



# OFFICE OF THE PUBLIC TRUSTEE

ANNUAL REPORT

FOR THE FISCAL YEAR ENDING MARCH 31, 2017

September 15, 2017

The Honourable Mark Furey  
Attorney General and Minister of Justice  
Department of Justice  
Province of Nova Scotia  
1690 Hollis Street, P.O. Box 7  
Halifax, Nova Scotia B3J 1A1

Dear Minister Furey:

Pursuant to Section 47 of the *Public Trustee Act*, I submit this Annual Report for the fiscal period ending March 31, 2017.

Yours very truly,



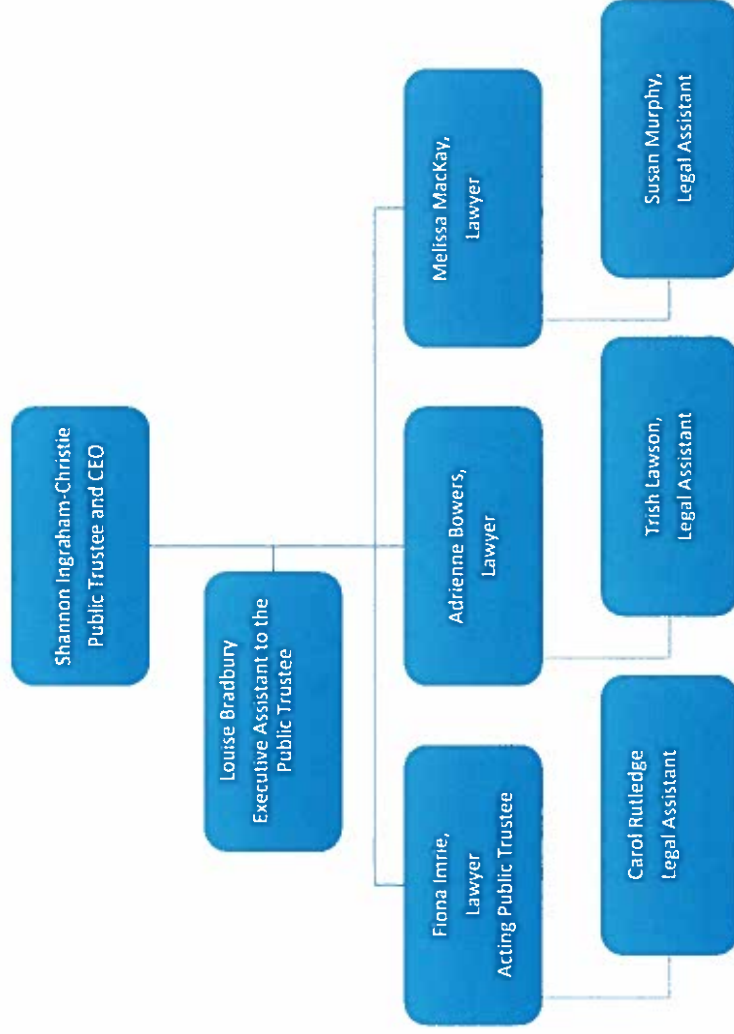
Shannon Ingraham-Christie, BBA LLB  
Public Trustee of Nova Scotia

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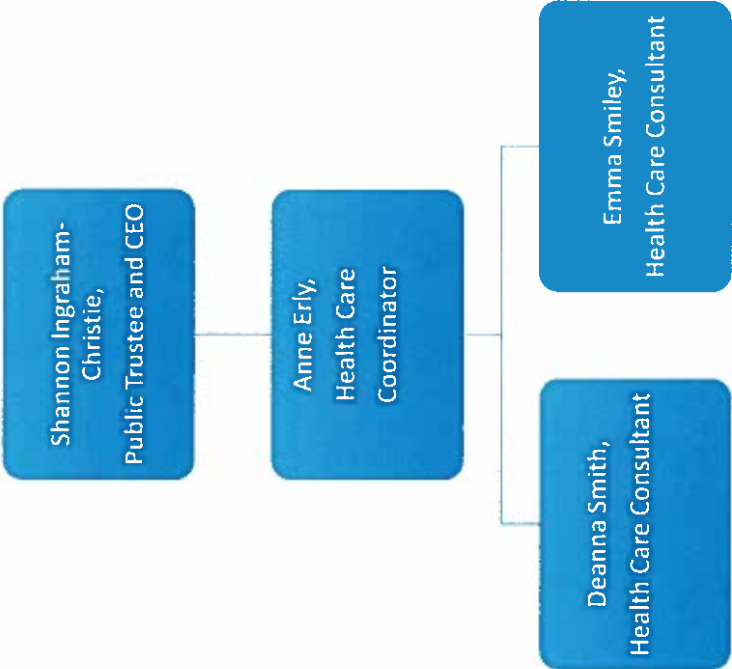
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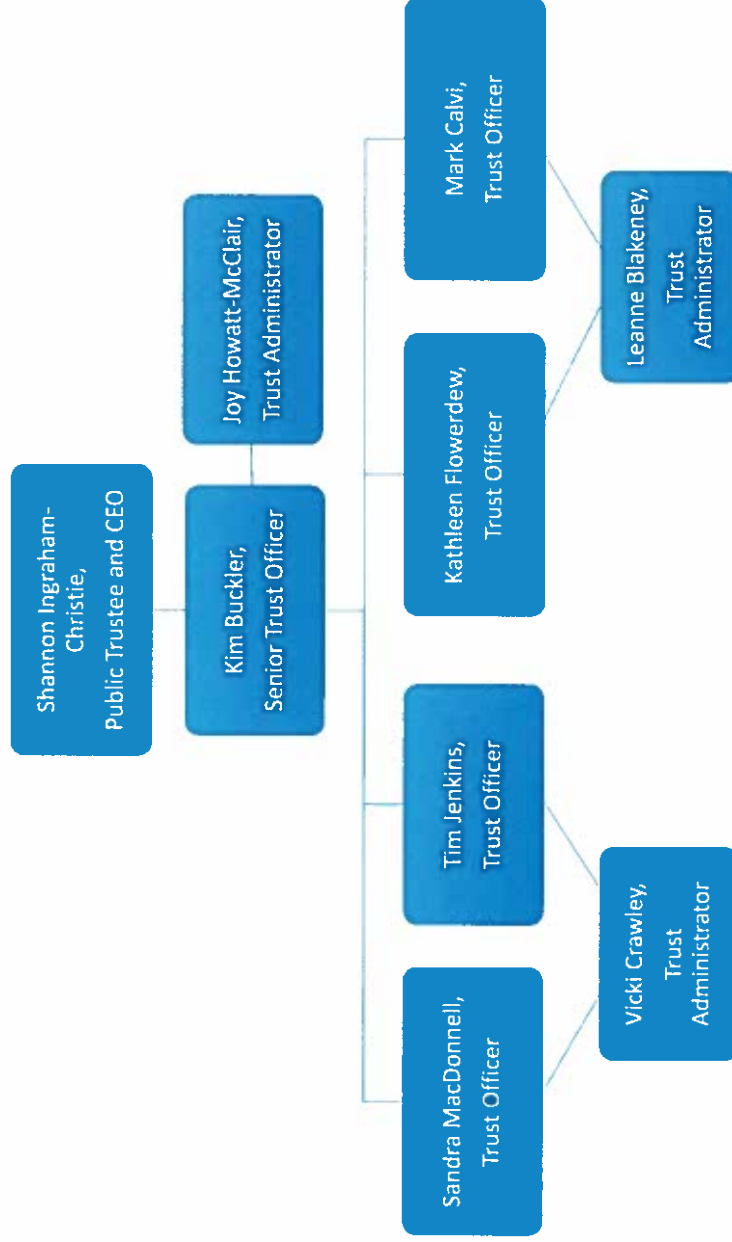
# Public Trustee Office - Legal



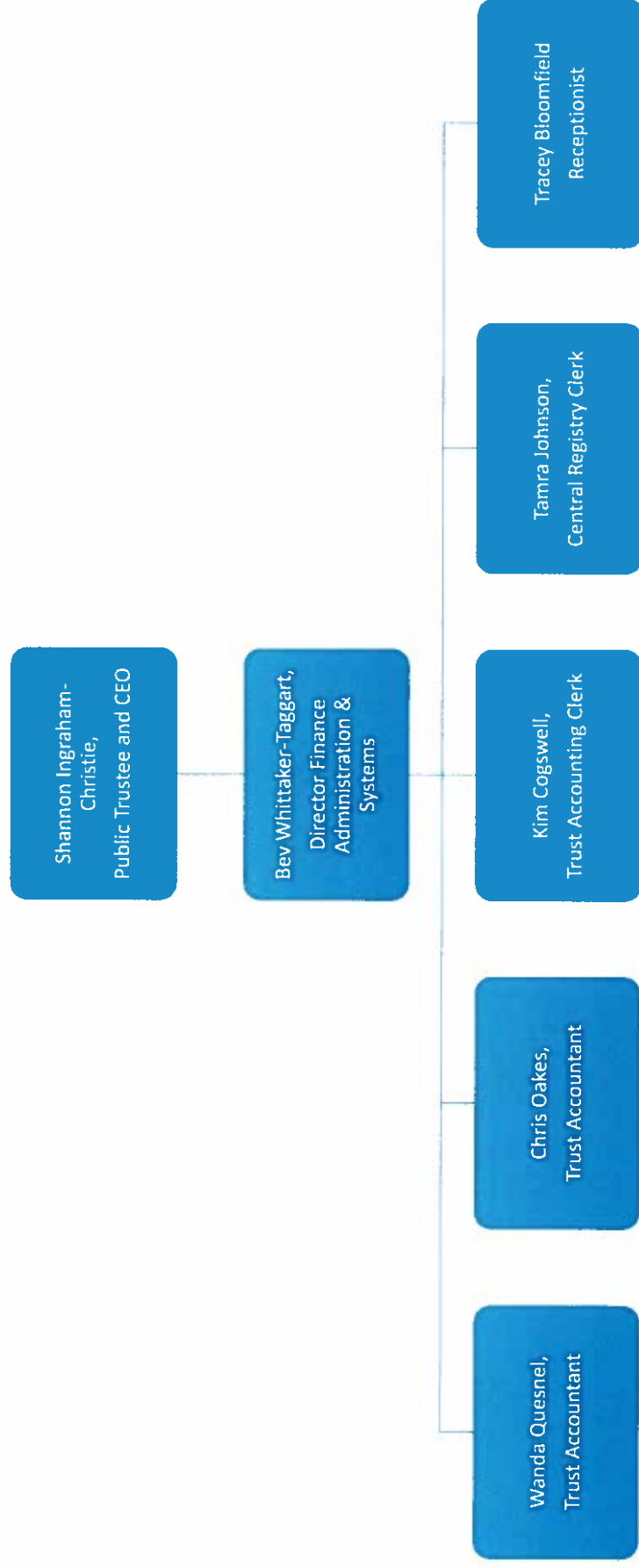
# Public Trustee Office-Health Care Decisions Division



# Public Trustee Office – Trust Officers



# Public Trustee Office – Accounting and Administration



## MESSAGE FROM THE PUBLIC TRUSTEE

The fiscal period April 1, 2016 to March 31, 2017 represents my first full year as Public Trustee of Nova Scotia. I am pleased to have been selected to lead this office and to serve and protect the interests of the most vulnerable people in our society. I would like to thank our former Public Trustee for her hard work and dedication to this office.

The Office of the Public Trustee was established to protect the interests of the most vulnerable people in Nova Scotia, namely minor children, incompetent adults, missing persons and deceased persons. We do this by providing professional and cost-effective guardian, trustee, custodian, estate and legal representation services in a variety of situations. Additionally, we are the substitute decision maker of last resort for incompetent persons who need personal care or non-emergency medical care and are not able to consent to it on their own behalf. We become involved through orders issued by a court, authority granted under various pieces of legislation and in some cases when appointed under a will, power of attorney or trust document. Generally, we become involved when it is determined there is no one else willing or able to act.

Public Trustee staff work with clients, their family and friends and a variety of social service, healthcare and private agencies to meet the needs of our clients. We are required to make decisions for our clients in situations where they are not able to make decisions on their own behalf. Some decisions are major, such as where the client will live and with whom, how we will respond to being served with legal documents on their behalf (for instance in a divorce proceeding or a tort action taken against them), will we sell their home and for how much, will we purchase a pre-paid funeral for them, where will we bury them, will they have a headstone, what will we invest their money in, what medical treatment will we consent to on their behalf etc. Some decisions are minor, such as determining if they need new clothing, what cable package to set-up for them, do they have money for haircare and footcare, when will we file their taxes, pay their bills, access government services for them, will we assist their parent's financially in their monthly maintenance or agree to fund their school trip. The work can be challenging and in some cases, the clients and/or their friends and family members have complex relationships and did not ask or want our office to be involved.

The staff at the Public Trustee Office continue to demonstrate a high degree of commitment and dedication. I am honored to work with a group of people who recognize the importance of what we do and the impact it has on the people we serve. I would like to thank them for their hard work and professionalism.



Shannon Ingraham-Christie, BBA LLB  
Public Trustee of Nova Scotia



# OVERVIEW

## Mission

The Public Trustee is committed to the proper administration of estates of deceased persons, incompetent persons, children and missing persons. It is also committed to providing informed consents for health care, placement in continuing care homes and the provision of home care services using an approach that is client-oriented, respectful of human rights and freedoms and in the client's best interests if prior wishes, values and beliefs are not known.

## Organization

The Public Trustee Office is a corporation sole, created pursuant to the *Public Trustee Act*. Although our office is located at 5670 Spring Garden Road, Halifax, Nova Scotia the Public Trustee's jurisdiction is province wide. It has a staff of twenty-five individuals.

The Office of the Public Trustee has perpetual succession and an official seal. It may sue and be sued in its corporate name. The person appointed to be Public Trustee has the status of a Deputy Head. They must be a lawyer with a minimum of ten years practising experience and in good standing with the Nova Scotia Barrister's Society. For administration purposes, the Public Trustee reports to the Attorney General.

The Public Trustee may perform the duties of and be a guardian, custodian of property, trustee, personal representative of deceased estates and for healthcare purposes substitute decision maker of last resort under numerous pieces of legislation, including the following:

- *Public Trustee Act*
- *Hospitals Act*
- *Personal Directives Act*
- *Patient's Abandoned Property Act*
- *Adult Protection Act*
- *Guardianship Act*
- *Incompetent Persons Act*
- *Probate Act*
- *Presumption of Death Act*
- *Survival of Actions Act*
- *Involuntary Psychiatric Treatment Act* and
- *Residential Tenancies Act*

The Public Trustee's services can be broken down as follows:

- Services for Mentally Incompetent or Physically Disabled Adults
- Health Care Decisions
- Deceased Estate Services
- Children's Trust Services
- Legal Representation Services
- Missing Persons Services
- Services pertaining to Undistributed Assets Held in Trust by Third Parties
- Public Enquiries

### Statistical Summary of Year

During this fiscal year, we opened 361 new files and we closed 294 files leaving us with a total of 1787 active, open files and 468 enquiry files. I refer you to Schedules "A", "B", "C", "D", "F" and "H" attached hereto. These schedules set out the 15 different categories of files that the Public Trustee manages, the number of files in each category that were opened and closed during the fiscal year and the number of active files at year end.

During the last five years, our total file numbers have increased by approximately 35%. Our enquiry files have increased by approximately 33%. The net value of assets we hold in trust has increased by approximately 32%.

	March 31, 2012	March 31, 2013	March 31, 2014	March 31, 2015	March 31, 2016	March 31, 2017
No. of client files	1321	1467	1469	1605	1720	1787
No. of enquiry files (opened)	352	370	442	456	484	468
Net value of assets held in trust	\$44,906,457	49,160,934	\$52,508,079	\$55,525,891	\$56,830,441	\$59,306,839

Our largest category of files are Adult Living Estate files at 507. Our second largest category of files are for Health Care files at 474. Our third largest category of files are Deceased Estate files at 170 and the fourth largest category of files are Infant Living Estate files at 166.

We continue to observe that the more complex and demanding files are often referred to the Public Trustee. These files are referred to our office by the judiciary, hospital staff, social service agencies, financial institutions and the general-public. The Public Trustee has a competent, experienced and hard-working staff. They find solutions where most would not. The people of Nova Scotia are well served by them.

## SERVICES

### Services for Mentally Incompetent or Physically Disabled Adults

The Public Trustee of Nova Scotia provides guardian and trustee services for adults who are deemed to be mentally incompetent or physically disabled persons under the following pieces of legislation:

- Section 59 of the *Hospitals Act*
- Section 13 of the *Adult Protection Act*
- Section 8A of the *Public Trustee Act* and section 14 of the *Personal Directives Act*
- Powers of Attorney Act*
- Section 12A of the *Incompetent Persons Act*
- Section 8 of the *Public Trustee Act*

Of these, we receive the most referrals pursuant to the *Hospitals Act*, the *Adult Protection Act* and section 8A of the *Public Trustee Act* in conjunction with section 14 of the *Personal Directives Act*. We are seeing an increasing number of matters coming into our office pursuant to the *Powers of Attorney Act*.

#### Hospitals Act Referrals

Section 59 and related sections of the *Hospitals Act* proclaimed in force April 1, 1979 created a mechanism whereby the Public Trustee, being notified by a hospital to do so, may "assume management" of the estate of a patient who has been found to be incompetent and has no one to administer his or her property and finances. It is not necessary for the Public Trustee to make an application to the court to obtain a guardianship order. The authority is granted through the legislation.

Hospital officials and community care officials were the leading proponents of this mechanism. It is the source of many of the Public Trustee's growing caseload of adult living estate files. Of the 95-new adult living estate files opened during this fiscal year, 52 or 55% originated from Section 59 *Hospitals Act* referrals.

Many of these referrals are sent to the Public Trustee when the patient is ready for discharge and a long-term care facility bed has been found. Increasingly, long-term care facilities are refusing to accept people unless there is a financial trustee available to manage their estate, pay the long-term care facility bills, deal with their taxes, secure their pension(s) and work out their daily rates with the Eligibility Review Unit of the Department of Health and Wellness. By referring the client to the Public Trustee, the placement in the long-term care facility can be achieved, and very often

achieved much more quickly, which benefits the patient and helps the hospital free up acute care and emergency room beds. This provides a valuable benefit to the province's health care budget. Unfortunately, we are not able to accept all the section 59 *Hospitals Act* referrals received due to our limited resources. Each of our 5 Trust Officers carry a case load of approximately 95-110 cases. In our experience, the cases are becoming more complex, often involving individuals who have property located in more than one province and country and with complex family dynamics. We must be cautious in accepting files as it is very important that we have the resources necessary to thoroughly investigate, locate, take control of and protect the assets of our incompetent client's in a timely fashion. If we are not able to do this, assets may be missed, stolen, misappropriated or damaged while technically under our care, thereby exposing our office to a high level of liability.

### Adult Protection Act Referrals

The *Adult Protection Act* came in force in 1985. The purpose of this legislation, as set out in section 2 of the Act, is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect.

Section 13(1) of the Act is entitled, "Public Trustee informed of removal of adult". It states that where an adult is "removed" from the premises where he resides to another place pursuant to this Act and it appears to the Minister that there is an immediate danger of loss of, or damage to, any property of his by reason of his temporary or permanent inability to deal with the property and that no other suitable arrangements have been made or are being made for the purpose, the Minister shall inform the Public Trustee.

Section 13(2) of the Act is entitled, "Powers of Public Trustee". It allows the Public Trustee, if she feels it is appropriate after receiving notice pursuant to section 13(1) of the Act, to assume *immediate management* of the estate of the adult in need of protection and safely keep, preserve and protect it until the happening of a future event. It is not necessary for the Public Trustee to make an application to the court to obtain a guardianship order pursuant to this section.

The Public Trustee has seen a decline in referrals from Adult Protection Services. Of the 95 new adult living estates opened in this fiscal year, only 18 or 19% came from Adult Protection as they are aware we lack the statutory authority to assume immediate management of the property and finances of individuals who have been determined by the courts to be an "adult in need of protection" but were not "removed" from their homes pursuant to section 10 of the Act. I refer you to my 2015/16 Annual Report for a detailed explanation.

### Personal Directives Act/Public Trustee Act Referrals

The *Personal Directives Act* was proclaimed on April 1, 2010. This legislation enables Nova Scotians to document their wishes concerning personal care and health care. An individual can name who they wish to make personal care and health care decisions for them in a Personal Directive document if, in the future, they are found to be incapable of doing so. If an individual does not prepare a Personal Directive the legislation provides a hierarchal list of statutory

decision makers to make decisions regarding health care, placement in a continuing care homes and home care for the mentally incapable person. The Public Trustee is named the substitute decision maker of last resort on this list.

If a Delegate named in a Personal Directive or a Substitute Decision Maker makes a decision on behalf of a mentally incapable person to accept an offer of placement in a continuing care home or regarding the provision of home care services and it is discovered that the individual also lacks the capacity to manage their property and finances and they have no financial guardian or Attorney acting pursuant to an Enduring Power of Attorney document, the *Personal Directives Act* in conjunction with section 8A of the *Public Trustee Act* establishes a mechanism whereby a statutory notice may be sent to the Public Trustee. The legislation allows the Public Trustee to then investigate whether the individual needs a guardian of his property and finances. If the Public Trustee determines its services are required, the Public Trustee can immediately become statutory guardian of the individual's property and finances. It is not necessary to make a court application to assume the authority as the authority is given under the legislation.

This has been a source of additional requests for the Public Trustee's services as statutory guardian of property and finances. Of the 95 adult living estate files opened during this fiscal period, 16 or 17% were opened pursuant to the *Personal Directives Act*. It is anticipated that the number of files opened pursuant to the *Personal Directives Act* will continue to increase each year as the legislation becomes better understood by long-term care facility staff, continuing care workers, adult protection workers and social workers generally. Staff in our Health Care Decisions Division have been actively conducting educational sessions around the province concerning the *Personal Directives Act*.

### *Powers of Attorney Act*

Enacted in 1988 to validate "Enduring Powers of Attorney" the *Powers of Attorney Act*, c.352, R.S.N.S. 1989 contains references to the Public Trustee. Section 4 provides that the Attorney named in the document and not the Public Trustee shall administer a patient's estate pursuant to S.59 of the *Hospitals Act*, if the instrument of enduring power of attorney includes a provision expressly excluding the operation of subsection (2) of Section 59 and the attorney wishes to act.

Subsection (2) of s. 5 provides that an Attorney shall, when the court so orders, submit his accounts to the Public Trustee for approval.

Subsection (3) of s. 5 provides that an attorney may apply to the court for an order substituting another person as attorney upon giving notice of the application to the Public Trustee.

Subsection (4) of s. 5 provides that if an attorney voluntarily submits his accounts to the Public Trustee the Public Trustee "shall consider the accounts when submitted". However, the legislation does not give the Public Trustee the authority to order money be repaid by an attorney appointed under an Enduring Power of Attorney document if after reviewing the accounts the Public Trustee finds any problems or discrepancies. Nor does this legislation or the *Public Trustee*

Act give the Public Trustee any powers of investigation or the ability to order the Attorney to provide them with additional information.

The Public Trustee received many calls from the public during the fiscal year seeking general information about Enduring Powers of Attorney and reporting suspicious or fraudulent conduct on behalf of attorneys. Many of these calls dealt with questions of accountability and the concerns individuals have on the way the attorney was managing the trust funds. Of the 95 adult living estate files opened during this fiscal period, approximately 5% were opened as an individual named the Public Trustee as their attorney in their Enduring Power of Attorney document or an application was made to the court pursuant to section 5 of the Act to have the Public Trustee substituted as Attorney under an existing Power of Attorney document.

The Public Trustee has the discretion to accept or refuse to act as a guardian, trustee or attorney.

We continue to see that the management of living estates for incompetent adults is our largest file category at 507. As the average age of the population of Nova Scotia continues to increase, the Public Trustee forecasts that the request for financial management of the estates of incompetent adults will continue to increase. The Public Trustee will need additional staff and resources to meet this demand.

## Health Care Decisions

The Public Trustee acts as the substitute decision maker of last resort for individuals who have been assessed and determined to lack capacity to make their own decisions concerning health care, home care services and placement in continuing care facilities, under the following pieces of legislation:

- *Personal Directives Act*
- *Hospitals Act*
- *Involuntary Psychiatric Treatment Act*

The Public Trustee's Health Care Decisions Division reviews all requests for consent. The Division has a Coordinator and two Health Care Consultants. The Coordinator and Health Care Consultants can provide consent to Level-1 and Level-2 health care decisions and the Public Trustee provides consent to Level-3 health care decisions, such as consent for amputations.

Detailed policy and procedures were developed to guide the Health Care Consultants in their deliberations. Underpinning the Health Care Decisions Division policies are the *best interest principles* and the *principle of informed consent*.

Health Care Decision Division policies also employ the four commonly held principles of health care ethics, namely: respect for autonomy; non-injury; beneficence; and justice. Respect for autonomy is demonstrated by respecting the client's prior capable wishes, values and beliefs, if known, and consideration of the client's rights to independence and freedom; non-injury is demonstrated in decision-making that avoids or minimizes risk to the client; beneficence is demonstrated in decisions that benefit the client; and justice is demonstrated in decisions that are fair and equitable.

The Health Care Decisions Division stands in the place of the client and is entitled to the same information and freedom of choice as the client would have received if he or she had capacity. Decisions are made using the *reasonable person standard*; after carefully considering the available relevant information, the Health Care Decisions Division makes a reasonably well-informed decision to consent, to not consent, or to withdraw consent as a reasonably prudent and careful lay person would do in similar circumstances and not as a health care professional.

All three performance indicators of the Health Care Decisions (HCD) division (i.e. complaints, response times and attendance at client conferences) were within established targets for 2016/17 fiscal year. Monitoring of the Health Care Decisions program was conducted and reported to the Public Trustee on a quarterly basis. The following is a summary of annual statistics for the Health Care Decisions Division for the fiscal year ending March 31, 2017:

- There were 474 active client files at March 31, 2017, an increase of 6% over 2015/16;
- 85 new client files were opened and 60 client files were closed during the year
- 593 referrals were received in 2016/17 as compared to 587 referrals for 2015/16
- 63% of referrals were received under the *Personal Directives Act*, 21% under the *Hospitals Act*, and 16% under *Involuntary Psychiatric Treatment Act*
- The largest number of referrals (256 or 43%) were received from agencies in the Central Region (Zone 4) of the Nova Scotia Health Authority and the least number of referrals (75 or 13%) came from agencies in the Eastern Region (Zone 3)
- A total of 2398 decisions were made in 2016/17; 2055 under *Personal Directives Act*, 186 under the *Hospitals Act* and 157 under *Involuntary Psychiatric Treatment Act*
- The average number of decisions per referral was 4, which was consistent with the average number in 2015/16
- 95% of decisions were Level-1, 3.5% of decisions were Level-2 and 1.5% of decisions were Level-3



- Seven external education sessions were provided to stakeholders in 2016/17. Evaluation of the one-year pilot project involving stakeholder education via webinars resulted in cancellation of the subscription and returning to traditional face to face presentations

We continue to see a growth in the number of consent to medical treatment files in our office. Knowledge of the services provided by our Health Care Consultants has continued to grow. As of March 31, 2017, Consent to Medical Treatment files was our second largest category of files totalling 474 compared to 449 files on March 31, 2016.

## Deceased Estate Services

The Public Trustee has the right to apply to administer the estate of a deceased person when they die intestate (without a will), pursuant to section 32 of the *Probate Act*, which reads as follows:

### Entitlement to administration

32(1) Subject to sections 15, 23 and 24 of the *Public Trustee Act*, administration of the estate of an intestate or of an estate partly or wholly unadministered owing to the death or removal of a personal representative shall be granted to one of more of the following persons, if they are competent and suitable for the discharge of the trust and willing to undertake the administration of the estate unless the court thinks it proper to appoint some other person according to the following priorities:

- (a) first - the spouse of the intestate if the spouse resides in the Province and those children of the intestate who reside in the Province;
- (b) second – those persons who reside in the Province and who are entitled to share in the distribution of the estate by reason of the *Intestate Succession Act* or by reason of being adult residuary beneficiaries;
- (c) third – the Public Trustee;
- (d) fourth – those persons who do not reside in the Province and who are entitled to share in the distribution of the estate by reason of the *Intestate Succession Act* or by reason of being adult residuary beneficiaries;
- (e) fifth – a creditor or a person having a cause of action against the estate.

A common-law spouse is not recognized as a legal “spouse” under the *Probate Act* or the *Intestate Succession Act* unless the couple signed a “domestic partnership agreement” and registered it with the Office of Vital Statistics of Nova Scotia.

The Public Trustee is listed as the third person in line to administer the estate of an intestate individual. If someone listed after the Public Trustee wants to administer the estate, they must ask the Public Trustee to sign an official Renunciation document before they can apply.

Before the Public Trustee does renounce its right to administer an estate considerable time is spent reviewing the facts of each estate to ensure the beneficiaries, heirs and creditors would be properly protected and served if someone other than the Public Trustee is appointed to administer the estate. The Public Trustee also considers the assets that are contained in the estate; whether the estate has enough money, personal and/or real property that can be sold to cover the costs of administering the estate properly, whether the Public Trustee has the expertise and staff to administer the estate properly, how much fees the estate administration will generate and whether any of the heirs are minors, or adults who are considered to be mentally incompetent or missing persons, among other things.

The Public Trustee renounced its right to administer 68 deceased estates during the fiscal year under review (see Schedule "G" attached hereto).

Pursuant to sections 15, 23 and 24 of the *Public Trustee Act*, the Public Trustee also has priority to administer a deceased estate in the following situations:

- the Public Trustee has acted as trustee, guardian, or custodian of a person's estate while they were alive and that person dies without a will
- the Public Trustee acted as trustee, guardian, or custodian of a person's estate while they were alive and that person dies with a will and the executor of the will is dead or renounces their right to probate the will
- a person dies with a will and the person who is named as executor of the will is dead or renounces their right to probate the will and the people named as the residuary beneficiaries live outside of Nova Scotia
- the Public Trustee is already administering the estate of a person who is alive or is administering the estate of a person who had died, and one of the following occurs:
  - i. the person is named as a beneficiary in the will of someone else who dies and there is no one who is willing or able to act as the executor of that will
  - ii. the person is entitled to inherit from the estate of a person who has died without a will
  - iii. the person is named as the executor of a will, or as the personal representative of the estate of someone who has died

Pursuant to section 36 of the *Public Trustee Act*, the Public Trustee is empowered in a case where "the Public Trustee is entitled to take out letters of administration under this Act" to authorize and appoint by writing under his hand some other person to take out such letters of administration" and "the Court of Probate shall, upon the application of a person so authorized

and appointed by the Public Trustee as aforesaid, grant to such applicant letters of administration". Customarily the Public Trustee declines to act pursuant to section 36 of the *Public Trustee Act* and prefers to leave this determination to the Court of Probate.

As of March 31, 2017, Deceased Estate Files was our third largest category of files totaling 170.

### **Children's Trust Services**

In Nova Scotia, the age of majority is 19. Under the law, an individual under the age of 19 is an infant or a minor. Where no person has been appointed to be guardian of the property of an infant or minor and they are entitled to receive money as a beneficiary under a life insurance policy, as a death benefit, as a beneficiary on an intestacy or under a will and the executor or administrator is not empowered to act as trustee of the child's share, or under a settlement or a trust, and no trustee is appointed by the will, or other instrument, the Public Trustee is automatically the legal guardian of the money and property under the following pieces of legislation:

- Section 14 of the *Guardianship Act*
- Sections 4(2), 4(3)(d) and 4(5) of the *Public Trustee Act*

The Public Trustee does not have to file a bond with the court to act as trustee or guardian of the estate of an infant or minor under these pieces of legislation. Nor does the Public Trustee have the discretion to accept or refuse to act.

The Public Trustee is also regularly appointed as trustee of the finances of an infant or minor by the Court in matters involving infant settlements in personal injury matters.

As of March 31, 2017, Infant Living Estate Files was our fourth largest category of files totaling 166.

### **Legal Representation Services**

The *Public Trustee Act* gives the Public Trustee the authority to act as a litigation guardian or guardian *ad litem* for a child or an adult who has been deemed to be mentally incompetent to manage their affairs in a legal proceeding before the court. The Public Trustee has the discretion to act or refuse to act in this capacity and rarely does so as the Public Trustee Office is not staffed or resourced for this (there is no Office of the Public Guardian in Nova Scotia).

The Public Trustee also has the authority to represent a deceased person (where an estate has not been opened in Probate Court) in a legal proceeding before the court under the *Survival of Actions Act* (see Schedule "H" attached hereto). As the deceased's public liability insurer or the Facility Association may be relied upon to defend any automobile accident claims, the Public

Trustee will generally always consent to be appointed to represent the estate of a deceased tortfeasor for the purposes of an intended action that arises out of a motor vehicle accident.

During the fiscal period under review 6 representative litigation files were opened.

### **Missing Persons Services**

Section 2(e) of the *Public Trustee Act* defines “missing person” as follows:

“Missing person” means a person who cannot be found after all reasonable efforts have been made to locate him and includes a person who dies intestate or intestate as to some part of his estate without leaving any known heir-at-law living in the Province or any heir-at-law who can be readily communicated with living elsewhere or where the only heir-at-law is an infant or where Her Majesty in right of the Province has an interest in the estate or proceeds thereof

Section 11 of the *Public Trustee Act* states that the Public Trustee shall be served with notice of each application made to the court in respect of the property or estate of a missing person. When the Public Trustee is served with notice of the application, they automatically become guardian of the estate or the property of the missing person.

The Public Trustee may safely keep, preserve and protect the property and effects of the missing person pending an order of a Judge of the Supreme Court. If the court approves, the Public Trustee may mortgage, lease, sell or otherwise dispose of any of the property of the missing person, pay sums of money that the missing person might otherwise have been ordered to pay and make such payments as are necessary for the maintenance or education of a spouse or child of the missing person.

During the fiscal year under review, no missing persons files were opened.

### **Services pertaining to Undistributed Assets Held in Trust by Third Parties**

Pursuant to section 28 of the *Public Trustee Act*, an executor or administrator or a trustee acting pursuant to a the provisions of a will or other trust agreement may at any time and shall, after the expiration of five years, apply for an order in Nova Scotia Supreme Court, authorizing the transfer of the assets to the Public Trustee when the heir-at-law or beneficiary cannot be located or identified or the object of the trust cannot be carried out or if for any other reason it is not possible to distribute the assets of the estate or trust. The Public Trustee must then convert any assets into cash and immediately pay the undistributed assets to the Minister of Finance.

For the fiscal year under review, the Public Trustee Office processed assets totally \$67,283.00, which pertained to 40 matters and forwarded them to the Minister of Finance. These numbers

are not included in our active case files for the year and the Public Trustee does not receive any fees for acting in this capacity.

### **Public Enquiries**

The Public Trustee has always been regarded as a public resource for information about guardianship, trust administration, the administration of deceased estates, legal representation services and the law pertaining to healthcare decisions for incompetent persons and the elderly. Information requests are received from many sources including lawyers, social workers, law enforcement officers and the general-public. Many individuals are referred to us by staff at the Probate Courts.

We strive to provide accurate general information about the issues raised. Due to the high cost of retaining legal services, many individuals are trying to find free legal information that will help them understand and resolve the problems they face. Access to justice is currently an issue throughout Canada. These calls put pressure upon our already limited legal resources. However, many of the enquiry calls and letters we receive pertain to cases that potentially could become Public Trustee files. These calls help identify the matters that should be further investigated by the Public Trustee and the matters that can be managed in the private sector. The number of enquiry calls we are receiving is increasing from year to year.

We opened 468 enquiry files during this fiscal period and note that the volume of materials and number of calls received on each enquiry file is increasing.

## REVENUE AND COSTS OF PUBLIC TRUSTEE OFFICE

Pursuant to the *Public Trustee Act* and the regulations thereto, the Public Trustee is entitled to charge for its legal, trustee and guardianship services. The Public Trustee is also entitled to receive administration fees when it acts as personal representative of a deceased estate. The Public Trustee does not earn any revenue for providing general advice on enquiry files, for acting as substitute decision maker of last resort and providing consents for medical treatment, for processing assets received pertaining to undistributed assets pursuant to section 28 of the *Public Trustee Act* or for providing legal representation services.

On an annual basis, the government forecasts what income the Public Trustee may earn for its services. This income is very important as it off-sets the cost of running the office.

During the fiscal year ending March 31, 2017, it was forecasted that the Public Trustee would earn \$900,000.00 in legal, administrative and trustee fees. The Public Trustee exceeded this goal, earning \$1,026,881.00 (excluding accruals) during the fiscal year. These fees have been transferred to the Department of Finance.

The Public Trustee recovered \$16,581.00 from its clients for disbursements including photocopy and postage fees incurred in carrying out our duties and responsibilities to our clients during the fiscal year.

The Public Trustee also earned income in its Special Reserve Fund in the amount of \$95,018.00.

If we total the legal, administrative and trustee fees earned by the Public Trustee (excluding accruals), its recovery fees from disbursements and the income earned from its Special Reserve Fund, the total revenue earned by the Office of the Public Trustee totalled \$1,138,480.00 during the fiscal period (see Schedules "E" and "E1" attached hereto).

Public expenditures for the general operating costs of the Public Trustee program, including rent, are funded by allocations from one of the global appropriations voted to the Department of Justice.

Funding sought to operate the Public Trustee Office for the fiscal year ending March 31, 2017 was \$2,390,000.00. The actual cost to operate the office was \$2,210,591.00. In other words, the Public Trustee was \$179,409.00 under budget.

Considering the total cost to operate the office and the revenue earned from all sources by the Office of the Public Trustee, the cost of providing this valuable service (excluding accrued fees) was \$1,072,111.00.

## **BUSINESS GOALS**

This year, the Public Trustee has identified long and short-term business goals. The long-term goals are global and ongoing and will not require specific reporting. The short-term goals are specific and may change from year to year.

### **Long-Term Business Goals**

1. To enhance the level of service provided to the client's, estates and trusts administered by the Public Trustee Office.
2. To improve communication with all individuals and agencies with whom we have contact and with the general-public.
3. To provide training opportunities and information sessions to employees on topics of relevance to enhance employee performance of their duties and responsibilities.
4. To ensure the efficient use of resources by reviewing administrative policies and procedures and the financial results of our service areas.
5. To try and approach recovery of the costs of operations for the Public Trustee Office.

### **Short-Term Business Goals**

1. **Completion and Implementation of PAM II Trust Accounting and Administration System**

In the Report of the Auditor General to the Nova Scotia House of Assembly dated May 2012, the Auditor General recommended that the Office of the Public Trustee obtain a recognized and comprehensive financial accounting and reporting system. Following the recommendation, a needs assessment was done and a company was hired to redevelop our existing PAM Trust Accounting and Administration System. This company completed the work they were contracted to do in 2017 and the program was turned over to Justice IT Services for completion and user testing. In January 2017, I retained the company that redeveloped the program to work with our accounting staff to map the various different functions of the program. This work will be conducted during the summer of 2017. Following completion of this step, we hope to move on to user testing with the goal of having the system go live in January 2018.

2. **To continue providing educational seminars and presentations throughout the province regarding services offered by the Public Trustee Office and related topics of interest to stakeholders**

During the fiscal year under review, seven external education sessions were provided to stakeholders on the role of the Public Trustee as substitute decision maker of last resort and how to make a referral to our Health Care Decisions Division.

In addition, during the fall of 2016, educational presentations were made at the CBA Annual Fall Conference, to the Halifax Estate Planning Council, to Nova Scotia Legal Aid lawyers and to Nova Scotia Continuing Care Coordinator's on the role of the Public Trustee, making referrals to our office and on existing adult guardianship laws in Nova Scotia.

**3. To host the National Association of Public Trustee and Guardians Annual Conference in May 2017**

In June 2016, I became President of the National Association of Public Trustee's and Guardians. One of the responsibilities of president is to host the annual national conference. This year's conference will be held from May 28- 31, 2017 at the World Trade and Convention Centre in Halifax, Nova Scotia. A tremendous amount of work has gone into locating a venue, creating an Agenda, securing speakers and organizing the logistics for the event.

**4. To assist the Department of Justice in developing new legislation to replace the existing *Incompetent Persons Act***

In December 2016, I participated in three round table discussions with the drafters of the new legislation and senior members of the Nova Scotia Barrister's Society who practice estate, trust and guardianship law. In or about April 2016, I was provided with a copy of the draft legislation and invited to sit on an advisory committee to review it and provide comments.

**5. To update the website of the Public Trustee Office**

In January 2017, I contacted Communications Nova Scotia about updating the website for the Office of the Public Trustee. I was advised they no longer do this. Rather, they conduct training programs and train government employees in the various government departments, corporations and agencies to update their own websites. At that time, the next training program available commenced in April 2017. I canvassed staff to determine if anyone was willing and able to take this training and then enrolled two staff members. The out-of-office training is provided once per week over a several months.



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# Public Trustee Trust Funds

Financial Statements

For the Year Ended March 31, 2017

## Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Public Trustee of Nova Scotia. Fulfilling the responsibility requires the preparation and presentation of financial statements and other financial information in accordance with International Financial Reporting Standards ("IFRS"). These standards are consistently applied

The Management of Public Trustee confirm that, to the best of our belief

- the preparation of the financial statements is in accordance with IFRS,
- significant assumptions used by us in making accounting estimates, including those measured at fair value and at nominal value, are reasonable; and
- significant accounting policies under IFRS have been determined by us to represent the activities of the Office;

The Office of the Auditor General of Nova Scotia has audited the financial statements of the Public Trustee Trust Funds prepared in accordance with IFRS.

The Auditor's responsibility is to express an opinion on the fairness of these financial statements. The Independent Auditor's Report outlines the scope of the audit and the auditor's opinion



Shannon Ingraham-Christie  
Public Trustee



Beverly Whittaker-Taggart  
Director, Finance, Administration & Systems



# Auditor General of Nova Scotia

## INDEPENDENT AUDITOR'S REPORT

To the Public Trustee

I have audited the accompanying financial statements of the Public Trustee Trust Funds, which comprise the Statement of Net Assets Held in Trust as at March 31, 2017, and the Statement of Net and Comprehensive Loss, Statement of Continuity of Net Assets Held in Trust and Statement of Cash Flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Public Trustee Trust Funds as at March 31, 2017, and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.

Michael A. Pickup, CPA, CA  
Auditor General of Canada

July 6, 2017  
Halifax, Canada



Public Trustee Trust Funds  
Statement of Net Assets Held in Trust  
March 31, 2017

	2017	2016
<b>Assets</b>		
<b>Estates and Trusts</b>		
Cash	\$ 3,833,826	\$ 5,007,831
Securities, real estate and other assets (Note 5)	49,053,888	45,596,581
Common Fund Securities (Note 6)	2,994,349	2,987,536
Special Reserve Fund (Note 7)	3,239,119	3,120,446
Accounts receivable and accrued interest	<u>842,052</u>	<u>587,919</u>
	<u>59,963,234</u>	<u>57,300,313</u>
<b>Liabilities</b>		
<b>Estates and Trusts</b>		
Due to Special Reserve Fund	117,742	124,514
Accounts payable	<u>538,653</u>	<u>345,358</u>
	<u>656,395</u>	<u>469,872</u>
<b>Net Assets Held in Trust</b>	<u>\$ 59,306,839</u>	<u>\$ 56,830,441</u>

See accompanying notes to the financial statements

Public Trustee Trust Funds  
Statement of Net and Comprehensive Loss  
For the Year Ended March 31, 2017

	2017	2016
<b>Revenues</b>		
Pension	\$ 8,444,366	\$ 8,030,619
Investment income	708,183	800,481
Other	1,038,001	790,601
Annuities	<u>651,164</u>	<u>660,632</u>
	10,841,714	10,282,333
Common Fund interest and investment income (Note 6)	<u>122,419</u>	<u>124,106</u>
	<u>10,964,133</u>	<u>10,406,439</u>
<b>Expenses</b>		
Accommodation	7,550,436	7,174,578
Fees charged by the Public Trustee paid to the Province (Note 9)	1,145,944	1,182,404
Taxes	696,927	885,142
Funeral	525,733	513,260
Medical	397,867	377,845
Allowances	375,949	371,788
Real estate	187,942	222,747
Legal costs	236,341	195,228
Property care	160,139	192,744
Utilities	142,370	140,292
Common Fund interest income to be transferred to the Special Reserve Fund (Note 7)	117,742	124,514
Insurance	97,008	101,669
Miscellaneous	<u>77,243</u>	<u>76,266</u>
	<u>11,711,641</u>	<u>11,558,477</u>
<b>Loss from operations</b>	(747,508)	(1,152,038)
Realized loss on sale of assets held in trust	(1,152,830)	(543,054)
Unrealized gain (loss) on assets held in trust at year end	<u>601,598</u>	<u>(134,121)</u>
<b>Net and comprehensive loss</b>	<u>\$ (1,298,740)</u>	<u>\$ (1,829,213)</u>

See accompanying notes to the financial statements

Public Trustee Trust Funds  
Statement of Continuity of Net Assets Held in Trust  
For the Year Ended March 31, 2017

	2017	2016
<b>Balance, beginning of year</b>	\$ 56,830,441	\$ 55,525,891
<b>Add: Estates and trusts of new clients and additional assets of existing clients</b>	14,490,824	13,972,525
<b>Net and comprehensive loss</b>	(1,298,740)	(1,829,213)
<b>Special Reserve Fund Income (Note 7)</b>	<u>213,691</u>	<u>219,401</u>
	<u>13,405,775</u>	<u>12,362,713</u>
<b>Less: Distribution of estates and trusts</b>	10,767,076	10,887,629
<b>Undistributable estates and trusts (per Section 28)</b>	67,283	69,641
<b>Special Reserve Fund Distribution (Note 7)</b>	<u>95,018</u>	<u>100,893</u>
	<u>10,929,377</u>	<u>11,058,163</u>
<b>Balance, end of year</b>	<u>\$ 59,306,839</u>	<u>\$ 56,830,441</u>

See accompanying notes to the financial statements

Public Trustee Trust Funds  
Statement of Cash Flows  
For the Year Ended March 31, 2017

	<b>2017</b>	<b>2016</b>
<b>Operating Activities</b>		
Net and comprehensive loss from operations	\$ (1,298,740)	\$ (1,829,213)
Deduct non-cash transactions:		
Unrealized (gains) losses	<u>(601,598)</u>	<u>134,121</u>
Net and comprehensive loss from operations - cash basis	<u>(1,900,338)</u>	<u>(1,695,092)</u>
<b>Increase in Estates and Trusts</b>		
Sale of securities	5,143,985	9,156,396
Sale of real estate and other assets	1,841,496	1,062,504
Cash holdings of estates and trusts	<u>8,074,925</u>	<u>7,673,219</u>
	<u>15,060,406</u>	<u>17,892,119</u>
<b>Decrease in Estates and Trusts</b>		
Purchase of securities	(8,941,449)	(7,413,914)
Distribution of cash holdings in estates and trusts	(5,330,611)	(5,455,789)
Change in Common Fund cash position	6,772	(8,557)
Transfer to Province	<u>(68,785)</u>	<u>(69,641)</u>
	<u>(14,334,073)</u>	<u>(12,947,901)</u>
<b>(Decrease) increase in cash</b>	(1,174,005)	3,249,126
Cash, beginning of year	<u>5,007,831</u>	<u>1,758,705</u>
Cash, end of year	<u>\$ 3,833,826</u>	<u>\$ 5,007,831</u>

See accompanying notes to the financial statements

## 1. Reporting Entity

The Public Trustee was established pursuant to the Public Trustee Act and is independent of government. The Public Trustee is set up as a corporation to protect the financial and personal well-being of clients. The Public Trustee is empowered to perform the duties of a guardian, custodian, trustee, and executor or administrator of an estate. All investments by the Public Trustee are to be made in accordance with the Trustee Act.

This set of financial statements reflects the net assets held in trust and the activity for the estates and trusts administered by the Public Trustee. Separate operating costs for the Public Trustee are presented in Note 9.

## 2. Basis of Preparation

### (a) Statement of Compliance

These financial statements have been prepared in accordance with the principles of International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board. The financial statements for the year ended March 31, 2017, including comparative were approved and authorized by the Public Trustee on July 6, 2017.

### (b) Basis of Measurement

The financial statements have been prepared on the historical cost basis except for securities, real estate, other assets, and amounts receivable and payable which are presented at fair value.

### (c) Functional and Presentational Currency

The financial statements are presented in Canadian dollars, which is the functional currency for the Public Trustee.

### (d) Use of Estimates and Judgments

The preparation of these financial statements in conformity with IFRS requires management to make judgments, estimates, and assumptions that affect the application of accounting policies and the reporting amounts of assets, liabilities, income, and expenses. Actual results could differ from management's best estimates as additional information becomes available in the future.



### 3. Summary of Significant Accounting Policies

The accounting policies set out below have been applied consistently to all periods presented in the financial statements.

#### (a) Initial Recognition and Valuation of Assets and Liabilities

The Public Trustee administers client investments, real property, and other assets (eg. vehicles, jewelry). On initial recognition, these assets and liabilities are recorded at fair value on the effective date the Public Trustee commences administration of the asset or liability.

Other assets, including personal effects, are carried at fair value. Fair value is determined through appraisal where deemed appropriate. For some other assets where no observable market exists, these assets remain valued at a nominal amount (\$1) until such time that more reliable valuation information is available.

#### (b) Subsequent Valuation

##### *Real Estate*

IFRS requires that, in the absence of an IFRS that can be specifically applied to a situation, management should use judgment in developing and applying an accounting policy to provide relevant, reliable, and prudent information. In these instances, it is suggested that IFRS requirements in dealing with similar issues are applied, as well as measurement concepts included within the IFRS framework.

Real estate included within the statement of net assets held in trust primarily represents the value of residential properties currently occupied by the clients administered by the Public Trustee, or forming part of their estates. Real estate is carried at fair value in the statement of net assets held in trust, as determined by professional appraisals or, where an appraisal is not available or is not current, as determined from the most recent property assessment or other relevant valuation data.

##### *Investments*

Client securities are carried at fair value in the statement of net assets held in trust as determined by external third party information.

The composition of securities administered by the Public Trustee is as follows:

i) Guaranteed Investment Certificates	76%
ii) Equity Securities	14%
iii) Bonds	2%
iv) Other (RRSPs, RRIFs, Mutual Funds)	8%

### 3. Summary of Significant Accounting Policies (continued)

#### ***Other Assets***

Other client assets are carried at fair value in the statement of net assets held in trust as determined by appraisal where deemed appropriate, or, where no active market exists, are held at a nominal value (\$1).

#### **(c) Revenue Recognition**

Income from pensions, benefits and settlements, as well as interest and other investment income are recognized as earned on an accrual basis.

Gains and losses on assets represent the appreciation or depreciation in the value of assets administered by the Public Trustee from the value assigned on the date of the commencement of administration of assets by the Public Trustee, the date of purchase, or the value at the prior year end. Such gains and losses become realized on the date the assets are sold or released to clients, beneficiaries or heirs. Both realized gains and losses and changes in unrealized gains and losses are reported in the statement of net and comprehensive loss.

#### **(d) Cash and Cash Equivalents**

Investments held by the Public Trustee are highly liquid and may be easily drawn upon by the Public Trustee in administering the estates and trusts.

### 4. Financial Risk Management

Section 3a(1) of the *Public Trustee Act* grants all trustees the authority to invest in any form of property or security, including a security issued by a mutual fund. The standard of care, skill, diligence, and judgment imposed by the section is that of a prudent investor. The Public Trustee utilizes a conservative investment management orientation. All trust property must be invested in a manner that reflects the standard and high duty of care required to fulfill the responsibilities of the Public Trustee. The Public Trustee's long-term objectives as a prudent investor are threefold:

- i) to minimize any loss of capital,
- ii) where possible, to provide income sufficient to meet the individual client's or trust's ongoing income needs; and
- iii) for clients or trusts with higher risk tolerances or longer term investment horizons, the potential for capital appreciation.

**4. Financial Risk Management (continued)**

The majority of the accounts held by the Public Trustee are administered on behalf of clients and are not held in a pooled fund. Clients with five years or less projected investment horizon with the Public Trustee may have their excess funds invested in a combination of cashable guaranteed investment certificates (GICs), treasury bills, fixed term GICs and bonds with a maximum investment period of five years.

**Liquidity risk**

Liquidity risk is the risk that a client account is unable to meet its financial obligations as they come due. The Public Trustee minimizes this risk by ensuring that client accounts hold sufficient cash funds to meet current liabilities and expenses and considers liquidity risk at March 31, 2017 to be insignificant.

**Credit risk**

Credit risk is the risk that a counterparty to a financial instrument will fail to discharge an obligation or commitment it has entered into, resulting in a financial loss. The investment policy established by the Public Trustee limits credit risk in the following manner: client excess funds invested in GICs are not to exceed \$95,000 from a national bank or trust company or \$235,000 from a credit union. This ensures that if a financial institution defaulted, the client would receive from the insurance plan the client's principal plus any accrued interest. Bonds purchased with client excess funds must have a minimum rating of BBB by the Dominion Bond Rating Service or an equivalent rating by another recognized rating agency.

**Interest rate risk**

Interest rate risk is the risk that the fair value or cash flows of interest bearing investments will fluctuate due to changes in market interest rates. Investments in guaranteed investment certificates and other term deposits with a maturity greater than one year are subject to interest rate risk. The effect on net income of a 1% change in interest rates on term deposits with a maturity of greater than one year would be estimated at \$118,328 (2016 - \$110,807). Because most term deposits held by the Public Trustee have a term to maturity of one year or less, interest rate risk is not considered significant. The Public Trustee mitigates this risk by investing excess client funds in a diversified portfolio, including investing in fixed rate securities.

**5. Securities, Real Estate, and Other Assets**

Securities, real estate, and other assets are comprised of the following balances:

	2017	2016
Securities	\$ 42,843,452	\$ 38,783,051
Real Estate	5,821,568	6,442,893
Other Assets	<u>388,868</u>	<u>370,637</u>
	<u>\$ 49,053,888</u>	<u>\$ 45,596,581</u>

**6. Common Fund Securities**

Section 30 of the Public Trustee Act permits the Public Trustee to invest monies, not subject to any express trust or direction for investment thereof, into a Common Fund. Investments of the Common Fund are valued at market value as of March 31, 2017. The Common Fund serves as a general bank account for its clients and allows the Public Trustee to pool small value client accounts in order to provide more substantial balances used to purchase income-generating investments.

The interest to be paid to clients with funds in the Common Fund is determined by a regulation which is as follows: the prescribed rate of interest is a floating rate ascertained by the Public Trustee half yearly, and is one percent less than the rate arrived at by averaging the lowest rate offered during the period on savings - non-chequing accounts by the Canadian Imperial Bank of Commerce and the Royal Bank of Canada at their respective Halifax branches. In addition, the regulation provides that, in order to earn interest, the client's account must have had a minimum quarterly balance of \$1,000 or more and must have been held in trust by the Public Trustee for more than three months.

Due to the fact that the current interest rate is below the prescribed rate, all interest received in the Common Fund during the year will be transferred to the Special Reserve Fund after providing for bank fees and other charges in the Common Fund, in accordance with the Public Trustee Act.

A continuity of the Common Fund is as follows:

	2017	2016
Balance, beginning of year	\$ 2,987,536	\$ 2,974,186
Add: Purchase of securities	5,476	19,629
Interest and investment income	<u>122,419</u>	<u>124,106</u>
	3,115,431	3,117,921
Less: Disbursements	(3,340)	(5,871)
Amount to be transferred to the Special Reserve Fund	<u>(117,742)</u>	<u>(124,514)</u>
Balance, end of year	<u>\$ 2,994,349</u>	<u>\$ 2,987,536</u>

The balance of the Common Fund consists of:

Cash	\$ 117,742	\$ 124,514
Investments	2,993,012	2,993,815
Payables (including \$117,742 to the Special Reserve Fund, 2016 - \$124,514)	<u>(116,405)</u>	<u>(130,793)</u>
	<u>\$ 2,994,349</u>	<u>\$ 2,987,536</u>

**7. Special Reserve Fund**

Section 32 of the Public Trustee Act provides for the establishment of a Special Reserve Fund. The Fund is administered by the Public Trustee and held in joint trust with the Deputy Minister of Finance and Treasury Board.

The stated purpose of the Fund is to provide for any future deficiency in the Common Fund. Investment income earned in the Common Fund in excess of the prescribed interest paid to clients' accounts is transferred to the Special Reserve Fund annually as required by the Public Trustee Act.

Income received on investments in the Special Reserve Fund may be transferred to the Province's general revenues in such amounts as may be determined by the Public Trustee and the Deputy Minister of Finance and Treasury Board. Such transfers are applied to the cost of administration of the Common Fund, the Special Reserve Fund, and the Public Trustee Office.

On an annual basis the Public Trustee consults with the Deputy Minister of Finance and Treasury Board, and the decision has been to transfer the Special Reserve Fund interest to the Minister of Finance for the purposes prescribed in legislation. Interest received during the year to be transferred to the Province totalled \$90,622 (2016 - \$95,018).

The continuity of the Special Reserve Fund is as follows:

	2017	2016
Balance, beginning of year	\$ 3,120,446	\$ 3,001,938
Add: Interest income and gains (losses)	95,949	94,887
Net amount to be transferred from the Common Fund	<u>117,742</u>	<u>124,514</u>
	3,334,137	3,221,339
Less: Amount transferred to the Province of Nova Scotia	<u>(95,018)</u>	<u>(100,893)</u>
Balance, end of year	<u>\$ 3,239,119</u>	<u>\$ 3,120,446</u>

The balance of the Special Reserve Fund consists of:

Cash	\$ 99,155	\$ 102,956
Receivables	163,448	166,130
Investments	<u>2,976,516</u>	<u>2,851,360</u>
	<u>\$ 3,239,119</u>	<u>\$ 3,120,446</u>

**8. Fair Values**

Client investments and Common Fund assets as well as other financial assets are reflected in the statement of net assets held in trust at fair value. In management's opinion, the fair value of cash and accrued interest approximates their carrying value due to the short term to maturity.

*Fair Value Hierarchy* - The three levels of the fair value hierarchy are as follows:

Level 1 – Unadjusted prices in active markets for identical assets or liabilities.

Level 2 – Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active market).

Level 3 – Inputs that are unobservable; there is little, if any, market data. Fair value determination would generally require significant management judgment or estimation.

As at March 31, 2017, client investments and Common Fund investments were valued using Level 2 inputs. During the year ended March 31, 2017, there was no transfer between Level 2 and the other levels in the fair value hierarchy.

**9. Operating Costs**

Operating costs of the Public Trustee are absorbed by the Nova Scotia Department of Justice and are not reflected in the Statement of Net and Comprehensive Loss. These costs are offset by fees charged for administering estates, recoveries of client expenses paid by the Public Trustee, and transfers of investment income from the Special Reserve Fund.

	<b>2017</b>	<b>2016</b>
Department of Justice		
Salaries and benefits	\$ 1,915,559	\$ 1,867,657
Other operating costs	138,867	168,783
Rent	<u>156,165</u>	<u>156,165</u>
	<u>2,210,591</u>	<u>2,192,605</u>
Less transfers to the Province		
Fees	1,026,881	971,672
Recoveries	16,581	17,276
Special Reserve Fund Income	<u>95,018</u>	<u>100,893</u>
	<u>1,138,480</u>	<u>1,089,841</u>
Net cost to the Province	<u>\$ 1,072,111</u>	<u>\$ 1,102,764</u>

Fees and recoveries totaling \$1,043,462 (2016 - \$988,948) represent cash payments to the Province. They are net of HST of \$154,407 (2016 - \$146,588) and net accrued fees of (\$51,925) (2016 - \$46,868). The total gross amount of these fees and recoveries is \$1,145,944 (2016 - \$1,182,404) and is disclosed on the Statement of Net and Comprehensive Loss.

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "A"**

**CASES ACTIVE AS OF MARCH 31, 2017**

<b><u>ESTATES AND TRUSTS</u></b>								
<b>Estate of Deceased</b>	<b>Adult's Estate (Living)</b>	<b>Infant's Estate (Living)</b>	<b>Undistributable Estate or Trust</b>	<b>Missing Person's Estate</b>	<b>Patients' Abandoned Property Act</b>	<b>Specific Trust</b>	<b>Renunciation</b>	<b>TOTAL</b>
170	507	166	7	5	9	29	365	1258
<b><u>REPRESENTATIVE LITIGATION</u></b>								
<b>Presumption of Death Act</b>	<b>Missing/Unascertained Person</b>	<b>Survival of Actions Act</b>	<b>Guardian ad litem of Incompetent Adult</b>	<b>Guardian ad litem of Infant</b>				
14	9	27	2	3				
				<b><u>CONSENT TO TREATMENT</u></b>				
				<b>GRAND TOTAL:</b>				<b><u>1787</u></b>

**REQUESTS, COMPLAINTS, INQUIRIES, LITIGATION & REFERRALS**

Individual General Inquiries April 1, 2016 - March 31, 2017      **TOTAL: 468**

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "B"**

**VOLUME AND PROGRESS OF CASELOAD**

<b><u>FISCAL YEAR</u></b>	<b><u>VOLUME AT START</u></b>	<b><u>NEW CASES ADDED</u></b>	<b><u>CASES CLOSED</u></b>	<b><u>VOLUME AT YEAR END</u></b>
April 1/16 – March 31, 17	1720	361	294	1787
April 1/15 – March 31/16	1605	381	266	1720
April 1/14 – March 31/15	1470	372	237	1605
April 1/13 – March 31/14	1468	387	385	1470
April 1/12 - March 31/13	1321	415	268	1468
April 1/11 - March 31/12	1189	428	296	1321



PUBLIC TRUSTEE STATISTICS

SCHEDULE "C"

BREAKDOWN OF CASES CLOSED

FISCAL YEAR ENDING	ESTATE OF DECEASED	ADULT'S ESTATE (LIVING)	INFANT'S ESTATE (LIVING)	UNDISTRIBUTABLE ESTATE OR TRUST	MISSING PERSON'S ESTATE	PATIENTS & TENANTS PROPERTY ACTS	SPECIFIC TRUST	CONSENT TO TREATMENT	RENUNCIATIONS	TOTAL
March 31/17	65	86	21	0	1	0	1	60	60	294
March 31/16	49	89	22	5	0	0	1	68	32	266
March 31/15	61	94	28	2	0	0	4	47	0	236
March 31/14	70	101	34	5	2	0	1	52	118	383
March 31/13	88	92	35	3	1	0	6	41	0	266
March 31/12	66	91	31	6	0	1	0	39	62	296

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "D"**

**BREAKDOWN OF NEW CASES ADDED**

FISCAL YEAR ENDING	ESTATE OF DECEASED	ADULT'S ESTATE (LIVING)	INFANT'S ESTATE (LIVING)	UNDISTRIBUTABLE ESTATE OR TRUST	MISSING PERSON'S ESTATE	PATIENTS & TENANTS PROPERTY ACTS	SPECIFIC TRUST	CONSENT TO TREATMENT	RENUNCIATION	TOTAL
March 31/17	79	95	23	0	1	1	3	85	68	355
March 31/16	53	115	18	5	2	1	3	92	87	376
March 31/15	69	113	20	2	0	3	1	78	83	369
March 31/14	59	113	32	4	1	1	6	91	69	376
March 31/13	73	145	24	5	0	1	5	96	65	414
March 31/12	58	109	23	3	1	1	3	163	61	422

PUBLIC TRUSTEE STATISTICS

SCHEDULE "E" - FUNDS TRANSFERRED TO DEPARTMENT OF FINANCE

YEAR ENDING	PUBLIC TRUSTEE FEES	EXPENSE RECOVERIES	SPECIAL RESERVE FUND INVESTMENT INCOME	SECTION 28
	Revenue *1	Revenue *2	Revenue	Trust Funds *3
March 31, 2017	\$1,026,881.00	\$16,581.00	\$95,018.00	\$67,283.00
March 31, 2016	\$971,672.00	\$17,276.00	\$100,893.00	\$69,641.00
March 31, 2015	\$896,678.00	\$17,646.00	\$95,093.00	\$136,654.00
March 31, 2014	\$1,214,553.00	\$21,819.00	\$95,949.00	\$217,682.00
March 31, 2013	\$881,970.00	\$23,852.00	\$94,784.00	\$287,546.00
March 31, 2012	\$1,159,693.00	\$23,883.00	\$94,121.00	\$124,758.00

\*1 Fees of counsel and solicitor, proctor's fees, administrator's commission collected from estates and transferred; figures do not include accruals.

\*2 Pre-tax expenses recovered from clients eg postage, photocopy. Figures first included in March 31, 2012.

\*3 May be subject of claims, *Public Trustee Act*, s. 35; figures do not include accruals.

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "E1"**

<b>YEAR ENDING</b>	<b>COMMON FUND INVESTMENT INCOME TRANSFERRED TO SPECIAL RESERVE FUND</b>	<b>SPECIAL RESERVE FUND ACCUMULATED NON-TRANSFERABLE EQUITY</b>
March 31, 2017	\$117,742.00	\$3,148,497.00
March 31, 2016	\$124,514.00	\$3,025,428.00
March 31, 2015	\$115,957.00	\$2,901,045.00
March 31, 2014	\$135,237.00	\$2,790,439.00
March 31, 2013	\$137,924.00	\$2,656,084.00
March 31, 2012	\$146,732.00	\$2,518,722.00

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "F"**

**HEALTH CARE DECISIONS**

<b>Client Files</b>	<b>2015-16</b>	<b>2016-17</b>
Active Files at April 1st	425	449
New Client Files Opened	92	85
Deactivated Files Reopened	0	0
Client Files Closed	(68)	(60)
Active Files at March 31st	449	474

**REFERRALS RECEIVED**

<b>Legislation</b>	<b>2015-16</b>	<b>2016-17</b>
Hospitals Act	91	122
Involuntary Psychiatric Treatment Act	86	97
Personal Directives Act	441	374

**TOTAL DECISIONS**

**YEAR ENDING**

**NUMBER OF DECISIONS**

March 31, 2017	2398
March 31, 2016	2383
March 31, 2015	1631
March 31, 2014	1678

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "G"**

**RENUNCIATIONS**

<b><u>YEAR ENDING</u></b>	<b><u>NUMBER OF RENUNCIATIONS</u></b>
March 31, 2017	68
March 31, 2016	87
March 31, 2015	83
March 31, 2014	69
March 31, 2013	65
March 31, 2012	61

**PUBLIC TRUSTEE STATISTICS**

**SCHEDULE "H"**

**REPRESENTATIVE LITIGATION CASES OPENED**

<b>FISCAL YEAR ENDING:</b>	<b>PRESUMPTION OF DEATH ACT</b>	<b>MISSING/ UNASCERTAINED PERSON</b>	<b>SURVIVAL OF ACTIONS ACT</b>	<b>GUARDIAN <i>ad litem</i> OF INCOMPETENT ADULT</b>	<b>GUARDIAN <i>ad litem</i> OF INFANT</b>	<b>TOTAL</b>
March 31, 2017	0	0	6	0	0	6
March 31, 2016	1	2	4	0	0	7
March 31, 2015	2	0	1	0	0	3
March 31, 2014	6	2	1	2	0	11
March 31, 2013	0	1	0	0	0	1
March 31, 2012	2	1	3	0	0	6



## **Health Care Decisions**

### ***Annual Statistical Report***

**2016-17**



## SUMMARY

Pursuant to the *Hospitals Act (HA)*, *Involuntary Psychiatric Treatment Act (IPTA)*, and *Personal Directives Act (PDA)*, the Public Trustee through the Health Care Decisions division acts as decision-maker of last resort for individuals who lack the capacity to make decisions concerning medical, surgical, and psychiatric treatment, as well as decisions related to health care, home care services, and placement to a continuing care home, and have no higher-ranked substitute with capacity who is willing and able to act on their behalf.

Both performance indicators of the Health Care Decisions (HCD) division (i.e. complaints, response times) were within established targets for 2016-17 fiscal year. Monitoring of the Health Care Decisions program was conducted and reported to the Public Trustee on a quarterly basis.

The following is a summary of annual statistics for the fiscal year 2016-17, which are detailed in this report:

- There were 474 active client files at March 31, 2017, an increase of 6% over 2015-16.
- 85 new client files were opened during the year and 60 client files were closed during the year.
- 593 referrals were received in 2016-17 as compared to 587 referrals for 2015-16.
- 63% of referrals were under PDA, 21% under HA, and 16% under IPTA, compared to 70%, 15%, and 15%, respectively for 2015-16.
- The most referrals - 256 (43%) - were submitted from agencies in Central Region (Zone 4) of Nova Scotia Health Authority; the least - 75 (13%) referrals – came from agencies in Eastern Region (Zone 3).
- A total of 2398 decisions were made in 2016-17 (2055 under PDA, 186 under HA, and 157 under IPTA).
- The average number of decisions per referral was 4, which is consistent with the average number in 2015-16.
- 95% of decisions were level-1; 3.5% of decisions were level-2; and 1.5% of decisions were level-3.
- Seven external education sessions were provided to stakeholders in 2016-17. Evaluation of a one-year pilot of stakeholder education via webinars resulted in cancellation of the subscription and returning to traditional face to face presentations.

## Recommendations

1. Continue the annual quality and operational review;
2. Continue to provide external stakeholder education throughout the province regarding the Health Care Decisions division's role, policies, and processes; and
3. Continue to seek feedback from external stakeholders with respect to HCD policies and processes to promote continuous quality improvement and best practice in decision making.

# HEALTH CARE DECISIONS DIVISION

## Public Trustee Mission

The Public Trustee is committed to the proper administration of estates of deceased persons, incompetent persons, children, and missing persons. It is also committed to provide informed consents for health care, placement to a continuing care home or home care services using an approach that is client-centred, respectful of human rights and freedoms, and in the client’s best interests if prior wishes, values, and beliefs are not known.

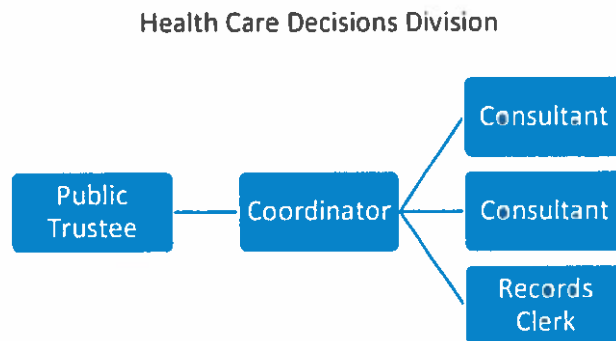
## Principles and Standards

Together with the *Personal Directives Act*, the *Hospitals Act*, and the *Involuntary Psychiatric Treatment Act*, the foundation documents supporting the Health Care Decisions Division are the Canadian Charter of Rights & Freedoms and the *Nova Scotia Human Rights Act*.

Underpinning Health Care Decision program policy are *best interest principles* and the *principle of informed consent*. Division policies also employ the four commonly held *principles of health care ethics*, namely: respect for autonomy; non-injury; beneficence; and justice. Respect for autonomy is demonstrated by respecting the client’s prior capable wishes, values and beliefs if known and consideration of the client’s rights to independence and freedom; non-injury is demonstrated in decision-making that avoids or minimizes risk to the client; beneficence is demonstrated in decisions that benefit the client; and justice is demonstrated in decisions that are fair and equitable.

The Health care Decisions division, on behalf of the Public Trustee, stands in the place of the client and is entitled to the same information and freedom of choice as the client would have received if he or she had capacity. Decisions are made using the *reasonable person standard*; after carefully considering the available relevant information, the Health Care Decisions division make a reasonably well-informed decision to consent, to not consent, or to withdraw consent as a reasonably prudent and careful lay person would do in similar circumstances and not as a health care professional.

## Structure



The Health Care Decisions Division team serves all of Nova Scotia and, in addition to the Public Trustee, is made up of three full-time equivalents (FTE), namely: the Coordinator and two Consultants. The Records Clerk provides records management support to the Health Care Decisions division.

## PROGRAM

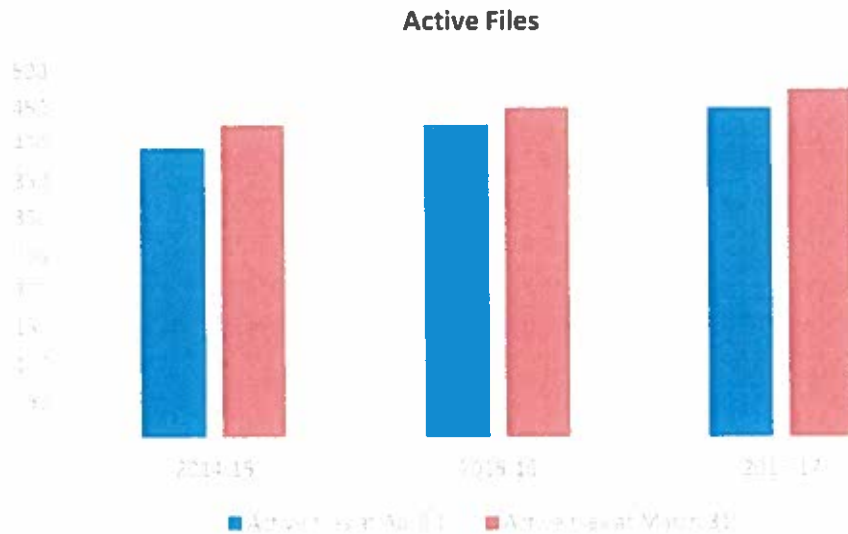
### *2016-2017 Statistical Overview*

84 new client files were opened in 2016-17. With the closure of 60 files, the year-end balance of 474 active files represents a 6% increase in the total number of active files at March 31, 2016.

**Table 1 – Year over year comparison of active and closed client files**

Client Files	2014-15	2015-16	2016-17
Active files at April 1 <sup>st</sup>	394	425	449
New Client Files opened	78	92	85
Deactivated Files reopened	0	0	0
Client Files closed	(47)	(68)	(60)
Active Files at March 31 <sup>st</sup>	425	449	474

**Chart 1 – Comparison of active files at year beginning and year end**



**Table 2 – Closed Files**

Reason for Closing	2014-15	2015-16	2016-17
Client death	40	49	57
Higher-ranked statutory decision maker	6	12	2
Delegate or proxy identified	0	1	0
Capacity regained	1	1	0
Left jurisdiction	0	6	1
<b>Total</b>	<b>47</b>	<b>69</b>	<b>60</b>

# Referrals

## Total Referrals by legislation

In the fiscal year 2016-17, a total of 593 referrals were received: 122(21%) referrals under *Hospitals Act*; 97 (16%) referrals under *Involuntary Psychiatric Treatment Act*; and 374 (63%) referrals under *Personal Directives Act*.

Chart 2 – Referrals by legislation

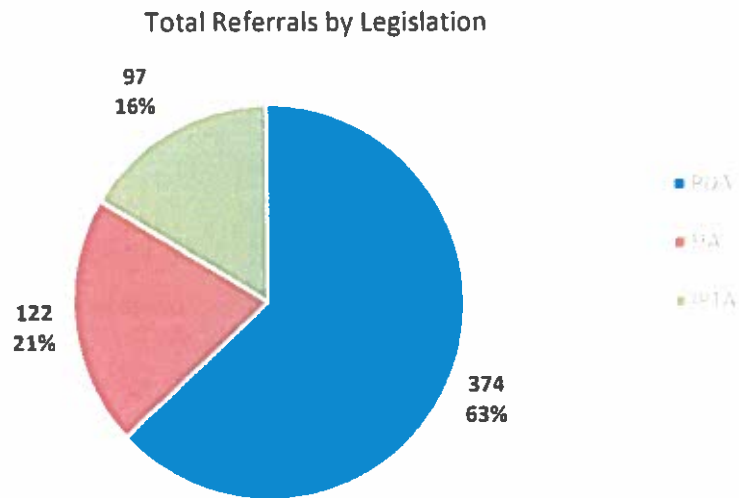
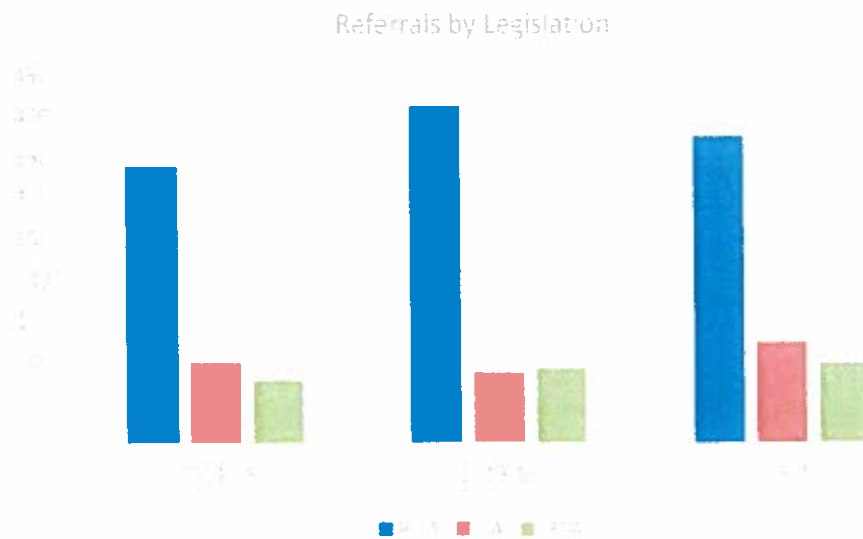
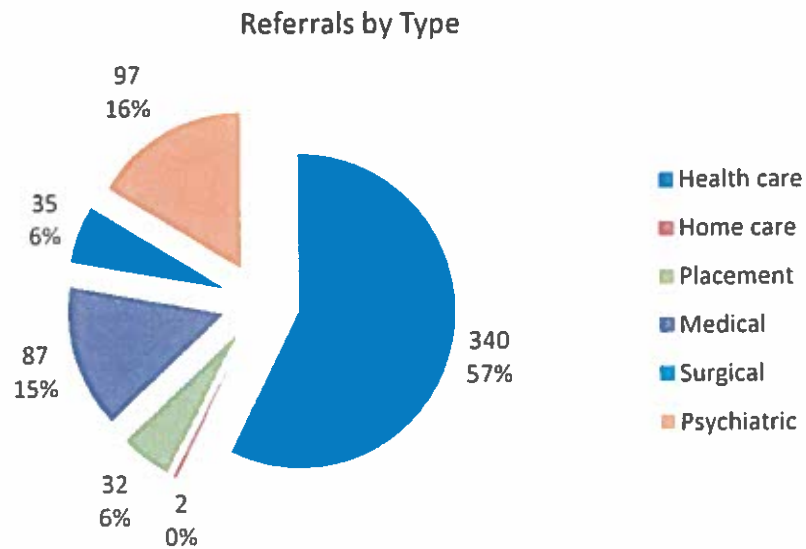


Chart 3 – Referrals - Year over year by Legislation



## Referrals by Type

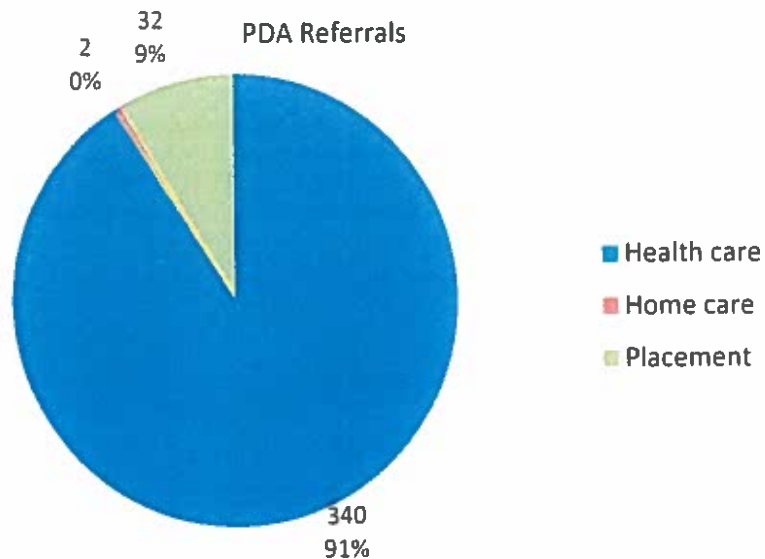
Chart 4 – Referrals by type



## Referrals under Personal Directives Act

Referrals under the *Personal Directives Act* include health care, home care, and placement to a continuing care home. In 2016-17 a total of 374 referrals were received under PDA.

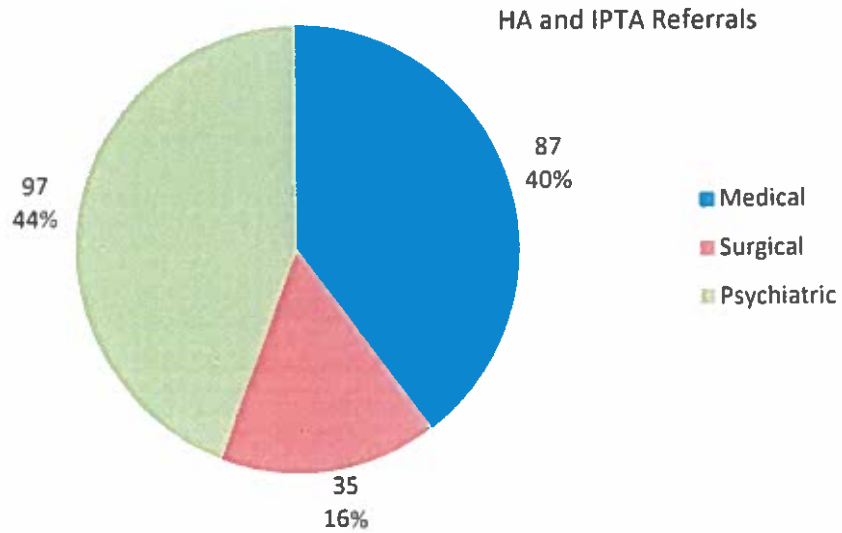
Chart 5 – 2016-17 Referrals: Health Care, Home Care, Placement



## Referrals under Hospitals Act and Involuntary Psychiatric Treatment Act

*Hospitals Act* referrals include medical treatment and surgical treatment. *Involuntary Psychiatric Treatment Act* referrals include psychiatric treatment in hospital and community treatment orders. In the fiscal year ending March 31, 2017, the Public Trustee received 122 referrals under the *Hospitals Act* and 97 under the *Involuntary Psychiatric Treatment Act*.

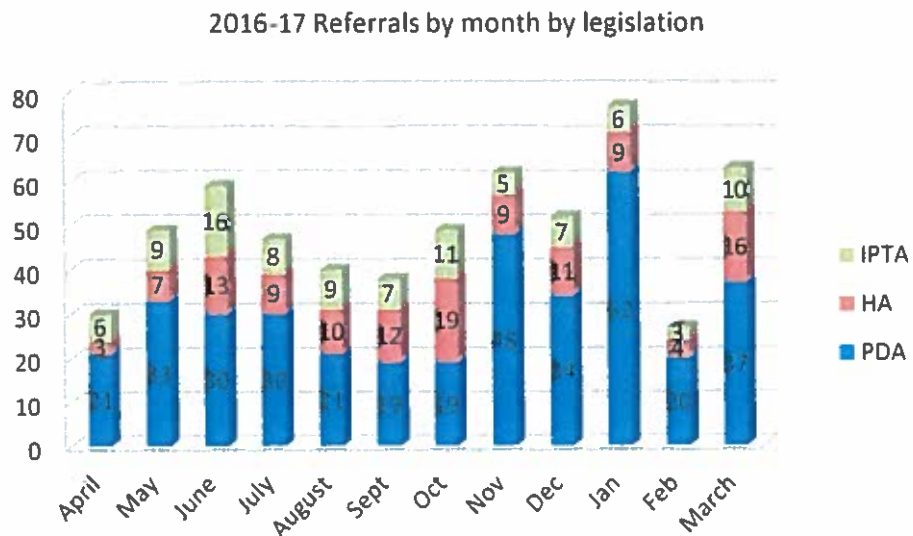
**Chart 6 – 2016-17 Total medical, surgical, and psychiatric treatment referrals**



## Referrals by month

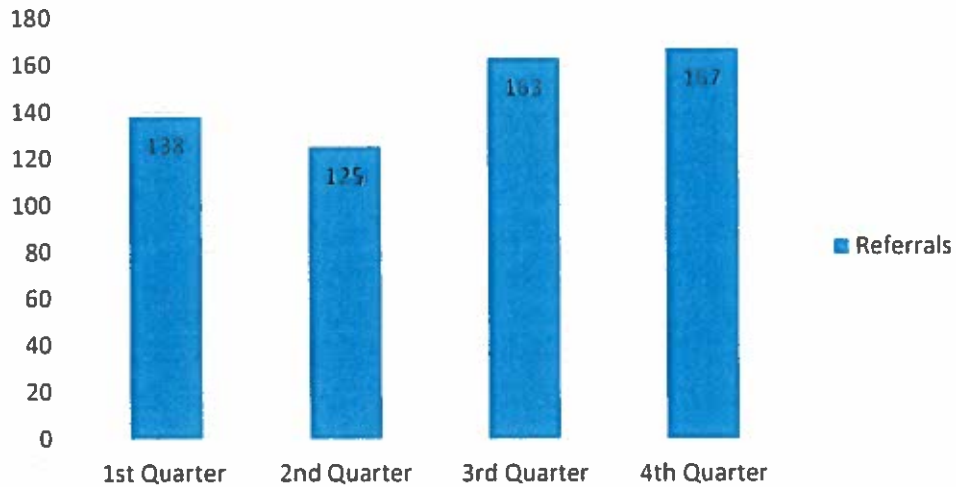
The average number of referrals received each month in 2016-17 was 49, the same as in 2015-16. January had the most referrals received in a month at 77; February had the fewest at 27 referrals.

**Chart 7 – 2016-17 Referrals per month by legislation**



**Chart 8 – Total Referrals by quarter**

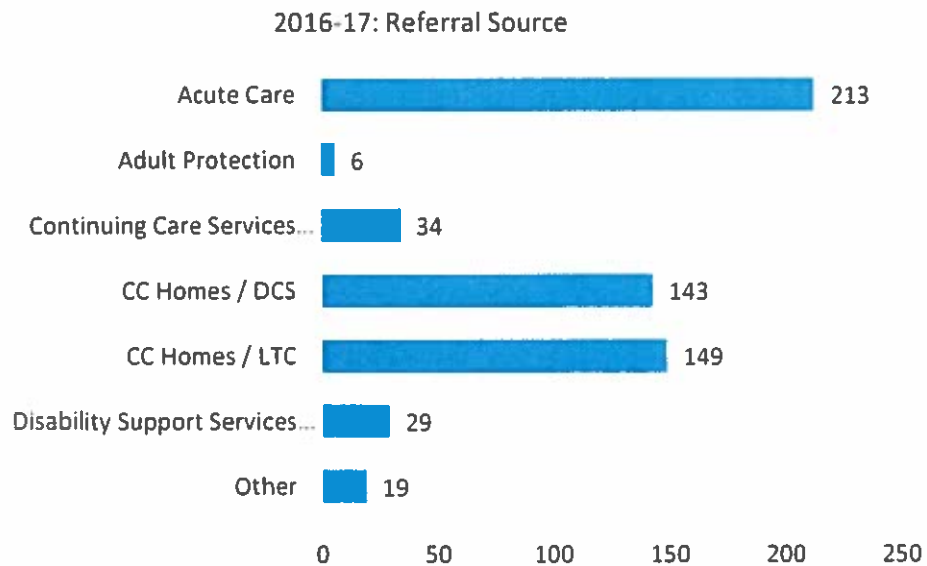
2016-17: Total Referrals by Quarter



### Referrals by Source

Referrals come from several sources, including hospitals (acute care), continuing care homes licensed under Departments of Community Services (DCS) and Health and Wellness (DHW), Adult Protection Services, Care Coordination and Placement Services (NSHA) and Disability Supports Program (DCS). 'Other' sources may include primary care health professionals in the community, e.g. dentist, general practitioner.

Chart 9 – Total Referrals by source

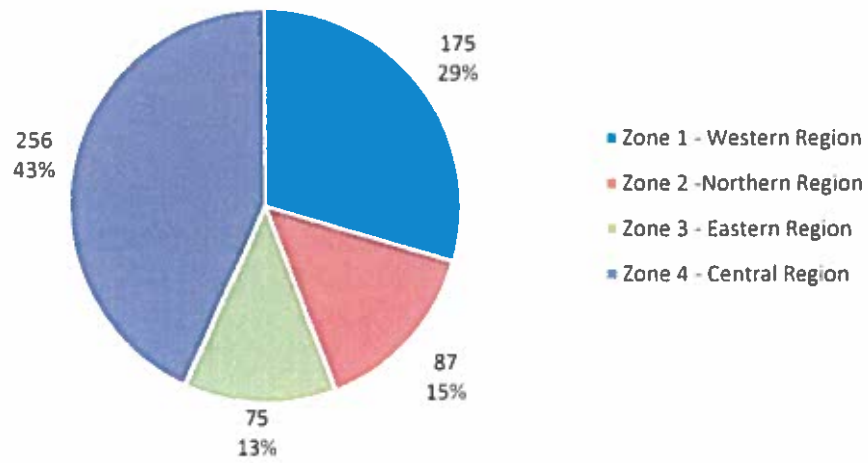


## Referrals by Geographic Area

On April 1, 2015, the nine District Health Authorities (DHAs) were consolidated, resulting in one Nova Scotia Health Authority (NSHA) divided into four geographic zones. DHAs 1, 2, and 3 became Zone 1 (Western); DHAs 4, 5, and 6 became Zone 2 (Northern), DHAs 7 and 8 became Zone 3 (Eastern), and DHA 9 became Zone 4 (Central).

Chart 10 – 2016-17 Total Referrals by Zone

2016-17: Referrals by NSHA Zone





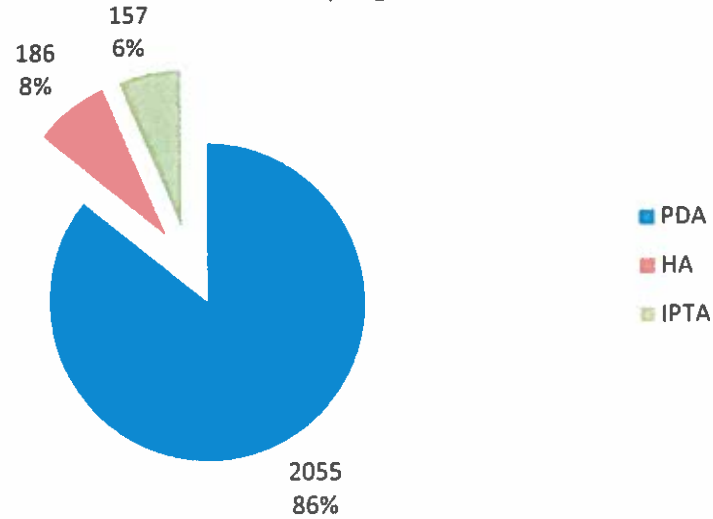
# Decisions

## Total Decisions

In the fiscal year 2016-17, a total of 2398 decisions were made compared to 2383 decisions made in 2015-16. Of the 2398 decisions made: 8% were made under *Hospitals Act*; 6% were made under *Involuntary Psychiatric Treatment Act*; and 86% were made under *Personal Directives Act*, which is consistent with 2015-16.

Chart 12 – Decisions by legislation

2016-17: Total Decisions by Legislation

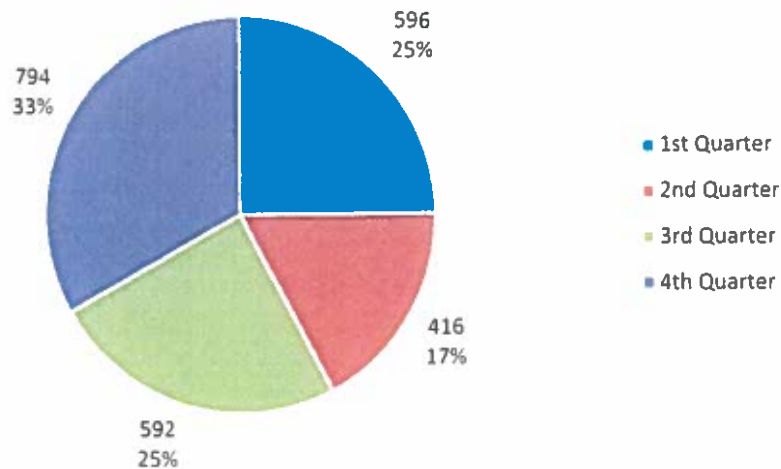


## Total Decisions each Quarter

There was an average of 4 decisions made per referral in 2016-17, the same number of decisions per referral as in 2015-16.

Chart 13 – Total Decisions by quarter

2016-17: Decisions by Quarter



## Decision Levels

Each decision is categorized as level 1, level 2, or level 3 in accordance with the degree of risk to the client, with level 3 having the most risk. In 2016-17, 95% decisions were level-1 and 3.5% were level-2. Level-3 decisions represent 1.5% of all decisions made and specific level-3 decision types made in 2016-17 are shown in Table 3.

Chart 14 – Total Decisions by level

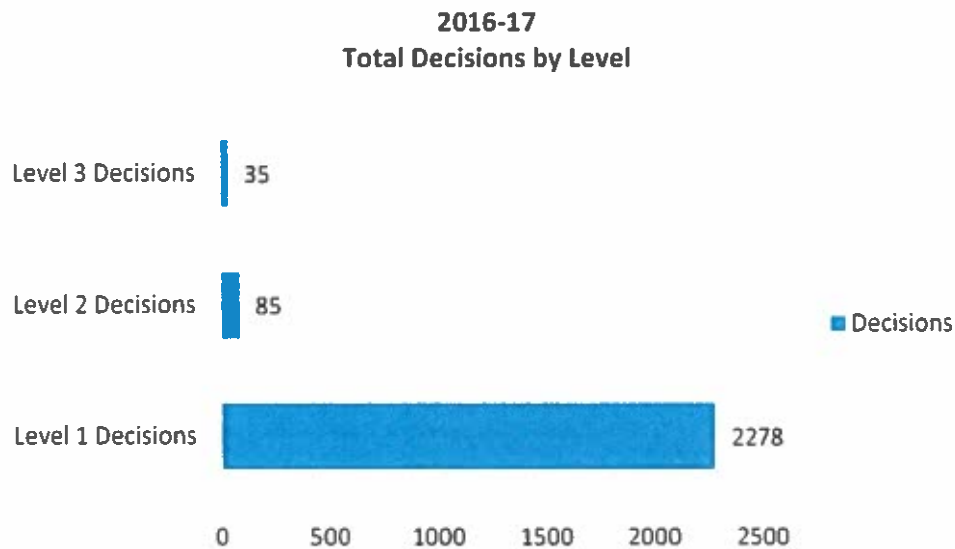


Table 3 – Level 3 Decisions 2016-17

There were 35 level 3 decisions made in 2016-17, as compared to 32 in 2015-16.

Level 3 Decision	Number
Community treatment orders (CTO) and CTO renewals	12
Electroconvulsive therapy (includes maintenance schedules)	21
Neurosurgery	2
<b>Total</b>	<b>35</b>

## **QUALITY**

### ***Quality Indicators***

#### **Complaints**

*2016-17 target was fewer than 5 complaints received during the year*

No complaints were received during the 2016-17 fiscal year.

#### **Response times**

*2016-17 target was 95% of decisions letters sent within response time standard*

593 of 593 (100%) of decision letters were issued within the established response time standard of within 3 business days of receipt of all relevant and required referral information.

#### ***External Education***

In 2016-17, seven (7) external education sessions were provided about the role of the Public Trustee as substitute decision maker and the referral processes of the HCD Division. In addition to these, a one-year pilot using webinar-based education was implemented in December 2015. Several webinars were prepared, which provided information on specific topics, e.g. consent and capacity, financial referrals, substitute decision-making and the role of the Public Trustee. Continuing care homes were the main target audience and a specialized webinar was created specifically for Adult Protection Workers. Although the webinars were promoted to all existing homes, the uptake was not as robust as anticipated. An evaluation of the pilot at the one year mark determined that this mode of education did not produce the desired results and the subscription was not renewed.

A provincial education outreach plan (like the one completed in 2015) was developed for implementation in 2017-18. It will include presentations throughout Nova Scotia by Health Care Consultants on the role of the Public Trustee as statutory decision-maker and will be offered to DHW and DCS-licensed continuing care homes and NSHA acute care facilities.

## **RECOMMENDATIONS**

1. Continue the annual quality and operational review;
2. Continue to provide external stakeholder education throughout the province regarding the Health Care Decisions division's role, policies, and processes; and
3. Continue to seek feedback from external stakeholders with respect to HCD policies and processes to promote continuous quality improvement and best practice in decision making.