet with the Office of the Comptroller to explore alternatives with respect to an internal audit program, associated costs, and possible options given the maturity and size of the program.</i>	FY 2017
<b>Processes for making care decisions on behalf of clients</b>		
<b>3.50</b> We recommend the Public Trustee ensure guardianship officers sufficiently document the rationale for all personal care and healthcare decisions in the case management system.	<i>Documentation standards for care decisions will be reviewed to ensure sufficient and consistent documentation in the case management system.</i>	FY 2017

Exhibit 3.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<b>Public reporting on the performance of services</b>		
<p><b>3.59</b> We recommend the Public Trustee establish goals, objectives and measurable targets for its services, measure its performance against the targets and publicly report on its performance.</p>	<p><i>Public Trustee Services will establish goals and objectives and begin measuring performance against established targets to the extent possible with the existing software. Efforts to improve measuring and reporting capabilities will be incorporated into ongoing software improvements.</i></p>	<p><i>FY 2017 – FY 2018</i></p>
<p><b>3.60</b> We recommend the Public Trustee make available publicly all audited financial statements of Trusts under the Administration of the Public Trustee.</p>	<p><i>All audited financial statements of Trusts Under the Administration of the Public Trustee will be included in Annual Reports which will be posted on the Commission's website in a timely manner.</i></p>	<p><i>FY 2017</i></p>
<b>Other issues</b>		
<p><b>3.69</b> We recommend the Public Trustee identify legislation changes needed to address the following, and work with the responsible department to implement them:</p> <ul style="list-style-type: none"> <li>• lack of timeliness in obtaining authority to act as Public Trustee for a client;</li> <li>• loss of authority upon death of a client;</li> <li>• limitations in fees that can be charged to clients; and</li> <li>• administration of unclaimed property.</li> </ul>	<p><i>Public Trustee Services is currently working with government on legislative changes to address the lack of timeliness in obtaining authority, residual authority after death of a client, and revisions to fees charged. Public Trustee Services will apply to the Court for direction on the administration of unclaimed property pursuant to current legislation.</i></p>	<p><i>FY 2017- FY 2018</i></p>



## Background

**3.7** The Office of the Public Trustee was created on June 1<sup>st</sup>, 2008, as a branch of the Department of Justice and Consumer Affairs. Effective April 1, 2012, the Office, with a budget of \$838,500, was transferred to the New Brunswick Legal Aid Services Commission and renamed Public Trustee Services. New Brunswick was the last province in Canada to create a Public Trustee.

**3.8** Legislation under which the Public Trustee operates includes the *Public Trustee Act*, the *Mental Health Act*, the *Infirm Persons Act*, the *Probate Court Act* and the *Family Services Act*. These allow the Public Trustee to:

- “act to make personal, healthcare, legal, or financial decisions for someone who is mentally incapable and cannot make those decisions;
- act on behalf of an individual in accordance with the terms of a power of attorney;
- act as an executor under a Will or as an administrator of the property of a deceased person;
- act to make legal or financial decisions for an individual declared to be an absentee under the Presumption of Death Act; and
- act to protect an individual's financial interests if appointed by a court.”<sup>3</sup>

**3.9** Public Trustee Services is comprised of three main groups:

- Legal counsel: lawyers prepare documents and appear in Court to obtain Court Orders or other legal documents, facilitate the sale of real property and provide legal services as required for clients;
- Financial: trust officers manage the estates of deceased and incompetent clients, and the trusts of adults and minors. They search for assets and liabilities, coordinate the sale of client assets and close estates. The financial officer processes invoices for client costs such as those related to personal care; and
- Guardianship: guardianship officers liaise with

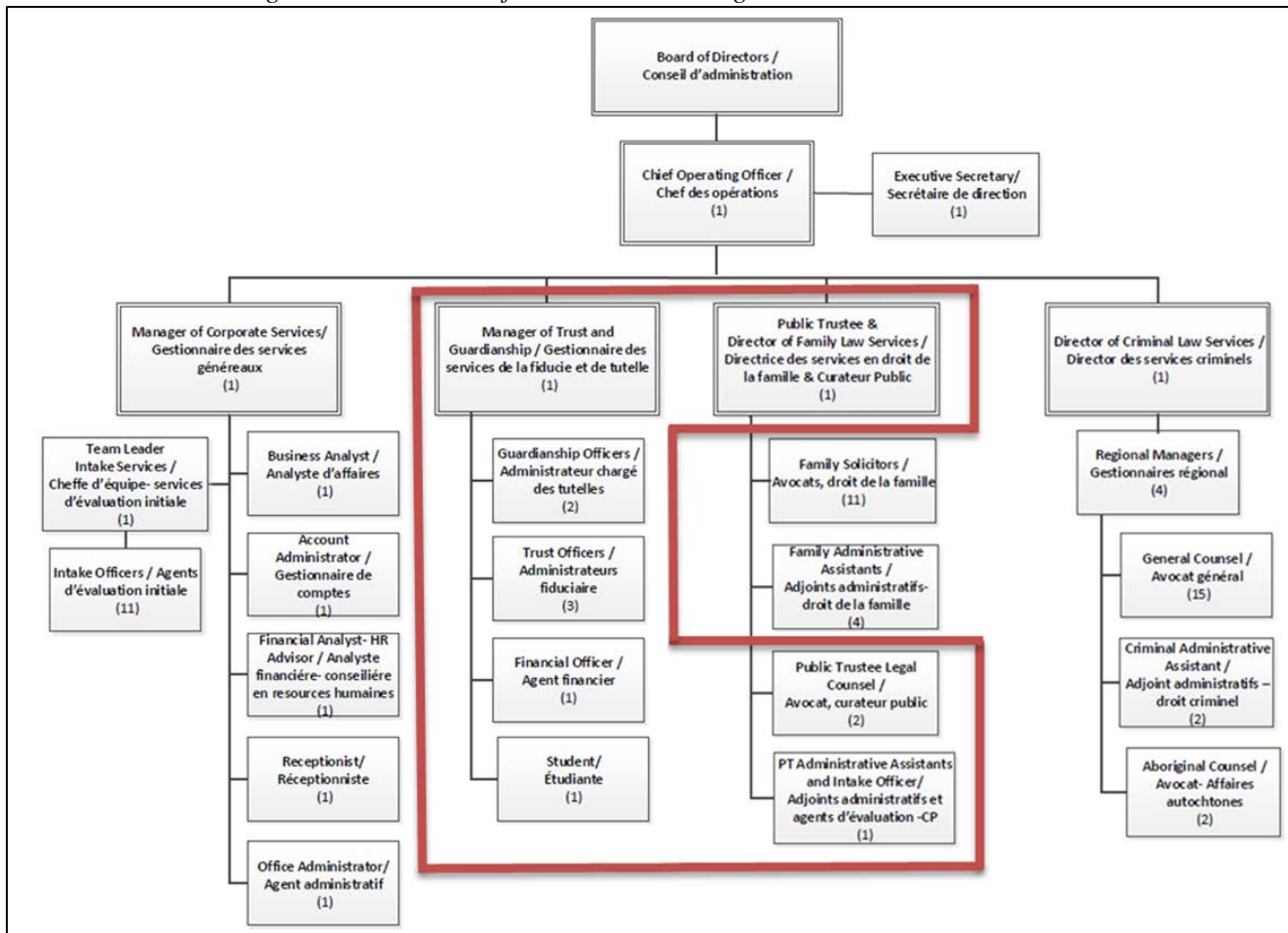
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<sup>3</sup> [http://legalaid.nb.ca/en/public\\_trustee\\_services](http://legalaid.nb.ca/en/public_trustee_services)

family members, service providers and other parties, consult with medical professionals and make personal care and healthcare decisions for incompetent persons on whom there is a court order designating the Public Trustee responsible for personal care.

**3.10** Exhibit 3.3 presents an organizational chart of the Legal Aid Services Commission. Approximately 12 FTEs relating to Public Trustee Services are highlighted in the outlined section.

*Exhibit 3.3 - Organizational Chart of New Brunswick Legal Aid Services Commission*



Source: Chart provided by New Brunswick Legal Aid Services Commission (unaudited)

**3.11** Operating expenses of Public Trustee Services are presented in Exhibit 3.4, along with fees collected from clients for services. The net cost of services is funded through the New Brunswick Legal Aid Services Commission’s budget.

Exhibit 3.4 - Net Cost of Public Trustee Services, by fiscal year

<b>Net Cost of Public Trustee Services (in thousands \$)</b>			
	<b>2013</b>	<b>2014</b>	<b>2015</b>
Program Expense*	787	990	945
Fee Revenue**	203	188	172
Net Cost***	585	802	772

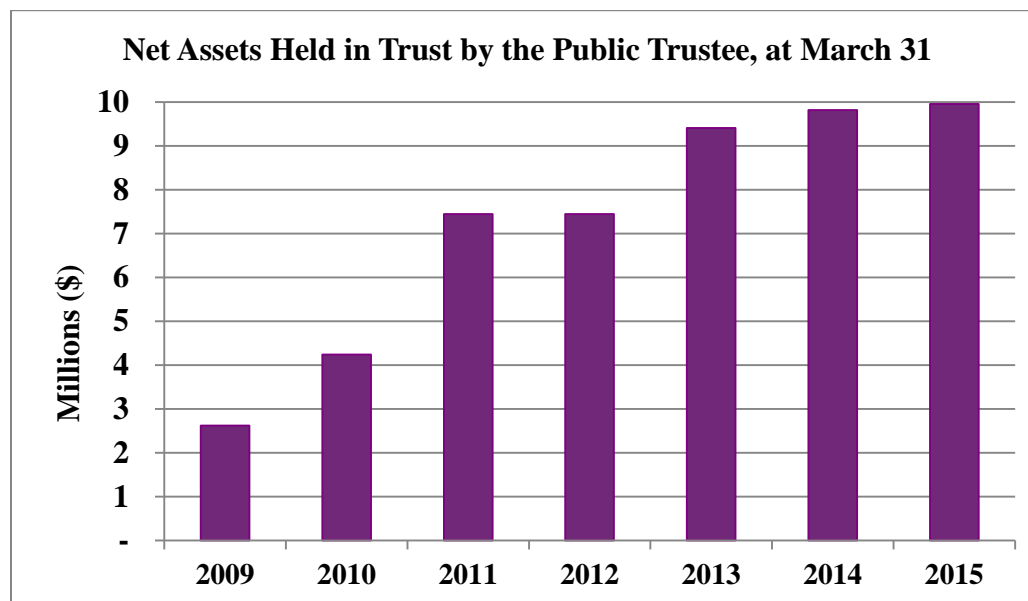
Sources: \* New Brunswick Legal Aid Services Commission Annual Report (unaudited)

\*\*Audited Financial Statements of New Brunswick Legal Aid Services Commission

\*\*\*Calculated by AGNB

**3.12** Information on net assets held in trust by the Public Trustee is shown in Exhibit 3.5. These figures have increased steadily since the creation of the Office of the Public Trustee, in line with an increasing client base. The increase in net assets in 2011 is largely due to two new clients with a high net worth. An excerpt from the 2015 audited financial statements of Trusts under the Administration of the Public Trustee, presenting the Statement of Financial Position, can be found in Appendix I.

Exhibit 3.5 - Net Assets Held in Trust by the Public Trustee, at March 31



<b>Net Assets Held in Trust by the Public Trustee, at March 31 (in millions \$)</b>							
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Net Assets Held In Trust	2.62	4.24	7.45	7.45	9.41	9.81	9.96

Source: Audited Financial Statements of Trusts under the Administration of the Public Trustee

**3.13** The number of actively managed client files, which has increased by 82% from 2012 to 2015, is presented by type of file in Exhibit 3.6. Comparable numbers are not available for 2009 to 2011 due to reporting limitations of the case management software, which are explained later in this chapter.

*Exhibit 3.6 - Number of Actively Managed Client Files, at March 31*

<b>Number of Actively Managed Client Files, at March 31</b>				
<b>Type of File</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Adult	161	203	235	290
Estate	19	37	67	67
Child	36	35	34	36
<b>Total Clients</b>	<b>216</b>	<b>275</b>	<b>336</b>	<b>393</b>

*Sources: Information provided by New Brunswick Legal Aid Services Commission (unaudited)*

## Scope

**3.14** We examined the time period from the creation of the Public Trustee in 2008 to September, 2015. Our work included the following:

- reviewing legislation and policies;
- meeting with management and staff of the Legal Aid Services Commission;
- selecting a sample of client files and examining documentation of the work done by trust officers and guardianship officers. Our testing of client files is discussed later in paragraph 3.34;
- observing a client property inspection; and
- performing other procedures as determined necessary.

**3.15** Our audit was performed in accordance with standards for assurance engagements, encompassing value-for-money and compliance, established by the Chartered Professional Accountants of Canada, and accordingly such tests and other procedures as we considered necessary in the circumstances.

**3.16** We developed criteria to use as the basis for our work. The criteria were reviewed and agreed upon by the New

Brunswick Legal Aid Services Commission. They are listed in Appendix II.

**3.17** Certain financial and statistical information presented in this chapter was compiled from information provided by the New Brunswick Legal Aid Services Commission. It has not been audited or otherwise verified. Readers are cautioned that this financial and statistical information may not be appropriate for their purposes.

### **Client Assets Held in Trust**

**3.18** Our first objective was:

*To determine whether the Public Trustee properly safeguards and administers client assets held in trust.*

**3.19** A summary of the significant deficiencies found pertaining to the safeguarding and administering of client assets is presented in Exhibit 3.7. The deficiencies are explained in more detail in the paragraphs following the exhibit.

*Exhibit 3.7 - Summary of Significant Deficiencies Identified*

<b><i>Summary of Significant Deficiencies Identified</i></b>	
<b>Finding</b>	<b>Paragraph Number</b>
Policies outdated and lacking	3.20
Investment policy not implemented	3.22
Inadequate information system	3.24
Inadequate controls for electronic receipt of revenue	3.28
Inadequate insurance coverage	3.29
No regular review of client files	3.30
No internal audit function	3.31

### ***Policies Outdated and Lacking***

**3.20** We reviewed policies in place at Public Trustee Services. Several policies have been developed in recent years, with significant progress in 2015-2016; however there is still work to be done. For example:

- Some policies are no longer relevant, such as the investment policy; and
- Some needed policies have yet to be developed, such as guidance on accepting clients (the meaning of “when there is no one else able and willing to do so”<sup>4</sup> has yet to be defined.)

**3.21** We were told trust officers often look for guidance on complex cases. From our examination of client files, we found processes have changed significantly over the years but documentation for the policies in place at particular points in time was often not available. This made it difficult in some cases for us to establish if appropriate policies were followed in our sample of client files. Our testing of client files is discussed later in paragraph 3.34. A comprehensive set of documented policies and procedures would assist trust officers in their work, help in training new trust officers and ensure uniformity across client files, such as when determining the level of fees that can be charged to a client.

***Investment Policy Not Implemented***

**3.22** In May 2010, the Province’s Board of Management approved the investment strategy defined in the Public Trustee’s *Statement of Investment Policies and Objectives*. During our Office’s financial audit of Trusts under the Administration of the Public Trustee we noted the Investment Policy has not been implemented. We examined this more closely at Public Trustee Services and found the following:

- The majority of client investment portfolios are converted to cash. We were informed this is to ensure liquidity of the funds in order to allow for timely payment of expenses on behalf of clients.
- The funds are kept in a bank account generating a low interest rate. At March 31, 2015, \$8.8 million of \$10.7 million in client financial assets consisted of cash held in a bank account. Approximately 73% of client net assets belong to 7% of clients.
- Public Trustee representatives indicated that

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<sup>4</sup> *New Brunswick Legal Aid Services Commission Annual Report, 2013-2014, p. A1a-2*

assigning staff to administer investments would benefit very few of their clients.

***Inadequate  
Information System***

**3.23** We believe the Public Trustee should implement a documented strategy and policy for investing client funds.

**3.24** We were told by several employees of Public Trustee Services the case management software is inefficient and difficult to use. It does not adequately meet user needs.

**3.25** The software does not allow for read-only access and does not track changes to client files, which increases the risk of inappropriate changes. In addition, until recently, changes made to the software were not tracked, which increases the risk of inappropriate software changes such as untested or unauthorized changes. (Representatives indicated this process has been implemented in early 2016).

**3.26** The system does not have the functionality to generate financial statements or produce reports that would allow reconciliation to Oracle, the financial information system used by the Province. It does not allow management information or statistics to be generated easily, such as the number of clients, or for client care plan information to be viewed in one screen.

**3.27** Financial statements are prepared manually for Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered. This is a very time-consuming process. Staff indicated having a significant backlog of work in this area. The reconciliation of the information system's listing of client assets to the financial statement figures is an extensive process done only yearly. Manual processes increase the risk of errors in the financial statements. Although we have noted improvements in our latest audit, several errors have been found in our Office's annual audits of these financial statements.

***Inadequate Controls  
for Electronic Receipt  
of Revenue***

**3.28** From our review of processes, we found there were inadequate segregation of duties around the electronic receipt of client revenue (such as pension benefits) which increase the risk of misappropriation of assets. We were told there were no documented policies and procedures related to setting up electronic transfers.

- Inadequate Insurance Coverage***     **3.29**     Public Trustee clients are added to the group institutional insurance policy, and property insurance if applicable, when they become clients. We noted there was a gap in insurance on clients' property when assets are transported and stored for auction. The terms of the insurance policy should be reviewed to ensure client assets are adequately insured.
- No Regular Review of Client Files***     **3.30**     We inquired about the review of client files. While specific components of client files are reviewed, we were told there is no process for regular supervisory review of client files. File reviews by a supervisor of work done by trust officers and guardianship officers provide assurance that client assets are being managed and care decisions are being made in the best interest of the client.
- No Internal Audit Function***     **3.31**     We found there is no internal audit function in place to test compliance with policy, and verify that internal controls are working and client assets are protected. Other jurisdictions, such as Alberta and Manitoba, have an internal audit function.
- 3.32**     Internal audit can identify weaknesses and opportunities for improvements, which becomes more important as the client base grows. This function should be independent and report directly to the Public Trustee. The Comptroller is considered the Chief Internal Auditor for the Government of New Brunswick. The Public Trustee could consult with the Office of the Comptroller (OOC) to determine if the OOC could provide periodic internal audit services.
- Property Inspections Done Well***     **3.33**     Public Trustee Services contracts with external parties to inspect vacant residences owned by clients in order to obtain important documents, such as wills, and assets that may be liquidated in order to help pay for the client's needs. We observed a property inspection at a client's home. We found minor instances of non-compliance with established procedures. However controls around the inspection appear to be strong overall and inspections appear to be well done.



**Client Files Examined**

**3.34** We selected a sample of 30 client files to examine, including files assigned to different trust officers and guardianship officers. We examined work performed on files from the creation of the Public Trustee in 2008 to September 30, 2015. Our sample was allocated to the different types, based on their proportion of total files:

- 22 adult files;
- 6 estate files; and
- 2 child files.

**Findings**

**3.35** We examined policies and other documentation and interviewed staff to identify appropriate processes. Our work included testing 26 to 39 attributes for adult files, 23 attributes for estate files, and 10 attributes for child files. From our testing, we determined the following:

- the Public Trustee had appropriate authority on the files;
- in most files, trust officers performed a thorough search for client assets and debts;
- Trust offices applied for eligible income and filed tax returns on behalf of clients in all applicable files;
- real property or other assets were disposed of appropriately; and
- in most files, funds were managed and disbursed properly.

**3.36** We found deficiencies which are described below:

- **Inadequate Training** - In one case, staff was not properly trained on current procedures. This increases the risk of errors being made which could have adverse financial effects on clients or Public Trustee Services.
- **Client Fee Incorrectly Calculated** - Fees are collected from clients for services. The fees charged are defined by the Regulation under the *Public Trustee Act*. An analysis of each client's financial situation is performed to determine the fee percentage, if any, that can be collected from each client based on their ability to pay. In three cases, the financial position analysis, which calculates a client's ability to pay fees, was completed incorrectly. In one of these files this would have affected the level of

fees charged to the client, possibly resulting in both lost fee revenue some years and overcharged fees during other years.

- **Client Fee Not Recalculated on Annual Basis** - Public Trustee Services' policy is to perform the financial position analysis yearly or when a client's financial situation changes. In three cases, the financial position analysis was not recalculated on an annual basis as required by policy. In one of these files, this may have resulted in lost fee revenue.
- **Approval Form Signed After Payment Processed** - In one case, the Release of Client Funds Distribution Approval Form was signed after the cheque for payout of funds held in trust for a child client was printed. This form ensures the calculation of the payout is accurate.
- **Secure Room Listing Incomplete** - In one case, the secure room inventory listing for the client was incomplete. The secure room contains clients' personal items and important documents. Inadequate documentation of items stored in the secure room reduces safeguards around client assets.
- **Identification not Requested from Beneficiaries** - In two cases, government identification was not requested from beneficiaries of an estate. We were told no threshold existed at the time for requesting identification, which allows verification of the identity of the beneficiaries. The estate payouts in these cases (approximately \$1,400 and \$400) were over the subsequently implemented threshold amount of \$200.
- **Required Forms not Signed by Parties Attending Inspection** - In three cases, the signed Confidentiality and Conflict of Interest Declarations were not on file for at least one of the persons present at the client's property inspection. These documents ensure confidentiality around client information and must be signed by parties present at the inspection.
- **Estate Documentation Missing** - In one case, the Letters of Administration for an estate were not on file. This file pre-dated the creation of the Public Trustee. Beneficiaries of the estate could not be located due to the missing information.

**3.37** Several of these deficiencies occurred early in the period under audit (before 2013). In our review of more recent files, we noted enhanced documentation, consistency and improvements in processes resulting from staffing reorganization.

## **Conclusion**

**3.38** We concluded the Public Trustee did not safeguard and administer client assets held in trust to the standard we expected. In recent years we found efforts to improve performance and noted no incidence of fraud. However continued improvements are needed to address:

- out of date or incomplete policies;
- the lack of a functioning investment policy;
- inadequate information system;
- inadequate controls over electronic receipt of revenue;
- the lack of a process for supervisor review of files; and
- the lack of an internal audit function.

## **Recommendations**

**3.39** We recommend the Public Trustee develop comprehensive policies and procedures for trust officers to assist trust officers in their work, to help in training new trust officers, and to ensure consistency of client files.

**3.40** We recommend the Public Trustee amend and implement the investment policy for client funds.

**3.41** We recommend the Public Trustee upgrade or replace its current case management information system in order to meet user needs.

**3.42** We recommend the Public Trustee review its insurance coverage to ensure client assets are adequately insured.

**3.43** We recommend the Public Trustee implement regular supervisory review of client files.

**3.44** We recommend the Public Trustee implement an internal audit function.

**Care Decisions  
Made on Behalf of  
Clients**

**3.45** Our second objective was:

*To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.*

**3.46** Guardianship officers make personal care and healthcare decisions, such as care facility placement, consent for medical procedures and approval of visitations, for mentally and physically incompetent persons.

**3.47** Our sample of files examined for the first audit objective included 22 files involving guardianship officers. We examined 30 care decisions involving the 22 clients. We expected to find documentation clearly indicating the guardianship officer identified all possible options, performed a risk assessment, and selected the best alternative for the client. Proper documentation of decisions is important so that the necessary information is available to another guardianship officer should file assignments change, or to any person reviewing the file.

***Two Deficiencies  
Regarding  
Documentation of  
Care Decisions***

**3.48** We found two deficiencies in documentation in our sample of 22 files:

- The work done by a guardianship officer around a sensitive personal care decision taken regarding visitations was insufficiently documented in one file; and
- In one case, a decision was not recorded in the case management software. Should there be a need to refer to this decision during on-call hours, the guardianship officer (using the information in the case management software) would have incomplete data, as they would not have access to the paper file.

**Conclusion**

**3.49** We concluded the Public Trustee's processes for making care decisions on behalf of its clients were in accordance with legislation and policies. However, improvements are needed to ensure care decisions are sufficiently documented.

***Recommendation***

**3.50** **We recommend the Public Trustee ensure guardianship officers sufficiently document the rationale for all personal care and healthcare decisions in the case management system.**

**Public Reporting by  
the Public Trustee**

**3.51** Our third objective was:

*To determine whether the Public Trustee publicly reports on the performance of its services.*

**3.52** Reporting on the effectiveness of a program is an important component of accountability. We reviewed the last annual report of the Office of the Public Trustee published through the former Department of Justice and Consumer Affairs, as well as the Legal Aid Services Commission's 2012, 2013 and 2014 annual reports. We also reviewed reporting by Public Trustees from other Canadian jurisdictions to identify examples of best practices.

**Public Trustee Act  
Requires Audited  
Financial Statements  
and Annual Report on  
Operations**

**3.53** The *Public Trustee Act* states in section 20:

*20(1) Within 60 days after receiving the Auditor General's report on the audit of the books and accounts of the Public Trustee for a fiscal year, the Public Trustee shall make to the Commission a report on the operations of the office of the Public Trustee in the fiscal year.*

*20(1.1) Before the first day of October in each year, the Commission shall submit the report on the operations of the office of the Public Trustee to the Minister for the fiscal year ending on the thirty-first day of March of that year.*

*20(2) The Minister shall lay a copy of the report on the operations of the office of the Public Trustee before the Legislative Assembly if it is in session or, if not, at the next session.*

**No Annual Report  
Since 2011**

**3.54** The Public Trustee reported performance information publicly each year until 2011. However, annual reports for Public Trustee Services have not been prepared since. As well, the Legal Aid Services Commission (NBLASC) has not reported on Public Trustee Services' performance in its annual report since the amalgamation. NBLASC's annual report provides limited information on Public Trustee Services, including only information on types of services provided and total costs. It does not present objectives, goals, or progress towards achieving goals.

**No Audited Trust  
Financial Statements  
Made Public Since  
2011**

**3.55** Audited financial statements of Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered for fiscal years ending after March 31, 2011, are not available publicly.

***Need for Performance Reporting***

**3.56** From our review of other jurisdictions' Public Trustee annual reports, we found examples of performance reporting the New Brunswick Public Trustee could follow including useful performance measures such as:

- number of days taken to assign files to a client administration officer from receipt of authorizing documentation;
- number of days needed for client asset search and inventory after assignment; and
- number of hours of training on average per employee per year.

**3.57** An example of reporting on a performance measure, from the Manitoba Public Trustee, is presented in Appendix III. While the last Office of the Public Trustee annual report from 2011 mentions the goal of developing performance measures, these have yet to be developed. A significant barrier to this is Public Trustee Services' inadequate case management software which generates very limited management information.

**Conclusion**

**3.58** We concluded the Public Trustee has not publicly reported on the performance of its services since 2011.

***Recommendations***

**3.59** We recommend the Public Trustee establish goals, objectives and measurable targets for its services, measure its performance against the targets, and publicly report on its performance.

**3.60** We recommend the Public Trustee make available publicly all audited financial statements of Trusts under the Administration of the Public Trustee.

**Issues Identified in Previous Financial Statement Audits**

**3.61** Our Office audits the annual financial statements for Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered. Appendix IV presents the issues identified during the financial audit for the 2015 fiscal year, as well as our recommendations and the responses from Public Trustee management. Similar issues have been identified repeatedly in previous years. We are concerned there has been little action to address these recurring weaknesses.

**Other Issues Identified**

**3.62** In the course of our work, we identified four other issues, requiring legislation changes:

- lack of timeliness in obtaining authority to act as Public Trustee for a client;
- loss of authority upon death of a client;
- limitations in fees that can be charged to clients; and
- administration of unclaimed property.

***Timeliness of Obtaining Authority***

**3.63** The Public Trustee receives applications referring clients to its services. After an application is received, the legal process for obtaining Court Orders appointing the Public Trustee as Committee of the Estate and/or Person of an adult client can take months. This process includes obtaining affidavits from the client's relatives and two doctors, and filing documents with the court. During this time, the client may have to remain in hospital because a decision to place them in a care home cannot be made. After a patient is discharged medically, they are charged for the use of the hospital bed. In the case we examined, these costs totaled thousands of dollars.

**3.64** Furthermore, the Public Trustee does not have access to the client's funds until a court order is obtained. The client's bills may not be paid during this time and the client is at risk of financial abuse until the funds are secured. Alberta, on the other hand, allows for an urgent order appointing a trustee to be obtained in a week and reviewed after 90 days.

***Authority upon Death of a Client***

**3.65** When an adult client passes away, the Public Trustee loses authority. Lawyers must apply to the court again to obtain Letters of Administration in order to administer the client's estate. In the meantime, the Public Trustee does not have residual authority to disburse funds on behalf of the client. This can delay payments to the care home where the client resided, a funeral home or other service providers.

Residual authority must be established through legislation however it is not included in the New Brunswick *Public Trustee Act*. Other jurisdictions, including Nova Scotia, Alberta and Manitoba, include this clause in their legislation.

***Public Trustee Fees***

**3.66** Fees that can be charged to clients are set out in the Regulation to the *Public Trustee Act* and the amounts set have not changed since 2008. The Regulation also does not address certain types of fees, such as percentages of estate proceeds. Other jurisdictions' fee schedules, such as Manitoba and Ontario, are comprehensive. For example, legislation allows the Manitoba Public Guardian and Trustee to charge fees for services "*if such a fee would be allowed to be charged by a private trustee*"<sup>5</sup>. The latest available audited financial statements of the Public Guardian and Trustee of Manitoba show that the office's expenses have been entirely funded by fees charged to clients for fiscal years 2012 to 2014. The New Brunswick Public Trustee fees are limited to a small percentage of the cost of providing the service, as shown in Exhibit 3.4 previously.

***Unclaimed Property***

**3.67** The administration of unclaimed bank accounts with Canada's large banks falls under Federal jurisdiction. However, only some provinces have legislation covering other unclaimed property, such as amounts held in trust. The New Brunswick Public Trustee has a number of estate files for which heirs have not been located. The New Brunswick *Escheats and Forfeitures Act* addresses personal property, however there are no guidelines indicating when personal property is considered forfeited or unclaimed. These funds, as well as other types of unclaimed property, could be transferred to the Province after a set number of years as is allowed in other jurisdictions.

***Legislation Changes Needed***

**3.68** The Office of the Public Trustee's 2011 annual report states that identifying recommended legislative change is part of the organization's future plans. This process is still underway. Based on discussions with management and review of other jurisdictions' legislation, changes to legislation could improve current processes, provide more guidance and allow the Public Trustee to charge client fees

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<sup>5</sup> *The Public Guardian and Trustee Act*, Province of Manitoba



in line with other jurisdictions.

***Recommendation***

**3.69 We recommend the Public Trustee identify legislation changes needed to address the following, and work with the responsible department to implement them:**

- **lack of timeliness in obtaining authority to act as Public Trustee for a client;**
- **loss of authority upon death of a client;**
- **limitations in fees that can be charged to clients; and**
- **administration of unclaimed property.**

## Appendix I - Excerpt from Audited Financial Statements of Trusts under the Administration of the Public Trustee at March 31, 2015

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TRUSTS UNDER THE ADMINISTRATION OF THE PUBLIC TRUSTEE  
NEW BRUNSWICK LEGAL AID SERVICES COMMISSION  
STATEMENT OF FINANCIAL POSITION  
AS AT MARCH 31

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	2015	2014
<b>Financial Assets</b>		
Cash and Cash Equivalents	\$ 8,780,895	\$ 9,303,930
Other Investments (Note 5)	1,238,647	673,494
Property Held for Sale (Note 2.7)	633,700	459,300
Interest Receivable	16,747	15,776
	<u>10,669,989</u>	<u>10,452,500</u>
<b>Liabilities</b>		
Accounts Payable (Note 7)	545,134	455,227
Client Debt (Note 2.8)	545,146	521,730
	<u>1,090,280</u>	<u>976,957</u>
<b>Net Financial Assets</b>	<u>9,579,709</u>	<u>9,475,543</u>
<b>Non-Financial Assets</b>		
Prepaid Expenses (Note 2.5)	377,775	339,421
Other Assets (Note 2.6)	1	1
	<u>377,776</u>	<u>339,422</u>
<b>Net Assets Held in Trust (Note 11)</b>	<u>\$ 9,957,485</u>	<u>\$ 9,814,965</u>

Contingent Liabilities - See Note 9

## Appendix II - Criteria used in our audit

The audit criteria we used to evaluate our objectives are listed below.

### **Objective 1**

To determine whether the Public Trustee properly safeguards and administers client assets held in trust.

Criterion 1: The Public Trustee should have policies and procedures to safeguard and administer client assets.

Criterion 2: Trust officers should follow legislation, policies and procedures in safeguarding and administering client assets.

Criterion 3: Decisions on safeguarding and administering client assets should be clearly documented in the client files.

### **Objective 2**

To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.

Criterion 1: The Public Trustee should have policies and procedures in place to provide guidance on making care decisions on behalf of its clients.

Criterion 2: Guardianship officers should follow legislation, policies and procedures in making care decisions on behalf of clients.

Criterion 3: The rationale for care decisions should be clearly documented in client files.

### **Objective 3**

To determine whether the Public Trustee publicly reports on the performance of its services.

Criterion 1: The Public Trustee should have performance goals.

Criterion 2: The Public Trustee should measure its actual performance.

Criterion 3: The Public Trustee should publicly report on its performance.

## Appendix III - Example of Reporting on Performance Measures (Source: Excerpt from Public Guardian and Trustee of Manitoba 2013-2014 Annual Report)

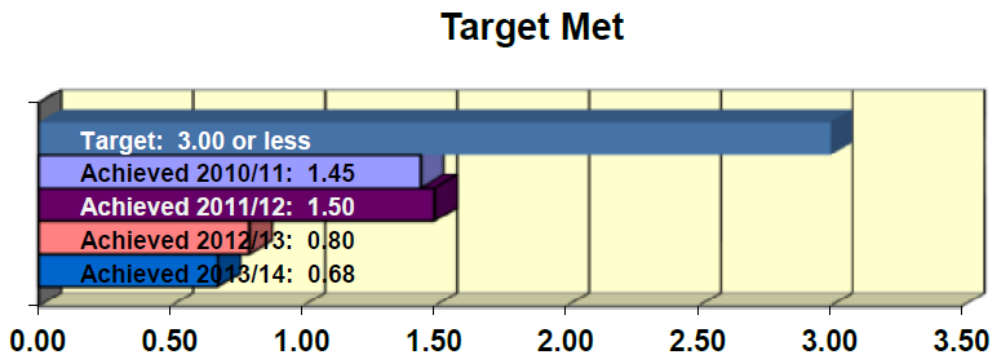
### Objective:

Adult clients will begin receiving management and protective services from The PT in a timely manner after receipt by The PT of authority to act.

This information is important to ensure that files for adult clients are assigned in a timely manner after authorizing documentation is received. This ensures that clients receive the management and protective services that The PT provides as soon as possible after the need is identified.

### Performance Target:

Client Administration files will be assigned to a client administration officer within an average of 3 days from receipt of authorizing documentation.



## Appendix IV - Issues Identified in the 2015 Financial Statement Audit

<i>Issues Identified in the 2015 Financial Statement Audit</i>	
Recommendation	Management Comments
<b>Implementation of Investment Policies</b>	
<p>We again recommend the Public Trustee move forward with the formation of an investment committee as specified in the Statement of Investment Policies and Objectives. (Also recommended in: 2014, 2013, 2012)</p>	<p><i>Management has evaluated the appropriateness of the formation of an investment committee. Management will present a recommendation to the Board of Directors that a resolution be passed that an investment committee will not be formed at this time.</i></p>
<b>Inefficient Manual Financial Statement Processes</b>	
<p>We recommend the Public Trustee develop a list of system modifications and work corroboratively with Information Management and Technology to implement these system improvements to allow interim and annual financial reports to be compiled electronically and reduce inefficient manual processes. (Also recommended in: 2014, 2013, 2012)</p>	<p><i>Due to resource and financial constraints within both Public Trustee Services and Information Management and Technology [Department of Justice] there is currently no plan for system modifications significant enough to provide the ability to generate either interim or annual financial statements and reduce the inefficient manual process. Spreadsheets supporting the financial statements will be password protected beginning with the March 31, 2016 fiscal year end.</i></p>
<b>Annual Report</b>	
<p>We recommend annual reports be prepared on a timely basis to meet the requirements of the Act. (Also recommended in: 2014)</p>	<p><i>Work is currently in progress to prepare all outstanding annual reports. Ongoing annual reports will be prepared as part of each year's annual audit preparation.</i></p>
<b>Change Management Controls in Aegis System</b>	
<p>We recommend the Public Trustee formalize and document a change management process for the Aegis system [Public Trustee Services' case management system]. Documentation should be on file to show all changes are tracked, approved, tested and approved to production. (Also recommended in: 2014)</p>	<p><i>Work on developing a change management process to track, approve and test program changes was undertaken in January 2016. The process and documentation has been created. Two change requests have been submitted and further change requests are being worked on. The process and documentation that has been developed has been applied to the change requests submitted and will be used on all future change requests submitted.</i></p>