



Government of
Saskatchewan

Annual Report 2004 - 2005

Saskatchewan Justice

Public Guardian and
Trustee of Saskatchewan



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This annual report is also available in electronic format from the department’s web site at www.saskjustice.gov.sk.ca

Letters of Transmittal



Her Honour the Honourable Dr. Lynda M. Haverstock
Lieutenant Governor of Saskatchewan

May It Please Your Honour:

I have the pleasure to transmit the Annual Report of the Public Guardian and Trustee of Saskatchewan for the year ending March 31, 2005.

I am pleased to report that the financial statements for the above fiscal year have now been finalized and audited.

The staff of the Public Guardian and Trustee are to be commended for their hard work and commitment to their clients.

A handwritten signature in black ink that reads "Frank Quennell". The signature is written in a cursive, flowing style.

The Honourable Frank Quennell, Q.C.
Minister of Justice and Attorney General

The Honourable Frank Quennell, Q.C.
Minister of Justice and Attorney General

Dear Sir:

I have the pleasure to submit for your consideration the Annual Report of the Public Guardian and Trustee of Saskatchewan for the year ending March 31, 2005.

The Office has made major progress in a number of areas. I refer you to the goals and the accomplished results in this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Ronald J. Kruzeniski". The signature is written in a cursive, flowing style.

Ronald J. Kruzeniski, Q.C.
Public Guardian & Trustee

Mandate

Vision: A society where the interests of vulnerable people are protected

Mandate:

The mandate of the Office of the Public Guardian and Trustee is to:

- Protect the property rights of children under the age of eighteen;
- Administer the property and finances of adults who are incapable of managing their financial affairs, monitor other property guardians and investigate allegations of financial abuse;
- Administer the estates of deceased persons; and
- Hold and administer unclaimed property.

Guiding Principles:

- Clients are entitled to a continuum of services from the Public Guardian and Trustee;
- Clients of the Public Guardian and Trustee should be able to obtain service in the simplest way possible;
- The Public Guardian and Trustee, although being easily accessible, should be the appointment of last resort;
- Every client is entitled to quality and timely service;
- The Public Guardian and Trustee will protect the assets of each client and attempt to maximize the rate of return; and
- To the extent possible, every service of the Public Guardian and Trustee should be charged for on a cost recovery basis.

Goal 1: Greater security and safety for the affairs of vulnerable people

- Objective 1: Intervene to secure the interests of vulnerable adults, children and deceased persons where permitted or directed by law
- Objective 2: Where possible, protect the estates of vulnerable adults and children from financial abuse and enhance the protection of their personal affairs where appropriate and permitted by law

Goal 2: Quality management of clients' assets and protection of their interests

- Objective 1: Identify, secure and manage clients' property and assets in a timely, prudent manner and maximize the rate of return
- Objective 2: Maintain accurate records of clients' property, assets, incomes and payments
- Objective 3: Make decisions regarding disbursement of clients' property in a timely, prudent manner
- Objective 4: Manage costs to clients and to the Office effectively

Goal 3: Knowledge and expertise around policy issues and law reform initiatives that affect clients' interests or the protection of vulnerable people

- Objective 1: Work with others in government to develop common approaches to legal and policy issues of concern to the Office
- Objective 2: Work with other Public Guardians and Trustees to develop common approaches to legal and policy issues of concern to the Office
- Objective 3: Develop a research basis for understanding the legal and policy issues of concern to the Office
- Objective 4: Promote public knowledge of the abuse of vulnerable people and develop potential tools for their protection

Goal 4: A high quality of work life, where all members of the Office develop and use their skills, take leadership and share in decision-making as part of a team

- Objective 1: Encourage leadership through staff skills development
- Objective 2: Recognize the achievements and accomplishments of employees
- Objective 3: Support a balance between work and life

Workplace Values:

The Public Guardian and Trustee and its staff believe in high quality services provided in a knowledgeable, courteous and professional manner. This service:

- contributes to the public's confidence in and understanding of the Public Guardian and Trustee;
- is responsive and sensitive to people's needs;
- is open, honest and candid while respecting legitimate rights to privacy; and
- is accessible.

The Public Guardian and Trustee and its staff value a high quality of work life where all members:

- share in decision making;
- demonstrate leadership;
- respect and communicate with each other;
- take personal initiative;
- have pride in their work;
- develop individual skills and abilities;
- develop team building skills; and
- work in a safe, healthy and adequately resourced work environment.

The Public Guardian and Trustee and its staff are accountable to clients and to the taxpayers of Saskatchewan for the wise, innovative and effective use of resources.

The Public Guardian and Trustee and its staff believe in working together as a team through negotiations and partnership with others for mutually acceptable outcomes. The Public Guardian and Trustee and its staff respect and value diversity and equality among clients and employees by recognizing, encouraging and understanding the individuality of each person.

What does the Office do?

For Children under the age of 18

- Holds funds for children under the age of 18;
- Monitors the actions of executors and trustees managing property for children;
- Manages children's interests in estates, lotteries, insurance policies and permanent impairment benefits;
- Approves settlements for personal injury claims and fatal accident claims and manages the proceeds of those claims;
- Approves legal fees for settlements of personal injury claims or fatal accident claims;
- Consents to the sale, transfer or lease of real estate where children have an interest.

For persons who are not capable of managing their own financial affairs

- The Public Guardian and Trustee can be appointed as property guardian in two different ways:

1. A Certificate of Incompetence under *The Mentally Disordered Persons Act*.
 - A medical doctor issues a Certificate of Finding of Incompetence;
 - A Chief Psychiatrist issues a Certificate of Incompetence;
 - The Public Guardian and Trustee issues an Acknowledgement to act;
 - The Public Guardian and Trustee has up to one year to issue an Acknowledgement after the date of the Certificate of Incompetence.
2. A Court Order under *The Adult Guardianship and Co-decision-making Act*
 - Under *The Adult Guardianship and Co-decision-making Act*, the court can appoint the Public Guardian and Trustee as property guardian, if no one else wants to act or a family is in dispute.

- When the Public Guardian and Trustee acts as property guardian, the Office is responsible for managing all the financial affairs of the person and does some or all of the following:

- ascertains the assets and debts of the person;
- determines the monthly income and expenses of the person;
- manages any personal property or real estate for the person;

- places funds of the person in the common fund;
 - makes any claims to recover funds on behalf of the person and if necessary commences a legal action;
 - defends or settles claims against the person;
 - arranges for the preparation of income tax returns.
- The Public Guardian and Trustee may also act as temporary property guardian if appointed by the court.
 - Where an adult is mentally incapable, the Public Guardian and Trustee may require the attorney under a power of attorney to provide an accounting.
 - The Public Guardian and Trustee may investigate an allegation that a vulnerable person is being subjected to financial abuse.
 - The Public Guardian and Trustee may require a financial institution to suspend the withdrawal or payment of funds from a person's account for up to 30 days, where the Public Guardian and Trustee has reasonable grounds to believe that the person is a vulnerable adult and the Public Guardian and Trustee has received an allegation that the person is being subjected to financial abuse.

For Deceased Persons' Estates

- Usually the family will administer the estate of a deceased person but sometimes there is no one to act as administrator or the family is in dispute.
- In these instances, the Public Guardian and Trustee can apply as Official Administrator.
- If family members are disputing the validity of a Will, the Public Guardian and Trustee can be appointed as administrator pending the outcome of the litigation.

When the Public Guardian and Trustee is appointed Administrator, the Office is responsible for dealing with all the financial affairs of the deceased and does the following:

- ascertains all the assets and liabilities of the deceased;
- determines the beneficiaries of the deceased estate;

- pays all income taxes owed by the deceased if there are sufficient funds;
- pays all liabilities of the deceased if there are sufficient funds;
- distributes the estate to the beneficiaries according to the will or *The Intestate Succession Act*.

For Missing Persons

- The Public Guardian and Trustee can hold funds for persons whose whereabouts are unknown and while it is hold those funds, it may do the following:
 - search for the missing person;
 - advertise in an attempt to locate the missing person;
 - hire an heir locator to attempt to locate the missing person;
 - after six years and the person still can not be found, pay the funds to the Crown.

For the Common Fund

Pursuant to section 47 of *The Public Guardian and Trustee Act*, all funds received by the Office are to be placed in the Common Fund. Section 47 allows the Office to invest a portion of those funds. This investment activity is governed by an Investment policy. This policy was last updated

November 2004 and can be found at:
<http://www.saskjustice.gov.sk.ca/PublicTrustee/docs/PTSKPol2004%20Final1.pdf>

The investment decisions are made by an investment manager, Greystone Managed Investments Inc. The investment manager is required to comply with the investment policy. Regular compliance reports are provided and any deviations from policy are reported to the Public Guardian and Trustee.

The actions and performance of the investment manager are monitored by an investment consultant, James. P. Marshall, a Hewitt Company. The investment consultant meets with the Investment Advisory Committee on a periodic basis to review the performance of the Common Fund and more particularly, the investment manager.

The custodian of the Common Fund is Royal Trust. The custodian is responsible for safekeeping of the assets, income collection, settlement of investment transactions, and accounting for the investment transactions and related holdings.

The Investment policy provides that investments can be made in different asset classes, which are as follows:

Common Fund Benchmark and Asset Component Ranges

	Minimum %	Benchmark %	Maximum %
Equities			
Canadian equities	5	13	25
U.S. equities	5	12	25
Non-North American equities	5	12	25
Total Foreign equities	10	24	40
Total Equities	20	37	50
Real Estate	0	5	7
Fixed Income			
Bonds	40	55	70
Short-term investments	2	3	30
Total Fund		100	

Each asset class has a minimum percentage that can be invested in that class and a maximum amount that can be invested in that class. Each asset class also has a benchmark percentage. The performance of the investment manager is monitored against market rates of return in each asset class. Total Fund performance is measured against a benchmark portfolio return, which is calculated by applying market rates of return to the benchmark portfolio weights.

The Common Fund is invested in a manner that reflects the highest standard of prudence in investment management and the high duty of care required to fulfill the responsibilities of the office of the Public Guardian and Trustee. Accordingly, the Common Fund is invested in a prudently diversified portfolio of high quality securities, with an overall conservative orientation. The Common Fund objective is to minimize the risk of a loss of capital, while providing current income sufficient to meet ongoing cash needs and to provide potential for capital appreciation over time to meet the needs of the clients with higher risk tolerances and longer investment time horizons.

As of March 31, 2005, the following amounts were invested in each category:

Canadian Equities	\$ 17,304,000	15.0%
U.S. Equities	\$ 16,583,000	15.0%
Non-North American Equities	\$ 13,478,000	12.0%
Bonds	\$ 63,894,000	56.0%
Short-Term Investments	\$ 2,645,000	2.0%
Total	\$113,904,000	100.0%

The Public Guardian and Trustee Regulations require that earnings be distributed quarterly. Earnings are distributed in accordance with sections 4 to 11 of the Regulations. These regulations can be found at <http://www.qp.gov.sk.ca/documents/english/Regulations/Regulations/p36-3r1.pdf>

Thus, distribution of earnings takes place after March 31, June 30, September 30 and December 31 of each year. Each distribution involves interest, dividends and capital gains or losses.

2004-2005 Information

As of March 31, 2005, the Public Guardian and Trustee provided services to:

Adults where someone else is acting as property guardian	1,288
Adults where we are acting as property guardian	1,080
Adults where we review property guardians' accounting	267
Adults where we have a notice of an interest in an estate	54
Adults where we are carrying out investigations	3
Adults where we are acting as litigation guardian	2
Children for whom we hold funds	2,182
Children whose property rights we may monitor	1,656
Estates where we have letters of administration	395
Estates where the value is less than \$10,000	288
Estates where we are monitoring activities	22
Estates where we have notice of tax enforcement	20
Estates where we are acting as administrator ad litem	2
Estates where we have unclaimed funds	2
Estates where we act as trustee	1
Total	7,332

- As of March 31, 2005, the Office held assets in trust for clients in the amount of approximately \$139 million.
- The annualized average rate of return realized for clients with money in the common fund for the twelve months ended March 31, 2005 was 5.68 per cent.
- The annualized rates of return over the past number of years are as follows:
 - The 4-year average was 6.85%
 - The 5-year average was 7.85%
 - The 7-year average was 9.12%
 - The 10-year average was 9.61%
 - The 12-year average was 9.64%

2004-2005 Planned Actions

- Propose implementation of a program of public personal guardianship for April 1, 2005, and request resources to fund the program and proclamation of section 18 of *The Public Trustee Amendment Act, 2001*.
- Obtain the resources to fund a program of investigation of financial abuse of vulnerable persons and proclamation of section 19 of *The Public Trustee Amendment Act, 2001*.
- Meet with the Department of Indian and Northern Affairs Canada to discuss areas of co-operation and collaboration on issues within the mandate of the Public Guardian and Trustee.
- Propose and promote amendments to *The Children's Law Act* regarding guardianship of children.
- Participate in the development of *The Powers of Attorney Regulations*.
- Implement *The Powers of Attorney Regulations* as they pertain to the Public Guardian and Trustee.
- Propose, promote and participate in a review of *The Trustee Act*.
- Participate in a process to update *The Administration of Estates Act* and consolidate *The Crown Administration of Estates Act, The Devolution of Real Property Act, The Absentee Act* and *The Intestate Succession Act*.
- Propose, promote and participate in the development of *The Co-ownership Act*.

Performance Measures and Targets

- The performance target:

Performance Measure	Baseline	2004-05 Target	2004-05 Year-to-date Results Achieved
<i>Quality of return rate on investments</i> Per cent difference between the four year average rate of return on client assets invested by the Office of Public Guardian and Trustee and the benchmark identified in the Investment Policy*	1.3% (March 31, 2004)	0.0%	0.4%

*The goal is to meet or exceed the benchmark established in the investment policy. The benchmark is derived from a series of market indicators for investment returns. It is usually a positive number. This

performance measure strives to meet the benchmark, which is in effect a very positive result.

2004-2005 Activities and Results

- The Office did propose a program of personal guardianship and requested resources to fund the program.
- A modest program of investigation of serious allegations of financial abuse was started February 1, 2005 with limited resources allocated to the program. Strict criteria are being applied before investigations are launched.
- The Office met with the Department of Indian and Northern Affairs Canada to discuss areas of co-operation and collaboration. The Office was able to assist the Department in a number of instances where litigation guardian services were required.
- *The Children's Law Act* was not amended and thus, no amendments have been proposed. When amendments to this Act are being considered, the Public Guardian and Trustee will make proposals for amendments.
- *The Powers of Attorney Act, 2002* and Regulations came into force April 1, 2004, and *The Powers of Attorney Amendment Act, 2004* and Regulations came into force January 1, 2005. The Act and Regulations as it pertains to the Public Guardian and Trustee has been implemented in the office.
- A review of *The Trustee Act* is currently taking place with consultations with lawyers and others.
- A review of *The Administration of Estates Act* has not yet taken place. It is hoped this will occur in the future.
- The development of a *Co-Ownership Act* has not yet occurred but it is hoped that this might occur in the future.
- Other things the Public Guardian and Trustee has achieved in the past year include:
 - the office finalized the Business Continuation Plan which deals with what would occur in the event of an emergency;
 - completed the Administration Manual for the office;
 - reprinted the Adult Guardianship Manual which provides information to the public on *The Adult Guardianship and Co-decision-making Act*;
 - began depositing funds into client's accounts by electronic funds transfer;
 - implemented amendments to *The Administration of Estates Act* which made administration of small estates easier.
- Implemented a new version of our computer system, Guardian 5.9.0.

2005-2006 Planned Actions

- To implement a program of investigation of financial abuse with related policies and procedures with allocated resources.
- To propose a program of personal guardianship for the 2006-07 year and if approved begin to develop resource plans, financial plans and policies and procedures.
- To organize, deliver and host a National Conference of Public Guardians and Trustees in October 2005.
- To participate in the development of a new *Trustee Act*.
- To promote and participate in the development of a *Co-ownership Act*.
- To promote and participate in the review and updating of *The Administration of Estates Act*.
- To develop a proposal to enhance the provisions of legal services to clients by adding another lawyer to the office.
- Undertake a security and privacy review of the operations of the Public Guardian and Trustee.
- To develop and design procedures for a customer satisfaction survey for each of the Estates, Children and Adults units.
- To develop and implement new releases of the computer system Guardian, versions 6.0 and 6.1, and begin work on an archiving system.

Trends and Issues

Aging Population

Saskatchewan's population is aging. According to the 2001 Census, over one in eight of Saskatchewan's citizens were 65 or older. The population 65 and older will continue to increase as the baby boomer generation matures, potentially to greater than one in six Saskatchewan people by 2016. Meanwhile, the number of those over 80 (the citizens with the greatest need for guardianship and estate management) has increased even more dramatically.

It is difficult to predict, but our aging population will probably result in the Public Guardian and Trustee being appointed as property guardian for more and more senior citizens. Seniors may also live longer under guardianship. The workload of the Office, and hence the need for additional resources and for qualified staff, will increase as a result. At the same time, the Office's ability to meet its fiduciary and other obligations for each and every file and for every decision will be stretched.

Increasing Aboriginal Population

The proportion of the population that is Aboriginal will increase dramatically over the next 10 to 20 years. According to some projections, persons of Aboriginal ancestry could represent as much as 20 per cent of the provincial population by 2018. In addition, the off-reserve Aboriginal population is growing at a faster rate than the on-reserve population.

The off-reserve Aboriginal vulnerable adult population may have unique estate needs and issues. The Public Guardian and Trustee may need to develop policies that deal with these special needs and circumstances.

Abuse of Senior Citizens

If you talk to doctors, lawyers, police officers, nurses, psychologists, social workers and other human service providers, they will probably be able to tell you of at least one case of physical, mental or financial abuse of a senior citizen. Physical and sexual abuses are obviously very serious, but financial abuse can be just as harmful to a senior citizen.

There are no definitive statistics on its occurrence, but various studies have shown that between 1 and 2.5 per cent of senior citizens are financially abused in Canada every year. This means that there may be many cases of financial abuse of seniors in Saskatchewan in any given year.

Financial abuse results in lost savings. It can mean that a nest egg set aside for retirement is gone. Once it occurs, it is difficult to get the lost property or money back. The Public Guardian and Trustee will take all the steps possible to develop actions to restore senior citizens to their original financial position.

The Legislative Assembly has passed an amendment to *The Adult Guardianship and Co-decision-making Act* that would create a presumption for all financial and property transactions done within one year prior to a vulnerable person's coming under property guardianship. The presumption will place the onus on the other party to prove that s/he reasonably believed the vulnerable person was capable. Such a presumption will ensure the protection of vulnerable people, who are likely suffering some form of incapacity before they come under guardianship, while allowing legitimate transactions to go ahead.

Joint Ownership

Many people in Saskatchewan place property in joint names as part of estate planning. They want to reduce their estate costs when they die.

The problem with joint tenancy is that both joint tenants can do anything they want with the property short of selling it. A son or daughter may put their parent in a home and then rent out the jointly held property for their own profit. If it is a bank account, one joint owner may withdraw most or all of the funds for the account.

In most instances, joint tenants have a right of survivorship, so that the last surviving joint tenant takes it all. One child who is in a joint tenancy with his or her parent may become the sole heir, supplanting any other children and potentially the wishes of the parent, or a bank account set up for the convenience of an older person may result in the surviving joint owner taking the entire contents of the account on the older person's death. Senior citizens should be extremely cautious about

placing property in joint names with the right of survivorship. Where the senior is using joint tenancy for convenience or to reduce estate costs, they should insist upon the other joint owner signing a Declaration of Trust. There is a need to educate senior citizens, bankers, accountants, social workers and police officers on the dangers of joint bank accounts and the importance of a Declaration of Trust.

The Public Guardian and Trustee is proposing a comprehensive review of the law of co-ownership in the province, so that legislation could be formulated that would better protect vulnerable adults or others from abuse connected with joint tenancy.

Other Legal Changes

Over the next few years a number of areas of the law relating to estates and estate management need to be changed in Saskatchewan. The law of trusts is being reviewed and the law relating to administration of estates needs to be updated.

The proposed amendments to the law of trusts could have a potential impact on the Public Guardian and Trustee. Changes to the law of administration of estates could increase the workload of the Office.

Security, Conflict of Interest and Bankruptcy of Property Guardians

The Adult Guardianship and Co-decision-making Act requires that all property guardians furnish security in the form of a bond equal to the value of the vulnerable person's estate. Security is a way to protect the estate of an infant or vulnerable adult. It offers some assurance that the infant or vulnerable adult will be able to recoup some of the value of the estate should anything happen to the estate.

The Public Guardian and Trustee views the provision of security as an essential part of adult guardianship, and has had good success in convincing the courts and lawyers that security should be provided in most cases. The Office now requests bonds on most property guardianship applications. In many cases, a personal bond will be acceptable. Sometimes the applicant requires

one or two sureties. Occasionally the applicant requires a commercial bond.

In reviewing applications for property guardians, the Public Guardian and Trustee is observing people applying for property guardianship when they have a conflict of interest in relation to the adult's financial affairs. A conflict of interest can be defined as a situation where if one makes a decision regarding someone else's property, he or she will benefit or lose financially depending on what that decision is.

It is not advisable that a person be appointed property guardian for an adult if there exists a notable conflict of interest. Where the Public Guardian and Trustee detects such conflict, it will advise the Court of the existence of the conflict and in many instances, recommend the applicant not be appointed.

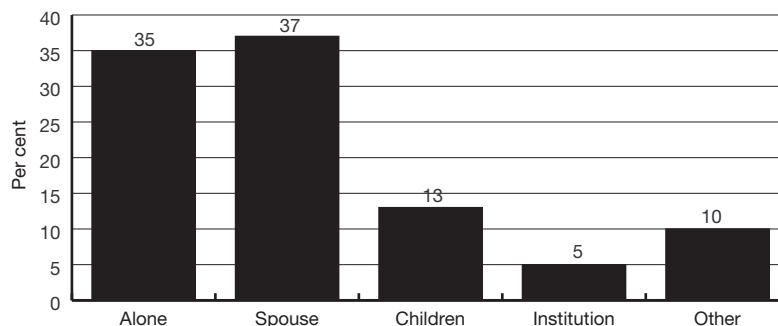
The Public Guardian and Trustee has also noted that individuals who have declared or been petitioned into bankruptcy are applying for property guardianship. Subsection 39(f)(vi) of *The Adult Guardianship and Co-decision-making Act* requires the Court to inquire into the suitability of the applicant and can take into account the applicant's history in relation to bankruptcy. The Public Guardian and Trustee will point out to the Court, the fact that the applicant was bankrupt or is in the process of being discharged from bankruptcy. In some instances, the Office will recommend against appointment of the applicant.

Living in the Community

Only 5 per cent of seniors in Canada lived in institutions in 2001 (see Figure 1). Thirty-five per cent of seniors lived alone in a domestic setting, 37 per cent with a spouse and 13 per cent with children. The number of seniors with serious and

chronic health conditions living in institutions may rise, however, in the near future. The majority of persons with disabilities also now live in the community.

Figure 1: Living Arrangements of Canadian Seniors – 2001 Census



Source: Statistics Canada, 2001 Census

Many of the Public Guardian and Trustee's clients therefore live in the community. This increases the need for personal guardians to assist vulnerable adults with personal decisions, and to be aware of the personalized needs of each client and seek ways to preserve their independence.

A Need for Information

At present, other human service providers, professionals and the public at large require more information on issues affecting vulnerable adults. This affects their ability to respond to certain issues, such as the abuse of the senior citizens or problems associated with joint ownership. These people generally do want to know more, in order to improve their responses.

In co-operation with the Regina Qu'Appelle Health Region, the Public Guardian and Trustee chaired a conference of health professionals and interested government human service providers in April 2004. The conference dealt with a variety of issues, including:

- Financial abuse;
- Property guardianship;
- Personal guardianship;
- Powers of attorney;
- Health care directives;
- Capacity issues; and
- Other related topics.

The Public Guardian and Trustee will work in conjunction with other government and community organizations to continue to provide information to interested professionals and the public.

Client Personal Information

The Public Guardian and Trustee is required to account publicly to the Minister and the Legislative Assembly as evidenced by this annual report. The Public Guardian and Trustee is required to have an audit performed by the Provincial Auditor each year. This audit reviews financial information but also involves a review of systems and controls. The Office is subject to all financial controls of the Comptroller's office and the accounting requirements of the Department of

Justice. Citizens have the right to contact the Ombudsman who has the authority to do a review of a file. Finally, at some point the office must always account to a client, his or her property guardian, executor or administrator. I point out these many accountability mechanisms, which are in place to require the office to operate in a lawful and responsible way.

The Public Guardian and Trustee has been in existence since April 1, 1984. The office and its predecessor, the Administrator of Estates, have always taken the issue of privacy and confidentiality very seriously. As the Office administered the financial affairs of a person, we believe that person is entitled to as much privacy as they had when they were managing their own affairs. When they were managing their own affairs, they had the discretion to disclose what information they wished; when the office administers their affairs, the office will always error on the side of disclosing less information rather than more so that the person's privacy is guarded.

The Freedom of Information and Protection of Privacy Act reinforces this principle in section 29, which provides as follows:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

..... (list of exceptions)

The Health Information Protection Act further enforces this principle in section 5(2):

5(2) A trustee shall use or disclose personal health information about an individual only:

(a) with the consent of the subject individual;
or

(b) in accordance with a provision of this Act that authorizes the use or disclosure.

To further reinforce this long-standing position of confidentiality, the office has developed a policy on when information can be released.

On a day-to-day basis, the Public Guardian and Trustee staff have to disclose information in order to manage the financial affairs of the office's clients. It is expected they will only release as

much information as is necessary to get the job done. The office will only release that amount of information, which is necessary and in the best interest of the client. The reverse is true, if releasing information is not in the best interest of the client, then the office will not release it.

If a neighbor or friend of the client called asking for information, the office would, there being no best interest, refuse to provide that information. If a son or daughter calls, the office takes the same approach. If there is no financial advantage to release the information, then the office will not release that information. When sons and daughters call, they have an expectation that the office should release information to them because they are the son or daughter. If the client were competent, he or she would decide whether to give any information to a son or daughter. Some parents do and some parents do not. A son or daughter has no higher right to a parent's financial information than a stranger.

The Public Guardian and Trustee also views our office as a place of last resort. The Office is property guardian for a client when the family will not or cannot be the property guardian. A family member who wishes more control and more information can always apply to court to be the property guardian. If the court appoints that person, the office will gladly hand over all information to that property guardian.

In many instances, when the office is property guardian for a client, it is because some financial abuse has taken place prior to our involvement. In many instances, it is one of the children who has been the abuser. That child has tried to benefit or has benefited from being power of attorney, property guardian or unofficial manager of the parent's affairs. Sometimes there is a major family dispute occurring. Our office is placed between two differing sides of the family. The Public Guardian and Trustee, when faced with an information request, does not want to give information to the abuser and does not want to take sides between family members or prejudice the rights of our client in case there is a claim for restitution. All of this reinforces the importance of a policy of confidentiality and protection of the client's privacy.

For all of the above reasons, the Public Guardian and Trustee has taken the side of protecting a person's privacy and enforcing a strict confidentiality policy.

Risk Management

The Public Guardian and Trustee continues to identify and manage risk. The Office partners with the Department of Justice, executive government and other government agencies to reduce or manage external risk.

Market fluctuations could have an adverse impact on the Public Guardian and Trustee's Common Fund. The Public Guardian and Trustee attempts to minimize this impact through:

- a balanced investment policy which is reviewed annually;
- an investment manager that makes all investment decisions;
- an investment consultant who advises on the performance of the investment manager;
- an investment advisory committee that reviews the performance of the investment managers and changes to the investment policy; and
- a policy that provides for the distribution of capital gains over a four year period.

Other internal risk factors include negligent administration of a client's affairs, breach of the fiduciary obligations, fraud, errors in recording income or expenses and loss of assets.

These are the risks that any organization that holds funds and manages assets has. They are also the risks that every Public Guardian and Trustee in Canada will have. The greatest risk is to ignore these risks and the preferred approach is to recognize them as risks and to take steps to minimize the risk and do all things in one's power to attempt to insure that such events do not occur. The Public Guardian and Trustee, in an attempt to minimize these risks to the greatest extent possible does the following:

- provides training at monthly meetings;
- ensures that staff attend relevant conferences;
- has legal counsel review actions or decisions;
- maintains a policy manual and a regular updating process;
- conducts an internal review on a monthly basis;
- annual review by the Provincial Auditor;
- establishes a series of tight controls surrounding the issuing of cheques and the processing of expenses;
- created greater physical security in the office;
- prescribed procedures for the opening of mail and the handling of cash and other assets;
- prescribed procedures for the recording of assets on the office's computer system;

- maintains and updates controls around the recording of income and expenses;
- creates rules regarding the taking and recording of inventory;
- secures personal property when stored at the office;
- places insurance on assets; and
- utilizes the computer system to allow only authorized staff to perform certain functions.

As stated above, the prudent approach is to recognize the risks and then take as many steps as possible to minimize those risks.

Management Structure



Fees

The Office has a principle of cost recovery in the provisions of its services. Where a full cost recovery is not achievable, partial cost recovery is the objective. There are certain situations where clients cannot pay the full or partial fee and the Public Guardian and Trustee has the discretion to reduce those fees in appropriate circumstances. Under *The Public Guardian and Trustee Act and Regulations* and *The Administration of Estates Act and Regulations*, the Public Guardian and Trustee charges fees for services.

For Children

- 1/12th of 1 per cent per month, of the amount held for the child.

For Adults

- 5 per cent or 7 per cent of income
- 1/12th of 1 per cent per month, of the value of the assets managed for adults.

For Estates

- A percentage of the value of the estate;
 - 7 per cent on first \$50,000
 - 5 per cent on next \$50,000
 - 4 per cent on excess over \$100,000with a minimum fee of \$900. This fee would apply if the Public Guardian and Trustee acts as administrator pending litigation or acts as administrator to defend a claim.

For Co-decision-makers or Temporary Guardians

Where the Public Guardian and Trustee acts as a co-decision maker or a temporary guardian, the fee is \$250 per month.

For Court Appearances

If the Public Guardian and Trustee appears in Court, it will ask the Court to award it costs on a solicitor/client basis.

For Litigation Guardians

Where the Public Guardian and Trustee acts as a litigation guardian for a child or an adult, the fee is \$500 plus disbursements and legal fees.

For Issuing a Certificate

- Consent to Sale of Real Estate: Varies, depending on the circumstances and or the value of the property.
- Certificate of No Infants: \$30.00
- Approval of Settlement for an Infant: Varies, depending on the amount of the settlement.

Relevant Legislation

Absentee Act, 1996
Administration of Estates Act and Regulations
Adult Guardianship and Co-decision-making Act and Regulations
Automobile Accident Insurance Act
Child and Family Services Act
Children's Law Act, 1997
Condominium Property Act
Crown Administration of Estates Act
Department of Social Services Act
Dependents' Relief Act, 1996
Devolution of Real Property Act
Escheats Act
Family Maintenance Act, 1997
Fatal Accidents Act
Intestate Succession Act, 1996
Land Titles Act, 2000
Limitations Act
Mentally Disordered Persons Act
Powers of Attorney Act, 2002 and Regulations
Public Guardian and Trustee Act and Regulations
Queen's Bench Act, 1998
Saskatchewan Insurance Act
Survival of Actions Act
Survivorship Act, 1993
Tax Enforcement Act
Teachers Superannuation and Disability Benefits Act
Trustee Act
Variation of Trusts Act
Wills Act, 1996

All of this legislation can be viewed at the Queen's Printer website at <http://www.qp.gov.sk.ca/>

Acknowledgment

The Public Guardian and Trustee acknowledges and thanks the many staff members who have continued to provide courteous, effective and efficient service to clients. Without their expertise and commitment, we would not have been able to attain our many goals for the 2004-2005 fiscal year.

Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Public Guardian and Trustee of Saskatchewan. Fulfilling the responsibility requires the preparation and presentation of financial statements and other financial information according to generally accepted accounting principles. These recommendations are consistently applied, with any exception specifically described in the financial statements.

The accounting systems used by the Public Guardian and Trustee include an appropriate system of internal controls to provide reasonable assurance that:

- transactions are authorized;
- the Public Guardian and Trustee's assets are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other information.
- the accounts are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other financial information.

The Provincial Auditor of Saskatchewan has audited the Public Guardian and Trustee's statement of financial position as at March 31, 2005, and the statement of operations and changes in net assets, and cash flows for the year then ended. Their responsibility is to express an opinion on the fairness of management's financial statements. The Auditor's Report outlines the scope of their audit and their opinion.

Financial Statements

The financial statements on the following pages provide an account of the financial activities of the Public Guardian and Trustee of Saskatchewan for the year ended March 31, 2005.