

PUBLIC TRUSTEE
ANNUAL REPORT
FOR
FISCAL YEAR ENDING MARCH 31, 2012

In Reply Please Quote Our File Number:

December 4, 2012

The Honourable Ross Landry
Attorney General and Minister of Justice
Province of Nova Scotia
5151 Terminal Road, 4th Floor
Halifax, NS B3J 1A1

Dear Mr. Landry:

Pursuant to Section 47 of the *Public Trustee Act* I submit this Annual Report for the fiscal period ending March 31, 2012.

The Financial Statements and Auditor's Report for this fiscal period have been incorporated into and form part of the report.

Respectfully submitted,



M. Estelle Theriault, Q.C.
Public Trustee

MET/dw

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PUBLIC TRUSTEE PROGRAM OF NOVA SCOTIA

SCOPE OF PROGRAM

The Office of Public Trustee is established under the *Public Trustee Act* and functions in reference to that Act and other Statutes wherein specific roles are prescribed for the Public Trustee, e.g. *Hospitals Act, Personal Directives Act, Patient's Abandoned Property Act, Adult Protection Act, Guardianship Act, Probate Act, Presumption of Death Act, Survival of Actions Act, Involuntary Psychiatric Treatment Act, etc.*

The Public Trustee:

- (1) manages estates of living persons who need services of a trustee, guardian, attorney or other fiduciary not readily available in the private sector to such living persons;
- (2) administers estates of deceased persons and has standing to apply for grant of administration or administration with will annexed in any case where no grant of probate or administration has been issued;
- (3) may consent to health care decisions and nursing home placement decisions for incapable persons when consent cannot be obtained from the person, a named health care decision maker, a court appointed guardian of the person or a statutory decision maker;
- (4) may act as guardian *ad litem* or representative in litigation for minor, incompetent, deceased, missing or unascertained litigants in respect to whom a court makes representation orders.

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.

STATUS OF PUBLIC TRUSTEE

- (1) The Public Trustee is a corporation sole under that name with perpetual succession and an official seal and, as such, the Public Trustee may sue and be sued in that name.
- (2) The Public Trustee has the powers and duties given to or imposed upon it by statute and such further powers and duties as the Governor in Council may prescribe.
- (3) The person appointed to be Public Trustee has the status of a Deputy Head.
- (4) Where the Governor in Council, a Minister of the Government or a Court is empowered to appoint a guardian, custodian, trustee, executor or administrator, the Public Trustee, if it consents to act, may be so appointed.

- (5) For administration purposes, the Public Trustee reports to the Minister of Justice.

MESSAGE FROM THE PUBLIC TRUSTEE

I am pleased to submit the annual report of the Public Trustee of Nova Scotia for the fiscal year ending March 31, 2012.

The office of the Public Trustee is situated in Halifax. It renders services throughout Nova Scotia with a staff of twenty-five employees. There has been no additional staff hired in the fiscal year under review.

The Public Trustee has had a very successful year. Four hundred and twenty-two new files were opened which is the largest number of new files opened in a single fiscal year. Two hundred and ninety-six files were closed which is the highest number in the past five years. There continues to be an upward pressure of new cases being referred to the Public Trustee Office (see Schedules "C" and "D" to this report). We anticipate this trend will continue with the ever aging population in Nova Scotia.

In the fiscal year under review we saw a dramatic increase in referrals to the Health Care Decision Division. One hundred and thirty-three (133) new client files were opened compared to ninety-three (93) in the past fiscal year. On March 31, 2012, this unit had two hundred and ninety-six (296) active files compared to one hundred and seventy-two (172) at the previous year end. Each client may have a number of decisions made on their behalf. In the year ending March 31, 2011, four hundred and thirty-five (435) decisions had been made. In the year under review, one thousand two hundred and sixty-one (1,261) decisions were made. I am pleased that health care providers are now availing themselves of the Public Trustee's services and the Public Trustee is acting as the substitute decision maker of last resort for persons who are mentally incapable of making their own decisions. It is an extremely valuable resource for the most vulnerable in our province.

In order to provide services to all Nova Scotians I am pleased to inform the House of Assembly that the Public Trustee's website has now been translated into French. Many calls have been received from individuals who, having read our website, have learned of the Public Trustee's services. Lawyers, social workers and health providers can now download all the forms required to make a referral to us.

The Public Trustee also is pleased to report that it has earned the highest revenue in its history, exceeding its revenue forecasts. At the same time the Public Trustee achieved budget savings in its financial authority. All revenue is paid to the Minister of Finance to help offset the costs of this valuable program.

This was also a year of introspection at the Public Trustee Office. The Auditor General's office selected our office for a performance audit. The Auditor General does an annual financial audit at our office but this was the first time they did a performance audit. The audit was conducted over several months and the Public Trustee's staff spent dozens of

hours providing information to the auditors. The Public Trustee appreciates the thorough review done by the Auditor General and we have accepted all sixteen (16) recommendations. The report was released in June, 2012 and already nine (9) recommendations have been implemented and work has begun on many of the others.

The Public Trustee manages approximately \$47,000,000.00 in estate and trust assets. The Auditor General found that the investments under the Public Trustee's management "were administered using a prudent investor approach in accordance with policy." I was extremely pleased with this finding.

I wish to thank all the staff at the Public Trustee Office for their dedicated service. They deal with complex and emotional family situations and often families in crisis. They conduct themselves with compassion and professionalism, meeting the challenges of an ever increasing caseload. The Province of Nova Scotia is very well served by their effort and I am proud to work with them.

CASE LOADS

The Public Trustee is known as an information centre for estate and trust cases. We are contacted on a regular basis by lawyers, social workers, health care workers, the judiciary and the general public seeking general information in this area. Sometime there will be one telephone call only. In other cases multiple telephone calls are made all dealing with the same subject. In some instances these cases eventually become a new file undertaken by the Public Trustee. In many cases through the general information provided other solutions can be found to deal with the problem and we can avoid the necessity of the Public Trustee's management. Considerable time is spent on these inquiry files. No compensation is obtained from this valuable service. In the fiscal year 2011 - 2012, three hundred and fifty-two (352) inquiry files were opened compared to three hundred and thirty (330) inquiry files last year.

In addition, the Public Trustee added four hundred and twenty-eight (428) new cases in this fiscal year. In reviewing Schedule "B" to this report, you will see a continuous increase in file openings each year.

It is important to note what types of files have been opened in the period of review. A study of Schedule "D" to this report will reveal that the fastest growing category is that of Adult Estates (Living) and Health Care Consent to Treat files.

The population of Nova Scotia is aging. This aging population has placed a great demand upon our hospitals, nursing homes and the Public Trustee Office. Under the Department of Health nursing home cost of care policy, individuals placed in a home for special care no longer have to contribute any of their accumulated capital toward their monthly cost of care nor do they have to pay any of the nursing care portion of the care they receive in the home. The monthly cost of care is based on their income only and, as a result, if the Public Trustee assumes management of an adult's estate who is in a nursing home the Public Trustee must continue to manage the capital of the client's estate until the adult dies. An

adult in a nursing home lives on average 2.6 years (approximately 30.7 months). Under the previous cost of care program the adult's capital would have been used to pay both the nursing care and accommodation costs. The adult's resources were quickly exhausted and the Public Trustee could close its management account for the client. The impact of all these factors is reflected in the fact that at the end of this fiscal year the Public Trustee has 387 Adult Estates (Living) files under its care (see Schedule "A" to this report) compared with 369 files at year end last year for an increase of 18 cases.

The full impact of the "Baby Boomers" coming to retirement age is just beginning. The impact on the Public Trustee's caseload, I fear, will be striking. I forecast that this will be where the greatest work pressure will be.

The Department of Health has a great impact upon the Public Trustee's caseload. Of the 109 adult living files opened by the Public Trustee in the fiscal year under review, 22 files came to the Public Trustee under the *Adult Protection Act*, 65 files came to the Public Trustee under the *Hospitals Act* and 12 files came to the Public Trustee under the *Personal Directives Act*. Therefore, 91% of the adult living files undertaken by the Public Trustee in the fiscal year came to the Public Trustee from legislation overseen by the Department of Health.

In many instances the adult clients being referred to the Public Trustee for financial management are patients in hospitals awaiting long term care placement. The nursing home will not agree to have the incompetent adult placed in their facility unless someone is prepared to manage the adult's finances and the nursing home will be paid. By taking on these files the Public Trustee is helping the Department of Health and the District Health Authorities manage their budget and their valuable acute care bed spaces.

The Public Trustee also administers estates of deceased persons. On average, over the past five years, the Public Trustee opened 59 cases per year. This year 58 new deceased files were opened (see Schedule "D" to this report).

The Public Trustee also is the *ex officio* guardian of the estate of all children in this province for whom no legal guardian of their estate has been appointed by the court. The Public Trustee opened 23 new infant files in the fiscal year under review. Trust funds are held until the child reaches the age of majority (19). The Public Trustee closed 31 files this year and it is now administering 192 infant trust files.

The Health Care Decision Division has seen a major increase in referrals. One hundred and seventy-two (172) new case files were opened in 2011-2012 compared to ninety-three (93) in the previous year. At year end the Division had 296 active case files. We expect this number will continue to increase into the foreseeable future.

The file numbers do not tell the entire story. It has been found that the files being referred to the Public Trustee are the more complex and difficult accounts.

In addition, with modern communication the Public Trustee staff have found that the public has become accustomed to instant information and communication. Few realize the very high demand and caseload each staff carries. This proves to be a challenge for the staff as

they try to make every effort to do their work efficiently and thoroughly for the benefit of the client.

The work environment can be stressful. I am aware of the stress and I work to try to bring support and counsel to them. I am proud to say the Public Trustee has competent and dedicated staff.

REVENUE AND COSTS OF PROGRAM

Pursuant to the *Public Trustee Act* and the regulations thereto, the Public Trustee is entitled to charge for its services as trustee and as solicitor. 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 in inquiry files nor does it earn any fees for providing health care consents.

On an annual basis, the government forecasts what income the Public Trustee may earn for its services. This income is very important and contributes to the cost of running this program. As Public Trustee I strive to earn this revenue.

In the fiscal year 2011/2012 it was forecasted that the Public Trustee would earn \$600,000.00 in legal, administrative and trustee fees. The Public Trustee greatly exceeded this goal. The Public Trustee earned \$1,159,693.00. These fees have been transferred to the Department of Finance.

The Public Trustee also recovered from its clients' pre-tax fees such as photocopy and postage. The Public Trustee recovered \$23,883.00 in these fees.

The Public Trustee also earned revenue and income in its Special Reserve Fund in the amount of \$94,121.00. This sum is significantly less than last year (\$155,649.00) but it is reflective of the lower interest rates of the past several years.

Totalling the fees the Public Trustee earned from its trustee/guardian/administrator services (excluding accruals), its recovery fees and the income earned from its Special Reserve Fund the total income earned by the Public Trustee equalled \$1,277,698.00 (see Schedules "E" and "E1" to this report).

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 projected and actually allocated to the Public Trustee program for the fiscal period ended March 31, 2012 was as follows:

<u>FISCAL PERIOD</u>	<u>AUTHORITY</u>	<u>ACTUAL</u>
ended March 31, 2012	\$2,213,000.00	\$2,150,870.00

This is a budget saving of \$62,130.00.

Taking into account the total revenue earned from all sources by the Public Trustee the cost of running this valuable service excluding accrued fees was \$873,173.00.

LAWS AND AMENDMENTS SIGNIFICANT TO THE PUBLIC TRUSTEE PROGRAM

HOSPITALS ACT

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 no guardian and is unable to administer his own estate. Hospital officials and community care officials had been leading proponents of that mechanism. They implemented it immediately. It became and continues to be the source of many of the Public Trustee's growing caseload of Adult Estates (Living). Of the 109 new Adult Estates (Living) files opened in the fiscal year ending March 31, 2012, 65 originated from Section 59 referrals.

On some occasions, the referrals from the hospitals do not become permanent files in the Public Trustee Office. However, the Public Trustee, through its investigative powers does assist the hospitals and the Department of Health to ascertain the extent of the patients' assets and incomes. This is crucially important if the patient requires placement in a nursing care facility.

ADULT PROTECTION ACT

Enacted and in force in 1985 this statute contains special references to the Public Trustee being notified by the Minister of Community Services, or designate, S.13, or by the Family Court S.9(4), to intervene in the estate of one who is thought to be (or adjudged by the Court to be) "an adult in need of protection". The effect of S.13 is similar to the effect of S.59 of the *Hospitals Act* in that it authorizes and empowers the Public Trustee to assume immediate management of the estate of a living adult. Section 9(4) merely identifies a case in which the Public Trustee might invoke its standing (*Public Trustee Act*, S.5) to seek an *Incompetent Persons Act* Guardianship Order in respect to the estate of one who has been adjudged to be an adult in need of protection.

In the current fiscal year the Public Trustee received 22 referrals from Adult Protection. The number of files referred to the Public Trustee by Adult Protection Services pursuant to Section 13 of the *Adult Protection Act* have decreased significantly over the past two years. The numbers are as follows:

March 31, 2008 – 66
March 31, 2009 – 79
March 31, 2010 – 59
March 31, 2011 – 32
March 31, 2012 - 22

Adult Protection Services is refocusing its efforts after a detailed program analysis. It is my submission that the *Personal Directives Act* has decreased the necessity of apprehending adults who are in need of protection to place them in a long term care facility. A delegate or a substitute decision maker may consent to the placement of the mentally incapacitated adult. Therefore, there is a reduced need for the mentally incapacitated adult to be apprehended by Adult Protection Services. If the adult is not apprehended Adult Protection Services cannot refer the client to the Public Trustee for financial management utilizing the provisions of Section 13 of the *Adult Protection Act*.

The Public Trustee did receive financial referrals for some of these mentally incapacitated adults under Section 8A of the *Personal Directives Act*. It is also surmised that some of the cases which would have been referred to the Public Trustee under the *Adult Protection Act* are now being referred to us utilizing Section 59 of the *Hospitals 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 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".

The Public Trustee also received many calls from the public seeking general information about Enduring Powers of Attorney. Many of these calls deal with the questions of accountability and the concerns individuals have on the manner the attorney is managing the trust funds. The Public Trustee does not oversee or investigate private power of attorney relationships. The Public Trustee is not legislated to fill this juncture nor are we provided with budget resources to undertake this task. This, I believe, would be a large undertaking if the Public Trustee ever undertook this responsibility.

The Minister of Justice has asked the Law Reform Commission of Nova Scotia to study the Power of Attorney legislation in Nova Scotia.

I have been asked to be a member of the Special Advisory Group. We are involved in an extensive review of new developments in the law dealing with Enduring Powers of Attorney.

This report will be given to the Commissioners. The Commissioners will prepare a report for submission to the government.

HEALTH CARE DECISIONS

The Public Trustee acts as the substitute decision maker of last resort for health care decisions for mentally incapacitated persons. The authority to do so is found in the *Hospitals Act*, the *Involuntary Psychiatric Treatment Act* and the *Personal Directives Act*.

The *Personal Directives Act* also empowers the Public Trustee as substitute decision maker of last resort to make decisions concerning the provision of home care services and placement to a continuing care home.

The Public Trustee has a Health Care Division to review all requests for consent. The Division has a Coordinator and two Health Care Consultants.

Detailed policy and procedures were developed to guide the consultants in their deliberations. 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 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 performance indicators for 2011-2012 were within established targets. Fiscal year 2011-2012 activities included the revision of HCD forms to be in compliance with government's Better Forms policy and stakeholder education.

The Office of the Auditor General (OAG) conducted a performance audit of the Office of the Public Trustee, which included the Health Care Decisions (HCD) Division. The three recommendations for HCD were accepted and two were immediately implemented while the third one is in progress and will be completed in 2012-2013.

Monitoring of the Health Care Decisions program was conducted and reported to the Public Trustee on a monthly basis. The following is a summary of annual statistics for the fiscal year 2011-2012 and are detailed in this report:

- 113 new client files were opened during the year, which represents an increase of 43% over the 93 new client files opened in 2010-2011
- 39 client files were closed during the year
- 479 referrals were received in 2011-2012 as compared to the projection of 475 referrals
- 69% of referrals were under PDA, 21% under HA, and 10% under IPTA
- Capital District Health Authority submitted the most referrals with 238 (50%) and Guysborough-Antigonish Health Authority submitted the least with 5 referrals (1%)
- A total of 1261 decisions were made in 2011-2012; 992 under PDA, 171 under HA and 98 under IPTA
- The average number of decisions per referral was 2.6
- 91% of decisions were level-1, 8% of decisions were level-2 and 1% of decisions were level-3

I am extremely pleased that the Public Trustee Office has been empowered to be the substitute decision maker of last resort for those who are mentally incapable of making their own decisions. This process helps protect these individuals.

REPRESENTATIVE LITIGATION

The Public Trustee is eligible for appointment to act as guardian *ad litem* or representative in litigation of mentally incompetent adults, minors, missing persons, unascertained persons and estates of deceased persons and any other interest entitled to sue or be represented in a proceeding. When acting pursuant to an *Incompetent Persons Act* Guardianship Order the Public Trustee is *ipso facto*, unless the court otherwise orders, guardian *ad litem* of the incompetent. Further, to accommodate the Bar and the Court, the Public Trustee occasionally consents to act, if appointed by the Court to act, as guardian *ad litem* or representative of a person or deceased person or interest that is not otherwise on the Public Trustee's caseload (see Schedules "H" and "H1"). No resources have been allocated to the Public Trustee specifically for that function. No fees are awarded to the Public Trustee by the courts if this appointment is undertaken. This type of appointment is normally a major time commitment on behalf of the Public Trustee.

During the fiscal period under review no new representative litigation files were opened.

RENUNCIATION

In certain fact situations, more particularly defined in Sections 15, 23 and 24 of the *Public Trustee Act* and in Section 32 of the *Probate Act*, the Public Trustee "is entitled to apply for and to receive a grant of letters of administration or administration with will annexed of the

estate" of a deceased person. 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 "in priority to all other persons". The Public Trustee also considers the assets which are contained in the estate. Are there funds in the estate which will allow the Public Trustee to properly administer the estate and also will the administration of the estate generate revenue for the Public Trustee Office which then assists the Public Trustee to provide services to the many cases which provide little or no revenue to the Public Trustee. All factors are considered when the Public Trustee decides whether it will administer a deceased estate or whether it will renounce.

By virtue of s. 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, he may 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 function pursuant to s. 36 of the *Public Trustee Act* and prefers to leave the determination to the Court of Probate.

Sixty-one (61) renunciations were given by the Public Trustee in the fiscal year ending March 31, 2012 (see Schedule "G" to this report).

**PROVINCE OF NOVA SCOTIA
PUBLIC TRUSTEE TRUST FUNDS
FINANCIAL STATEMENTS
MARCH 31, 2012**

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INDEPENDENT AUDITOR'S REPORT

To the Public Trustee; and to the Minister of Justice:

Report on the Financial Statements

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, 2012, March 31, 2011, and April 1, 2010, and the statements of Net and Comprehensive Loss, Continuity of Net Assets Held in Trust, and Cash Flows, for the years ended March 31, 2012 and March 31, 2011, and notes, comprising a summary of significant accounting policies and other explanatory information.

Management's Responsibilities 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. Except as explained below, 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 judgement, 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 the 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 qualified audit opinion.

Basis for Qualified Opinion

In common with many trust funds, it is not possible to verify by audit procedure that all the assets of any given trust, or income earned on trust assets, came under the administration of or were recorded by the Public Trustee. Accordingly, my verification of trust assets was limited to those recorded in the records.

Qualified Opinion

In my opinion, except for the possible effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements present fairly, in all material respects, the financial position of the Public Trustee Trust Funds as at March 31, 2012, March 31, 2011, and April 1, 2010, and its financial performance, and its changes in net assets and its cash flows for the years ended March 31, 2012, and March 31, 2011 in accordance with International Financial Reporting Standards.


Jacques Lapointe, CA
Auditor General

Halifax, Nova Scotia
October 30, 2012

Province of Nova Scotia
Public Trustee Trust Funds
Statement of Net Assets Held in Trust
For the Year Ended March 31, 2012

	2012	2011 Restated (Note 2)	2010 (Note 6)
Assets			
Estates and Trusts			
Cash	\$ 2,187,685	\$ 2,381,759	\$ 2,336,315
Securities, real estate and other assets (Note 4)	39,254,156	45,125,572	41,908,987
Common Fund securities (Note 7)	2,966,442	2,966,442	2,905,037
Accounts receivable and accrued interest	<u>746,073</u>	<u>697,009</u>	<u>340,171</u>
	<u>45,154,356</u>	<u>51,170,782</u>	<u>47,490,510</u>
Liabilities			
Estates and Trusts			
Accounts payable	<u>247,899</u>	<u>738,593</u>	<u>-</u>
Net Assets Held in Trust	<u>\$ 44,906,457</u>	<u>\$ 50,432,189</u>	<u>\$ 47,490,510</u>

Approved:



Public Trustee
M. Estelle Theriault, Q.C.

(See accompanying notes to the financial statements.)

Province of Nova Scotia
Public Trustee Trust Funds
Statement of Net and Comprehensive Loss
For the Year Ended March 31, 2012

	2012	2011 Restated (Note 2)
Revenues		
Pension	\$ 5,692,545	\$ 5,244,114
Annuities	492,825	485,169
Other	1,015,880	1,075,592
Investment income	<u>852,172</u>	<u>704,946</u>
	<u>8,053,422</u>	<u>7,509,821</u>
 Expenses		
Accommodation	5,728,087	5,182,415
Allowances	256,990	261,302
Medical	406,287	482,726
Utilities	126,913	166,084
Taxes	529,424	1,205,858
Funeral	408,118	390,940
Real estate	135,311	118,185
Insurance	91,082	117,964
Legal costs	250,879	289,683
Property care	431,001	258,369
Miscellaneous (Note 6)	262,003	188,934
Fees charged by the Public Trustee	<u>1,134,232</u>	<u>887,302</u>
	<u>9,760,327</u>	<u>9,549,762</u>
 Loss from operations	 (1,706,905)	 (2,039,941)
Realized loss	(591,642)	(34,528)
Unrealized gains (Note 6)	<u>62,779</u>	<u>688,277</u>
 Net and comprehensive loss	 <u>\$ (2,235,768)</u>	 <u>\$ (1,386,192)</u>

(See accompanying notes to financial statements.)

Province of Nova Scotia
Public Trustee Trust Funds
Statement of Continuity of Net Assets Held in Trust
For the Year Ended March 31, 2012



	2012	2011 Total Restated (Note 2)
Balance, beginning of year (Note 6)	\$ 50,432,189	\$ 47,490,510
Add: Estates and trusts of new clients and additional assets of existing clients	7,036,844	18,371,536
Net and comprehensive loss	<u>(2,235,768)</u>	<u>(1,386,192)</u>
	<u>4,801,076</u>	<u>16,985,344</u>
Less: Distribution of estates and trusts	10,202,051	13,214,864
Adjustment (Note 2)	-	738,593
Undistributable estates and trusts (per Section 28)	<u>124,757</u>	<u>90,208</u>
	<u>10,326,808</u>	<u>14,043,665</u>
Balance, end of year	<u>\$ 44,906,457</u>	<u>\$ 50,432,189</u>

(See accompanying notes to the financial statements.)

Province of Nova Scotia
Public Trustee Trust Funds
Statement of Cash Flows
For the Year Ended March 31, 2012

	2012	2011
Operating Activities		
Net and comprehensive loss from operations	\$ (2,235,768)	\$ (1,386,192)
Deduct non-cash transactions:		
Unrealized gains	<u>(62,779)</u>	<u>(688,277)</u>
Net and comprehensive loss from operations - cash basis	<u>(2,298,547)</u>	<u>(2,074,469)</u>
Increase in Estates and Trusts		
Sale of securities	9,890,611	9,685,647
Sale of real estate and other assets	3,900,873	3,593,093
Cash holdings of new estates and trusts	<u>4,053,172</u>	<u>5,458,841</u>
	<u>17,844,656</u>	<u>18,737,581</u>
Decrease in Estates and Trusts		
Purchase of securities	(9,110,688)	(10,946,270)
Distribution of cash holdings in estates and trusts	(6,508,238)	(5,559,457)
Change in Common Fund cash position	3,500	(21,733)
Transfer to Province – Section 28	<u>(124,757)</u>	<u>(90,208)</u>
	<u>(15,740,183)</u>	<u>(16,617,668)</u>
 (Decrease) increase in cash	 <u>\$ (194,074)</u>	 <u>\$ 45,444</u>
 Cash, beginning of year	 <u>2,381,759</u>	 <u>2,336,315</u>
Cash, end of year	<u>\$ 2,187,685</u>	<u>\$ 2,381,759</u>

(See accompanying notes to the financial statements.)

1. Reporting Entity

The Office of the Public Trustee was established pursuant to the Public Trustee Act and is independent of government. It 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 information 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 have been prepared in Note 10.

2. Restatement of Prior Year

For the year March 31, 2011, the Public Trustee determined amounts receivable to and payable from Estates and Trusts. Although expenses for the year reflected the impact of the amounts payable, Net Assets Held in Trust had not been reduced for these amounts owing. Accordingly, the Continuity of Net Assets Held in Trust reflects this adjustment.

3. Basis of Preparation

a) Statement of Compliance

This financial information has been prepared in accordance with the principles of International Financial Reporting Standards (IFRS). This is the first set of financial information that has been prepared under IFRS and IFRS 1 *First-time Adoption of International Financial Reporting Standards* has been applied. In previous years, the financial information was prepared in compliance with Canadian Generally Accepted Accounting Principles (Canadian GAAP).

The transition date elected by Office of the Public Trustee was April 1, 2010. The adoption of IFRS has been applied retroactively. No transitional adjustments were required on adoption of IFRS.

b) Basis of Measurement

The financial information has been prepared on the historical cost bases except for securities, real estate, other assets, and amounts receivable which are presented at fair value.

c) Functional and Presentational Currency

The financial information is presented in Canadian dollars, which is the functional currency for the Office of the Public Trustee.

3. Basis of Preparation (continued)

d) Use of Estimates and Judgments

The preparation of this financial information 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.

4. Summary of Significant Accounting Policies

The accounting policies set out below have been applied consistently to all periods presented in the financial information and in preparing the opening IFRS statement of net assets at April 1, 2010 for the purposes of the transition to IFRS.

(a) Initial Recognition and Valuation of assets and liabilities

The Public Trustee administers client investments, real property, and other assets (eg. vehicles, jewelry, etc.) 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 there 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 Property

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 property included within the statement of net assets primarily represents the value of residential properties currently occupied by the clients administered by the Office, or forming part of their estates. Real property is carried at fair value in the statement of net assets 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.

4. Summary of Significant Accounting Policies (continued)

Investments

Client securities are carried at fair value in the statement of net assets 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	9%
iii) Bonds	5%
iv) Other (RRSPs, RRIFs, Mutual Funds)	10%

Other Assets

Other client assets are carried at fair value in the statement of net assets 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 is 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 Office of 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 last balance sheet date. 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 income and loss.

(d) Cash and Cash Equivalents

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

5. Financial Risk Management

Section 3(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

5. Financial Risk Management (continued)

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

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, 2012 and March 31, 2011 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 \$79,503 (2011 - \$82,009). Because most term deposits held by the Public Trustee have a term to maturity of one year or less, interest rate risk is not

5. Financial Risk Management (continued)

considered significant. The Public Trustee mitigates this risk by investing excess client funds in a diversified portfolio, including investing in fixed rate securities.

6. Comparative Figures

Comparative figures related to unrealized gains and losses (or realized gains and losses) in 2011 have been reclassified to conform to the financial statement presentation adopted in this fiscal year. The net unrealized gain on real property and other assets was excluded when determining net and comprehensive income and loss in the prior year. In addition, certain expenses paid by the Public Trustee were not included as expenses during 2011. This net gain, and these expenses, were all included in the Continuity of Net Assets Held in Trust. It was also determined during the current year that, due to its nature, the Special Reserve Fund should be excluded from the total of Net Assets Held in Trust (Note 8).

The impact of these changes on amounts previously disclosed at March 31, 2011, is as follows:

	Miscellaneous Expenses	Unrealized gains	Net Assets Held in Trust
Balance, as previously reported	\$ 25,368	\$ 514,884	\$ 49,864,260
Miscellaneous expenses	163,566	-	-
Unrealized gains - real property and other assets	-	173,388	-
Special Reserve Fund	_____	_____ -	_____(2,373,750)
Balance, as adjusted	<u>\$ 188,934</u>	<u>\$ 688,277</u>	<u>\$ 47,490,510</u>

7. 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, in a Common Fund. Investments of the Common Fund are valued at market value as of March 31, 2012. The purpose of the Common Fund is to pool small value client assets in order to provide more substantial balances used to purchase income generating investments. Interest earned on these securities in excess of the rate prescribed by the Governor in Council, is transferred to the Special Reserve Fund.

8. 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.

The purpose of the Fund is to provide for any deficiency in the Common Fund between interest earned on Common Fund securities and the interest to be paid to the estates in that Fund as prescribed by regulation. Interest earned in the Common Fund in excess of the prescribed rate is transferred to the Special Reserve Fund. Income earned on securities held in the Special Reserve Fund also forms part of this Fund.

The Special Reserve Fund also provides for any deficiency between the aggregate amount of sums invested by the Common Fund and the realized value of the investments of the Common Fund.

Interest earned on securities held in the Special Reserve Fund is eligible for transfer to the Province. The amount eligible to be transferred to the Province during 2012 totaled \$94,784 (2011 – \$94,121). The balance in the Special Reserve Fund is as follows:

	March 31, 2012	March 31, 2011
Balance, beginning of year	\$ 2,464,827	\$ 2,373,750
Add: Net accrued interest	1,284	2,374
Interest income	94,784	94,121
Common Fund interest income	<u>146,732</u>	<u>150,231</u>
	<u>2,707,627</u>	<u>2,620,476</u>
Less: transfers to the Province	<u>(94,121)</u>	<u>(155,649)</u>
Balance, end of year	<u>\$ 2,613,506</u>	<u>\$ 2,464,827</u>

9. Fair Values

Client investments, common fund and special reserve fund assets as well as other financial assets are reflected in the statement of net assets 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.

9. Fair Values (continued)

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, 2012 and March 31, 2011 client investments, and common fund investments were valued using Level 2 inputs. In both years ended March 31, 2012 and 2011, there were no significant transfers between Level 1 and Level 2.

10. Operating Costs

Operating costs of the Office of the Public Trustee are absorbed by the Nova Scotia Department of Justice and are not reflected in the Income Statement. These costs, determined on a cash basis, are offset by fees charged for administering estates and by investment income.

	2012	2011
Department of Justice		
Salaries and benefits	\$ 1,906,626	\$ 1,813,214
Other operating costs	117,695	123,237
Rent	<u>126,548</u>	<u>126,548</u>
	<u>2,150,869</u>	<u>2,063,139</u>
Less transfers to the Province		
Fees	1,159,693	861,842
Recoveries	23,883	20,033
Special Reserve Fund Income	<u>94,121</u>	<u>155,649</u>
	<u>1,277,697</u>	<u>1,037,524</u>
Net cost to the Province	<u>\$ 873,172</u>	<u>\$ 1,025,615</u>

PUBLIC TRUSTEE STATISTICS

SCHEDULE "A"

CASES ACTIVE AS OF MARCH 31, 2012

ESTATES AND TRUSTS

Estate of Deceased	Adult's Estate (Living)	Infant's Estate (Living)	Undistributable Estate or Trust	Missing Person's Estate	Patients' Abandoned Property Act	Specific Renunciation Trust	TOTAL
172	387	192	6	5	2	24	203
							991

REPRESENTATIVE LITIGATION

Presumption of Death Act	Missing/ Unascertained Person	Survival of Actions Act	Guardian ad litem of Incompetent Adult	Guardian ad litem of Infant
5	7	15	3	4

CONSENT TO TREATMENT

GRAND TOTAL: 296

REQUESTS, COMPLAINTS, INQUIRIES, LITIGATION, REFERRALS

Individual General Inquiries April 1, 2011 - March 31, 2012 TOTAL: 352

PUBLIC TRUSTEE STATISTICS

SCHEDULE "B"

VOLUME AND PROGRESS OF CASELOAD

<u>FISCAL YEAR</u>	<u>VOLUME AT START</u>	<u>NEW CASES ADDED</u>	<u>CASES CLOSED</u>	<u>VOLUME AT YEAR END</u>
April 1/11 - March 31/12	1189	428	296	1321
April 1/10 - March 31/11	1101	383	295	1189
April 1/09 - March 31/10	1050	284	233	1101
April 1/08 - March 31/09	1013	310	273	1050
April 1/07 - March 31/08	872	265	124	1013

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' ABANDONED PROPERTY ACT	SPECIFIC TRUST	CONSENT TO TREATMENT	RENUNCIATION	TOTAL
March 31/12	66	91	31	6	Nil	1	Nil	39	62	296
March 31/11	60	92	43	5	Nil	1	4	15	55	275
March 31/10	42	67	22	4	Nil	1	2	3	89	230
March 31/09	39	83	26	Nil	1	1	2	2	99	253
March 31/08	41	51	20	2	5	1	2	2	Nil	124

PUBLIC TRUSTEE STATISTICS

SCHEDULE "D"

BREAKDOWN OF NEW CASES ADDED

FISCAL YEAR ENDING	ESTATE OF DECEASED	ADULTS ESTATE (LIVING)	INFANT'S ESTATE (LIVING)	UNDISTRIBUTABLE ESTATE OR TRUST	MISSING PERSON'S ESTATE	PATIENTS' ABANDONED PROPERTY ACT	SPECIFIC TRUST	CONSENT TO TREATMENT	RENUNCIATION	TOTAL
March 31/12	58	109	23	3	1	1	3	163	61	422
March 31/11	63	121	15	4	1	1	2	96	74	377
March 31/10	59	103	37	4	Nil	1	5	12	56	277
March 31/09	56	112	52	3	Nil	1	4	11	63	302
March 31/08	58	96	40	4	4	1	Nil	4	47	254

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 Trust Funds *3
	Revenue *1	Revenue *2	Revenue	
March 31, 2012	\$1,159,693.00	\$23,883.00	\$94,121.00	\$124,758.00
March 31, 2011	\$861,842.00		\$155,649.00	\$90,208.00
March 31, 2010	\$824,226.00		\$107,571.00	\$158,152.00
March 31, 2009	\$652,900.00		\$81,393.00	\$52,863.00
March 31, 2008	\$665,149.00		\$78,877.00	\$406,151.00

*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.

PUBLIC TRUSTEE STATISTICS

SCHEDULE "E1"

YEAR ENDING	COMMON FUND INVESTMENT INCOME TRANSFERRED TO SPECIAL RESERVE FUND	SPECIAL RESERVE FUND ACCUMULATED NON-TRANSFERABLE EQUITY
March 31, 2012	\$146,732.00	\$2,518,722.00
March 31, 2011	\$150,231.00	\$2,370,705.00
March 31, 2010	\$128,072.00	\$2,218,101.00
March 31, 2009	\$126,607.00	\$2,090,009.00
March 31, 2008	\$143,287.00	\$1,962,921.00

PUBLIC TRUSTEE STATISTICS

SCHEDULE "F"

HEALTH CARE DECISIONS

Client Files	2010-11	2011-12
Active files at April 1 st	93	172
New Client Files opened	93	133
Deactivated Files reopened	1	30
Client Files closed	(15)	(39)
Active Files at March 31 st	172	296

REFERRALS RECEIVED 2011-12

Legislation	2010-11	2011-12
<i>Hospitals Act</i>	55	100
<i>Involuntary Psychiatric Treatment Act</i>	45	48
<i>Personal Directives Act</i>	125	331

TOTAL DECISIONS

YEAR ENDING

NUMBER OF DECISIONS

March 31, 2012

1261

March 31, 2011

435

March 31, 2010

28

SCHEDULE "G"

RENUNCIATIONS

<u>YEAR ENDING</u>	<u>NUMBER OF RENUNCIATIONS</u>
March 31, 2012	61
March 31, 2011	74
March 31, 2010	56
March 31, 2009	63
March 31, 2008	47

PUBLIC TRUSTEE STATISTICS

SCHEDULE "H"

REPRESENTATIVE LITIGATION CASES OPENED

FISCAL YEAR ENDING:	PRESUMPTION OF DEATH ACT	MISSING/ UNASCERTAINED PERSON	SURVIVAL OF ACTIONS ACT	GUARDIAN <i>ad litem</i> OF INCOMPETENT ADULT	GUARDIAN <i>ad litem</i> OF INFANT	TOTAL
March 31, 2012	2	1	3	Nil	Nil	6
March 31, 2011	1	Nil	3	1	1	6
March 31, 2010	Nil	1	3	1	2	7
March 31, 2009	4	Nil	3	1	Nil	8
March 31, 2008	4	5	1	1	Nil	11

PUBLIC TRUSTEE STATISTICS

SCHEDULE "H1"

REPRESENTATIVE LITIGATION CASES CLOSED

FISCAL YEAR ENDING:	PRESUMPTION OF DEATH ACT	MISSING/ UNASCERTAINED PERSON	SURVIVAL OF ACTIONS ACT	GUARDIAN <i>ad litem</i> OF INCOMPETENT ADULT	GUARDIAN <i>ad litem</i> OF INFANT	TOTAL
March 31, 2012	Nil	Nil	Nil	Nil	Nil	Nil
March 31, 2011	10	Nil	8	1	1	20
March 31, 2010	Nil	Nil	Nil	2	1	3
March 31, 2009	6	Nil	14	Nil	Nil	20
March 31, 2008	Nil	Nil	Nil	Nil	Nil	Nil



Health Care Decisions

Annual Statistical Report

2011-12

SUMMARY

Pursuant to the *Hospitals Act (HA)*, *Involuntary Psychiatric Treatment Act (IPTA)*, and *Personal Directives Act (PDA)*, the Public Trustee 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 health care, home care services, and placement to a continuing care home, and who have no higher-ranked substitute with capacity who is willing and able to act on their behalf.

All performance indicators for 2011-12 were within established targets. 2011-12 activities included the revisions of HCD forms to be in compliance with government's Better Forms policy and stakeholder education.

The Office of the Auditor General (OAG) conducted a performance audit of the Office of the Public Trustee, which included the Health Care Decisions (HCD) Division. The three recommendations for HCD were accepted and two were immediately implemented while the third one is in progress and will be completed in 2012-13.

Monitoring of the Health Care Decisions program was conducted and reported to the Public Trustee on a monthly basis. The following is a summary of annual statistics for the fiscal year 2011-12 and are detailed in this report:

- 113 new clients files were opened during the year, which represents an increase of 43% over the 93 new client files opened in 2010-11
- 39 client files were closed during the year
- 479 referrals were received in 2011-12 as compared to the projection of 475 referrals
- 69% of referrals were under PDA, 21% under HA, and 10% under IPTA
- Capital District Health Authority submitted the most referrals with 238 (50%) and Guysborough-Antigonish Health Authority submitted the least with 5 referrals (1%)
- A total of 1261 decisions were made in 2011-12, 992 under PDA, 171 under HA, and 98 under IPTA
- The average number of decisions per referral was 2.6
- 91% of decisions were level-1, 8% of decisions were level-2, and 1% of decisions were level-3

Recommendations

1. Continue the annual quality review and evaluation of divisional policies, procedures, and operational processes;
2. Continue to work with Department of Justice IT Services so that the PAM modifications recommended in the OAG Performance Audit are implemented;
3. Continue to work with Communications Nova Scotia to complete the HCD Better Forms project;
4. Continue to provide external stakeholder education regarding the Health Care Decisions division's role, policies, and processes; and
5. 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 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.

Structure

Health Care Decisions Division



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 Program Assistant hours cover approximately 30 hours Monday to Friday in a combination of full and half days and are taken from already existing legal assistant FTEs within the Public Trustee Office.

PROGRAM

2011-2012 Statistical Overview

The 133 new client files that were opened in 2011-12 represent an 85% increase in client files overall. With the closure of 39 files, the year-end balance of 296 active files represents a 72% increase in the number of active files at March 31, 2011.

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

Client Files	2010-11	2011-12
Active files at April 1 st	93	172
New Client Files opened	93	133
Deactivated Files reopened	1	30
Client Files closed	(15)	(39)
Active Files at March 31 st	172	296

Chart 1 – Comparison of active files at year start and year end

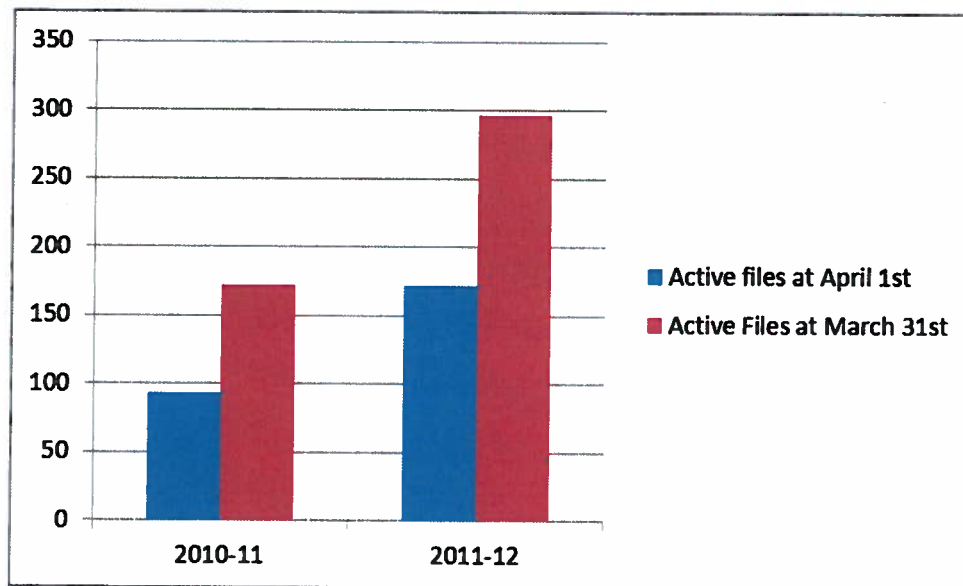


Table 2 – Closed Files

Reason for Closing	2010-11	2011-12
Client death	11	27
Higher-ranked statutory decision maker	4	11
Delegate named in personal directive	0	1
Total	15	39

Referrals

Total Referrals by legislation

In the fiscal year 2011-12, a total of 479 referrals were received: 100 (21%) referrals under *Hospitals Act*; 48 (10%) referrals under *Involuntary Psychiatric Treatment Act*; and 331 (69%) referrals under *Personal Directives Act*.

Chart 2 – Referrals by legislation

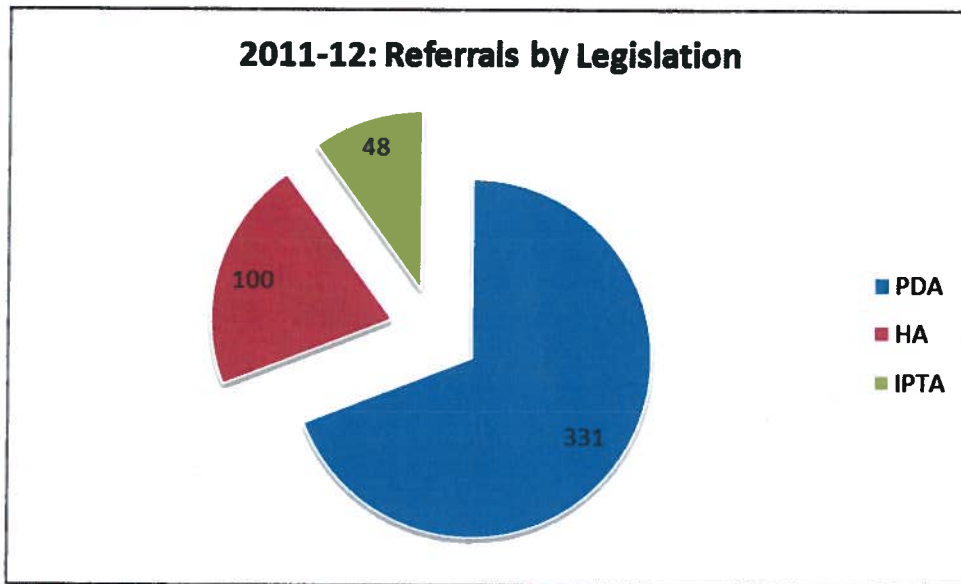
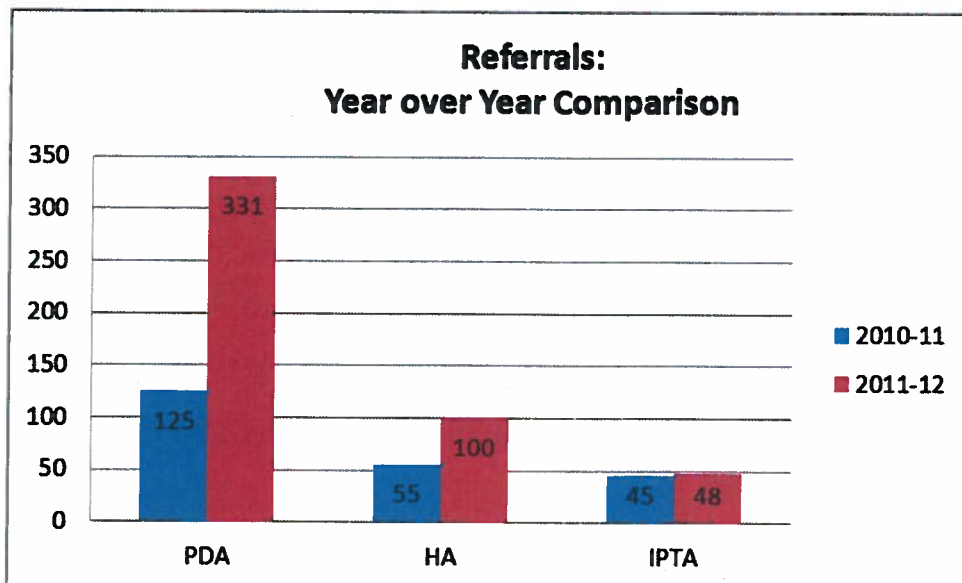
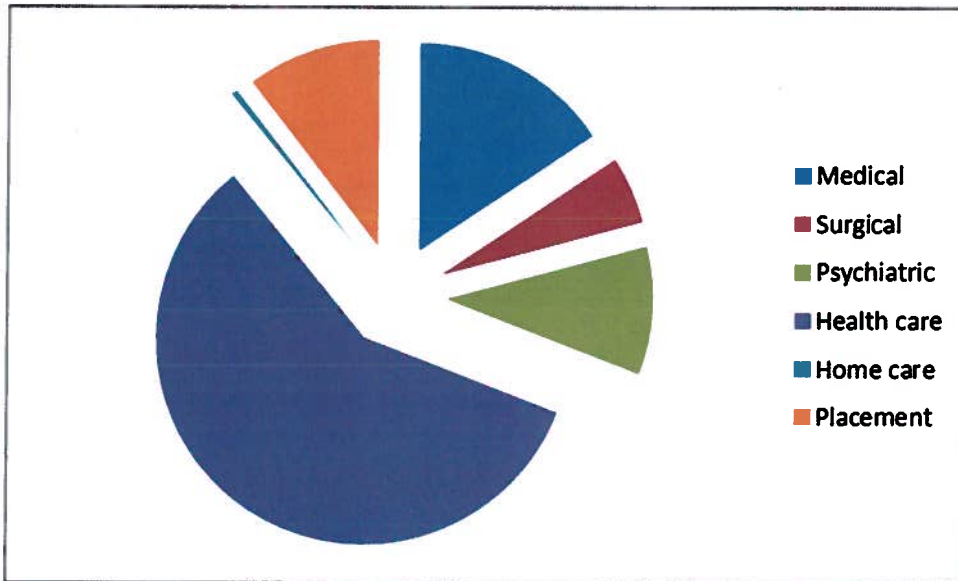


Chart 3 – Referrals - Year over year by Legislation



Referrals by Type

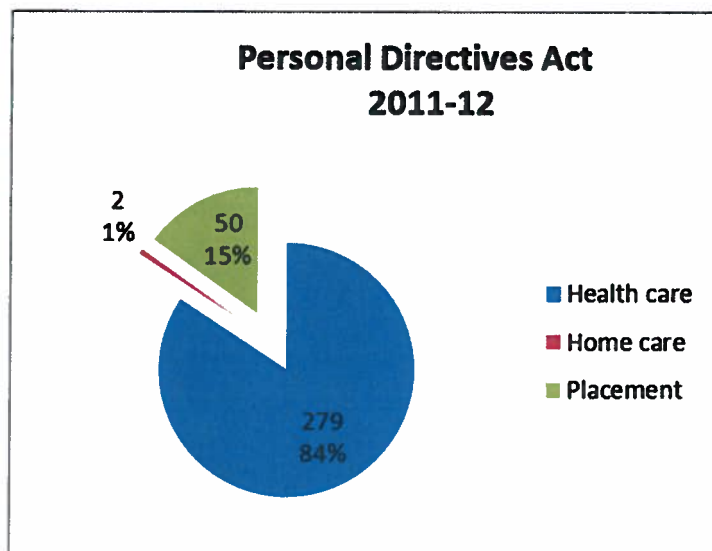
Chart 4 – Referrals by type



Referrals under Personal Directives Act

Personal Directives Act includes referrals for health care, home care, and placement to a continuing care home. In 2011-12 a total of 331 referrals were received under PDA.

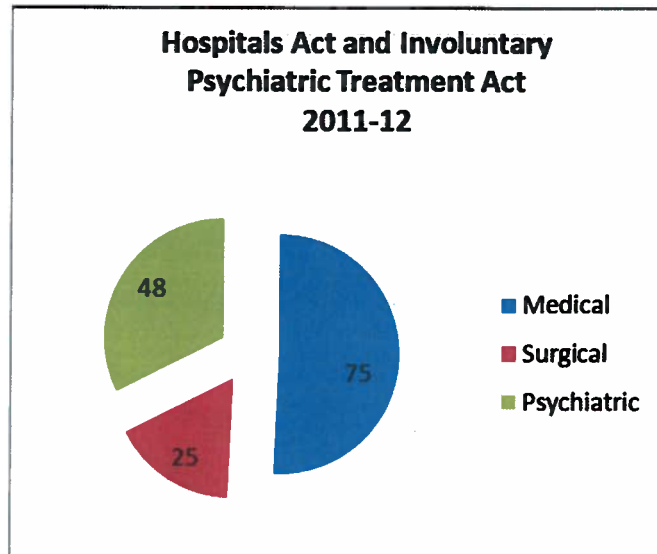
Chart 5 – 2011-12 Health Care, Home Care , and Placement Referrals



Referrals under Hospitals Act and Involuntary Psychiatric Treatment Act

Hospitals Act includes referrals for medical treatment and surgical treatment. *Involuntary Psychiatric Treatment Act* includes referrals for psychiatric treatment in hospital and under a community treatment order. In the fiscal year ending March 31, 2011, the Public Trustee provided 100 consents under the *Hospitals Act* and 48 under the *Involuntary Psychiatric Treatment Act*.

Chart 6 – Total medical, surgical, and psychiatric treatment referrals



Overview of referrals by month

In October 60 referrals and in December 68 referrals were received, the majority being under PDA and from Department of Community Services (DCS) facilities. The deadline for compliance with PDA for DCS homes was November 30, 2011.

Chart 7 – Referrals per month by legislation

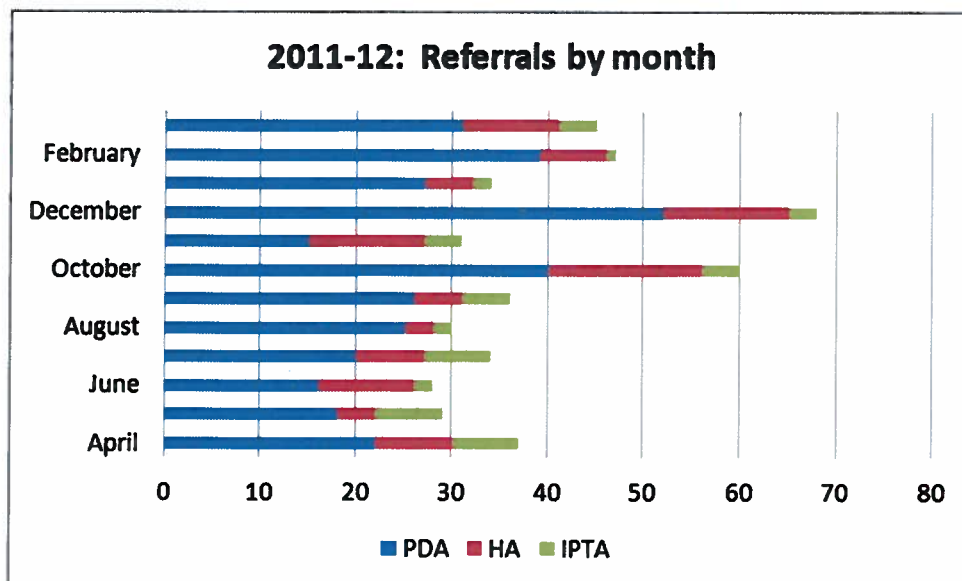
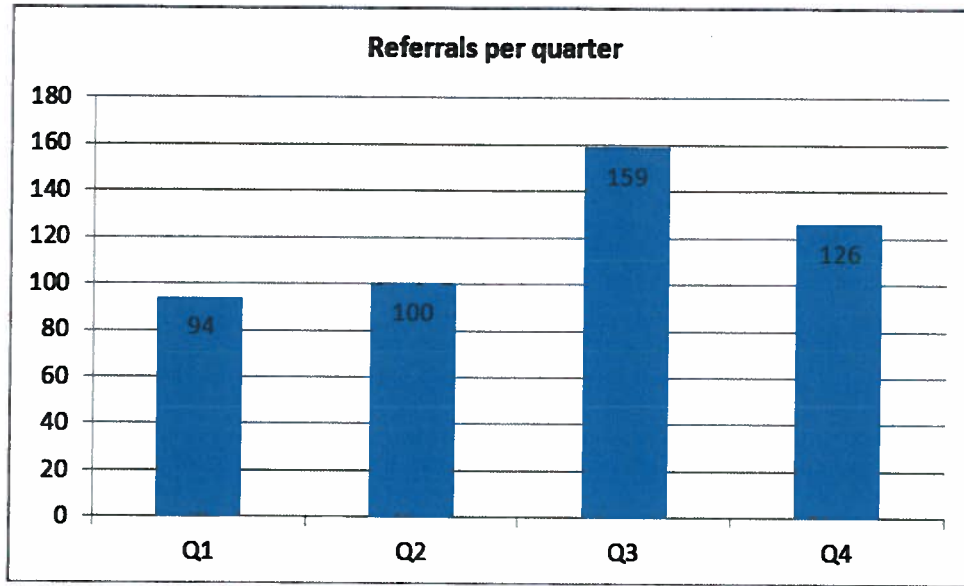


Chart 8 – Referrals by quarter



Referrals by Geographic Area

Geographic areas have been defined by the District Health Authority (DHA) boundaries. All referrals have been sorted by DHA. 50% of all referrals received in 2011-12 came from DHA 9 (Capital Health). Only 5 referrals or 1% were received from DHA 7 (Guysborough Antigonish).

Chart 9 – Referrals per month by DHA

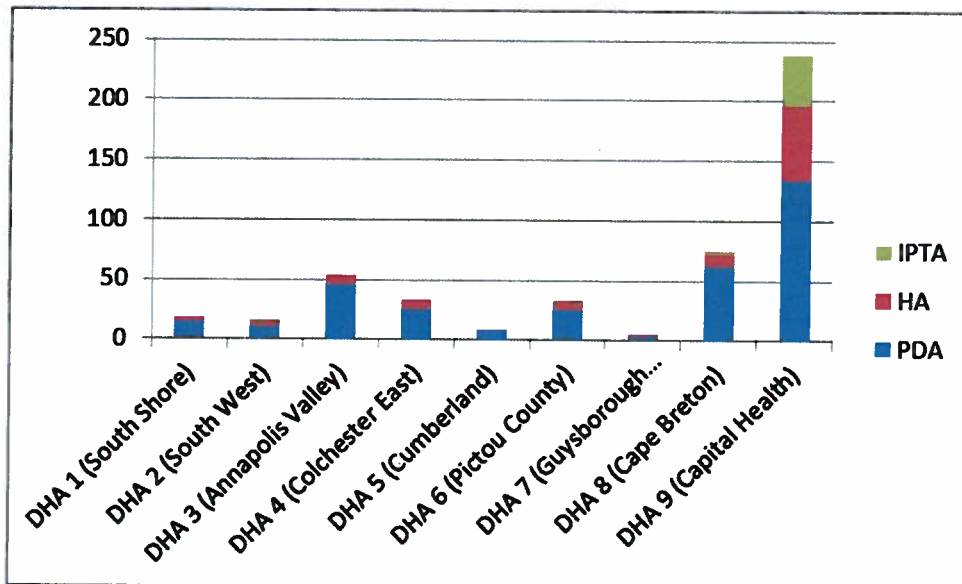
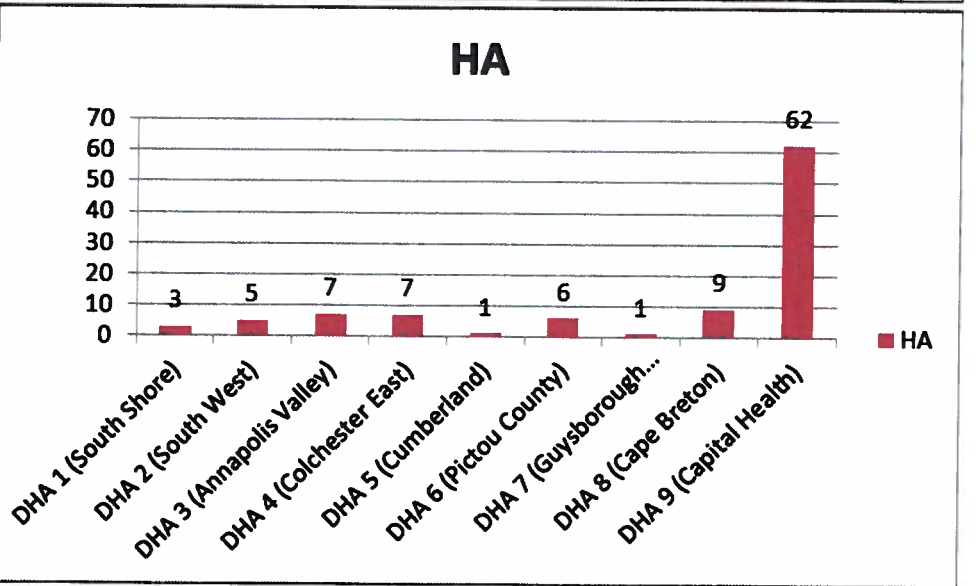
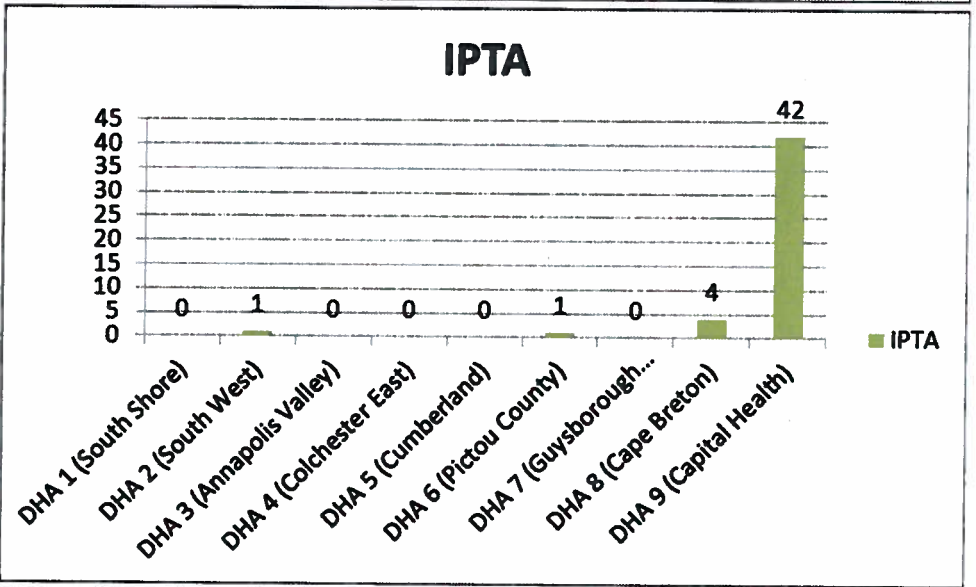
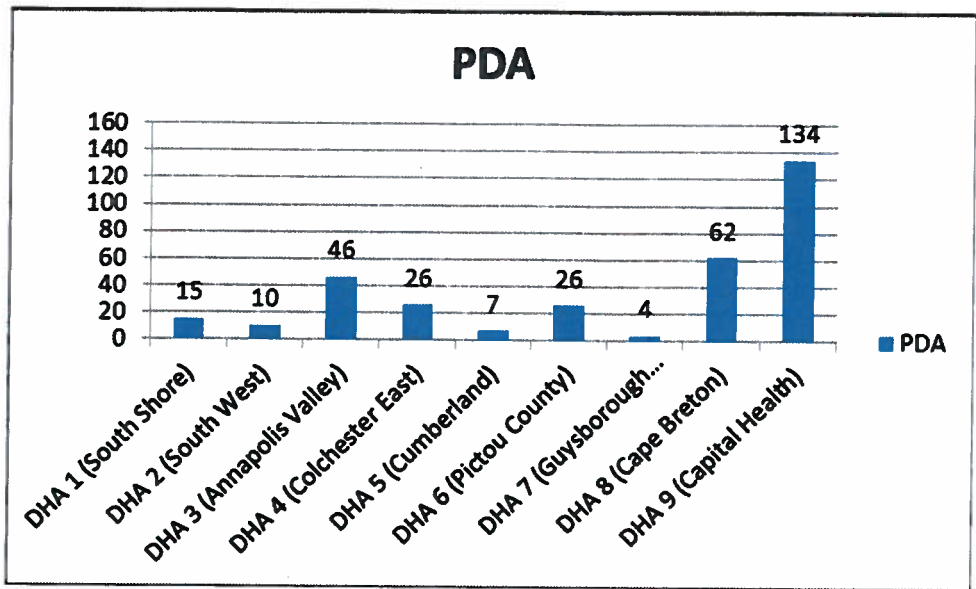


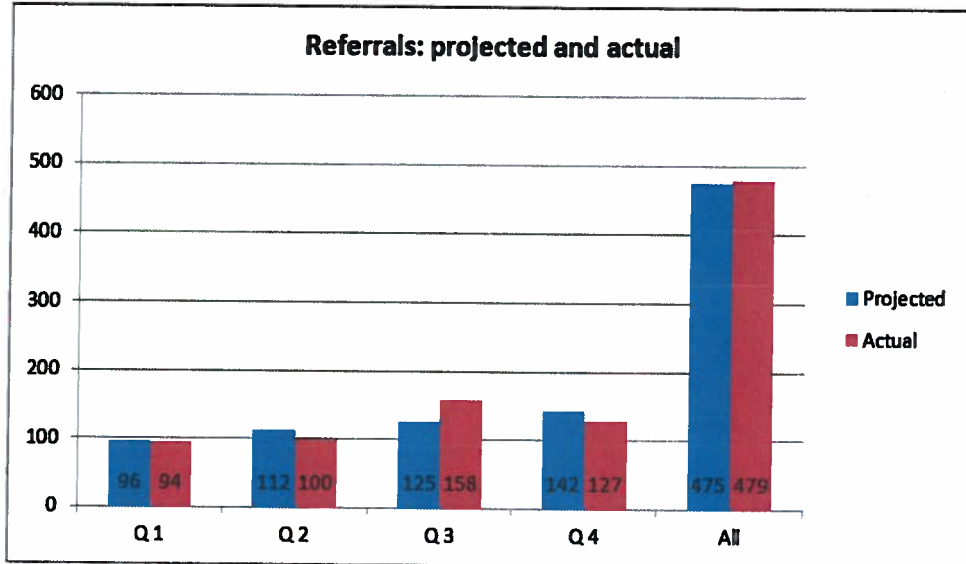
Chart 9 is further broken down by specific legislation in the following charts on page 9.



Referral Trendline

The trendline for 2011-12 projected approximately 475 referrals would be received in the fiscal year 2011-12; the actual number received was 479 referrals.

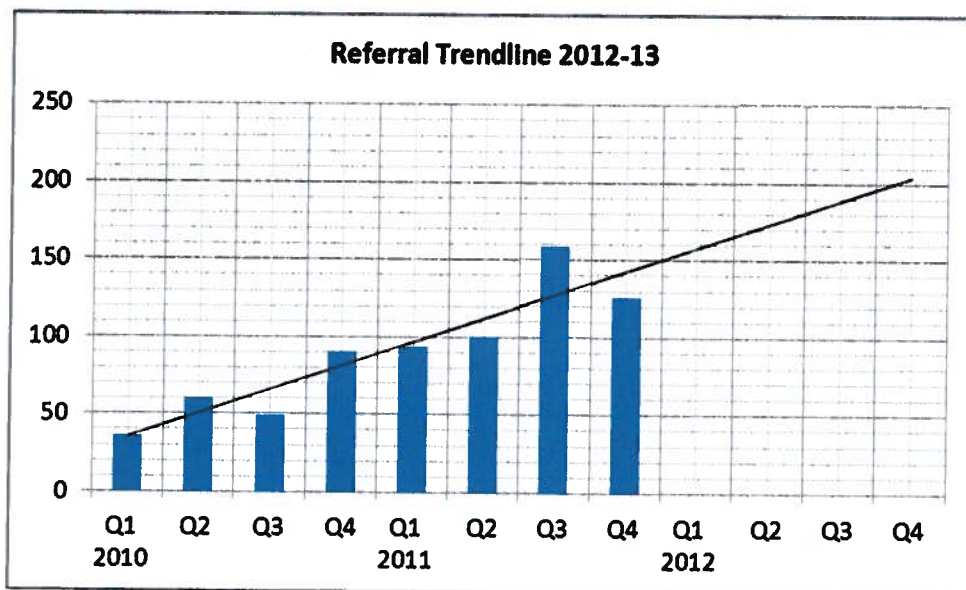
Chart 13 – Projected to actual referral total



Referral Projection for 2012-13

Applying a trendline for the next four quarters, it is estimated that approximately 720 referrals will be received in the 2012-13 year.

Chart 14 – Referral trendline for 2012-113

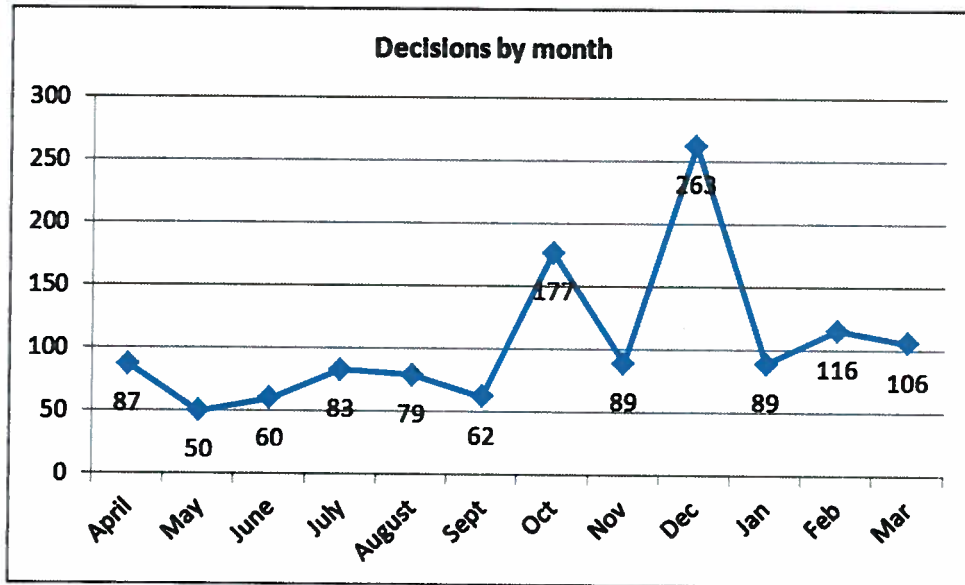


Decisions

Total Decisions

In the fiscal year 2011-12, a total of **1261** decisions were made compared to 435 decisions made in 2010-11. May had the lowest number with 50 decisions made and December had the most with 263 decisions made, which coincides with the spike in referrals received that month related to PDA compliance by DCS facilities.

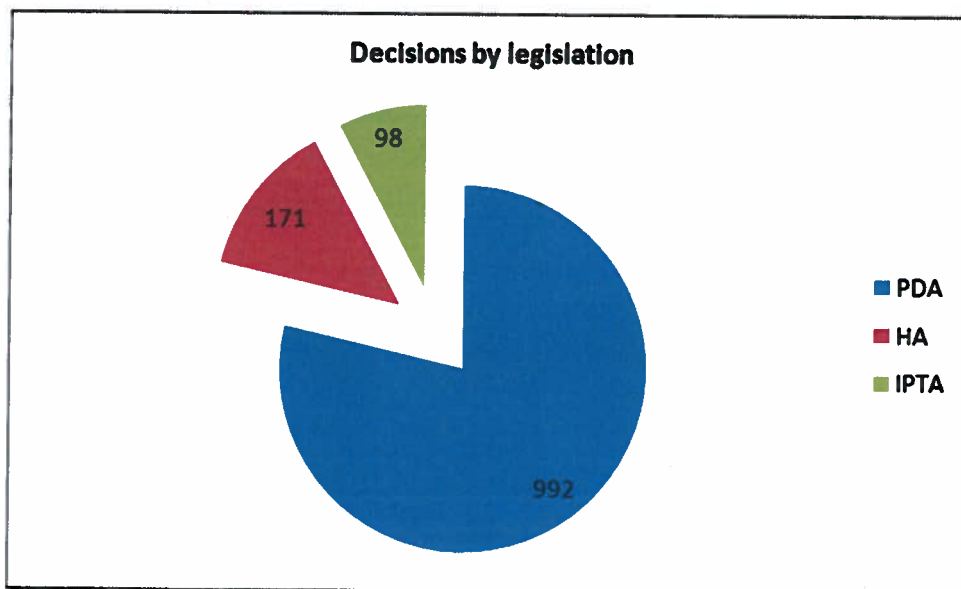
Chart 15 – Total Decisions 2011-12



Total Decisions by Legislation

In the fiscal year 2011-12, of the 1261 decisions made: 171 (13.5%) were made under *Hospitals Act*; 98 (7.8%) were made under *Involuntary Psychiatric Treatment Act*; and 992 (78.7%) were made under *Personal Directives Act*.

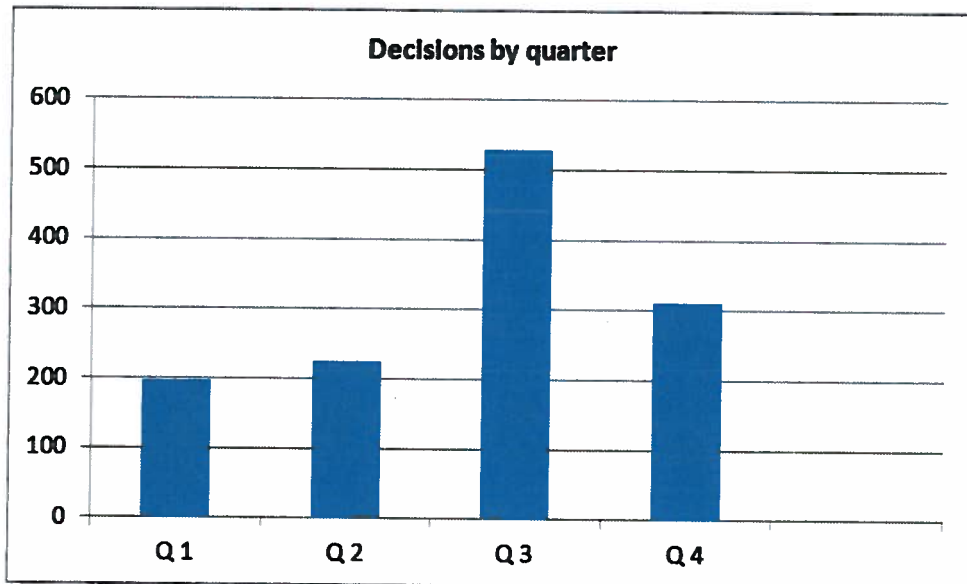
Chart 16 – Decisions by legislation



Total Decisions by Year Quarter

The number of decisions increased each quarter; there was a significant spike in December which corresponded with the end of the compliance period for Department of Community Services homes. There was an average of 2.6 decisions made per referral compared with 1.8 per referral in 2010-11.

Chart 17 – Total Decisions by quarter



Decision Levels

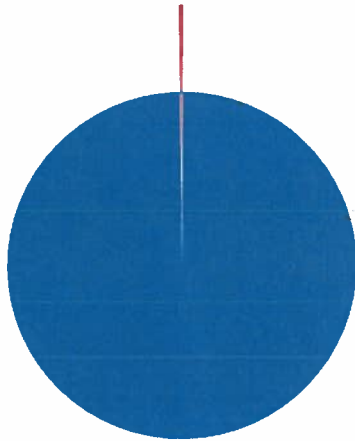
Each decision is categorized as level 1, level 2, or level 3 in accordance with the degree of risk to the client, with level 3 having the most risk. In 2010-11, there were 1146 (91%) level-1 decisions made, 102 (8%), level-2 decisions made, and 13 level-3 decisions made. Level 3 decisions represent 1% of all decisions made and are shown in Table 3.

Table 3 – Level 3 Decisions 2010-11

Level 3 Decision	Number
Community treatment order and renewals	3
Neurosurgery to repair hematoma	1
Electroconvulsive therapy (ECT)	9
Total	13

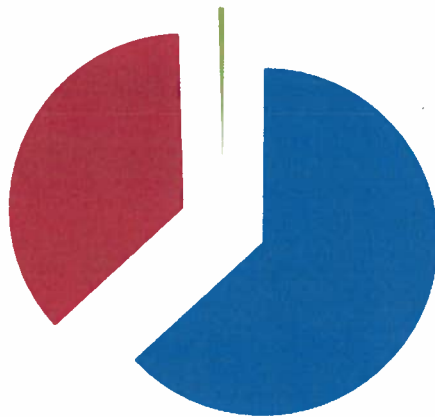
Chart 17 decisions are further broken down by specific legislation in the following charts on page 13.

PDA



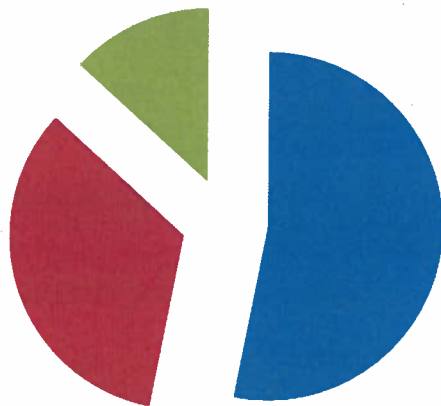
- Level 1
- Level 2
- Level 3

HA



- Level 1
- Level 2
- Level 3

IPTA



- Level 1
- Level 2
- Level 3

Top Five Decisions 2010-11

In 2011-12, there were 65 different decision types with the top five decision types making up 54.6% of all types by volume. This compares to 55% in 2010-11.

Table 4 - Top 5 decision-types by volume 2010-11

Decisions	Number
Medications	190
Blood work & routine tests	149
Individualized care or support plan	136
Immunization / Vaccination	112
Assessment by health care professional	102
Total	689

External Education

Two external education sessions about the role of the Public Trustee as substitute decision maker and the processes of the HCD Division were held to in 2011-12 for a total of 43 participants.

Program Audit by the Office of the Auditor

General Recommendations and Response

In the fall and winter of 2011-12, Health Care Decisions Division was audited by the Office of the Auditor General (OAG) with the objective to determine whether the Office of the Public Trustee's processes for making health care decisions on behalf of its clients are appropriate and in accordance with legislation and policies. The OAG found that HCD policies provide adequate guidance to staff in making health care decisions on behalf of clients. It recommended that the complaints policy be strengthened to include a definition of complaint, as well logging and tracking.

The Public Trustee accepted both recommendations and immediately implemented them, as recommended. Additionally, the OAG recommended an upgrade of the PAM system to improve management reporting and data integrity. The Public Trustee accepted this recommendation and will work with information technology (IT) of the Department of Justice to complete required PAM modifications.

QUALITY

Quality Indicators

Complaints

2011-12 target was less than 5 complaints received during the year

No complaints were received during the 2011-12 fiscal year. In response to the Office of the Auditor General's performance audit recommendation, the complaints policy was strengthened to include a definition of complaint and complaint tracking.

Response times

2011-12 target was 95% of decisions letters sent within response time standard

478 of 479 (99.8%) 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.

Client Conferences

2011-12 target was 95% attendance

HCD staff were notified and invited to attend 31 client case conferences in 2011-12. 31 (100%) were attended; 5 were attended in person and 26 by teleconference.

Policy Review

The scheduled year-end policy review was carried out and necessary revisions were made. The need for policies around palliative care, restraints, file audits, and records management was identified and draft versions were drafted. These policies will be finalized in 2012-13.

Forms Revision

The Better Forms project regarding HCD forms was piloted for a 6-month period by the province's largest long term care organization. Feedback received was incorporated in the new format. In addition to reducing the number of forms from five to three (one per applicable legislation), a Quick Reference Guide (QRG) for each was created. The QRGs use process diagrams to communicate information.

In response to feedback from acute care physicians, a form for subsequent medical treatment was created, which is essentially a shortened version of the Medical and Surgical referral form to be used for repeated requests for consent for a client during the same hospitalization.

The electronic fillable feature for referral forms has been delayed and it is expected that this will be accomplished in the 2012-13 fiscal year.

Recommendations

1. Continue the annual quality review and evaluation of divisional policies, procedures, and operational processes;
2. Continue to work with Department of Justice IT so that the PAM modifications recommended in the OAG Performance Audit are implemented;
3. Continue to work with Communications Nova Scotia to complete the HCD Better Forms project; and
4. Continue to provide external stakeholder education throughout the province regarding the Health Care Decisions division's role, policies, and processes; and
5. 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.