



**Manitoba Law
Reform Commission**

**ABANDONED ACCOUNTS AND MISSING
MONEY: ESTABLISHING A PROCESS FOR
UNCLAIMED INTANGIBLE PERSONAL
PROPERTY**

CONSULTATION REPORT

October 2019

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Personal Property**

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The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

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The Manitoba Law Reform Commission is funded through grants from:



CONSULTATION REPORT

Comments on this Consultation Report should reach the Manitoba Law Reform Commission (“the Commission”) by **December 31, 2019**.

The Commission encourages you to provide your thoughts, comments and suggestions concerning this aspect of Manitoba’s law. Please refer to the provisional recommendations identified in this report, and any other matters you think should be addressed.

Please submit your comments in writing by email, fax or regular mail to:

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ACKNOWLEDGMENTS

The Commission gratefully acknowledges the following people for their assistance on matters related to this project: Tanya Brothers, Courtney Wowryk, and Valerie Smith of Manitoba Justice, Civil Legal Services; Karen Fulham, Judicial Services; and Kevin Funk and John Fergusson, Public Guardian and Trustee of Manitoba. The Commission would also like to thank Amelia Peterson and Jarrod Sundmark student interns from the Faculty of Law, University of Manitoba, for their assistance on this project.

This consultation report was prepared by the Commission's former director and legal counsel, Elizabeth McCandless.

Please note that the information provided in this Consultation Report does not represent the views of those who have so generously assisted the Commission in this project.

CHAPTER 1: INTRODUCTION

What happens to unclaimed personal property in Manitoba? How can a person who believes they have a rightful interest try to claim it? Every year thousands of individuals are reunited with their money in provinces that have an established process for unclaimed property. In Manitoba, no such process exists. The Commission therefore is interested in studying whether this is a viable option for Manitoba.

For a variety of reasons, credit balances, insurance policies, bonds or pension plans can become abandoned or forgotten. In Manitoba there is no obligation on the part of many property holders, such as credit unions and insurance policy holders, to report unclaimed personal property to the provincial government.¹ Even where unclaimed personal property is remitted to the government the legislation provides no guidance for an individual to find out if they are the rightful owner. Other Canadian jurisdictions have enacted legislation to address unclaimed property so that money can end up in the hands of rightful owners. In light of reforms in other Canadian jurisdictions, the Commission asks the question: *Should Manitoba adopt a process for unclaimed intangible personal property? If so, what elements would the legislation need to address?*

This project involves two distinct, yet related, issues: escheats and unclaimed property. While distinct legal concepts, in both cases the property vests in the Crown by operation of law.² In Manitoba, both these situations are addressed in the same piece of legislation, *The Escheats Act*.³ The Commission has learned that the process for administering escheats and unclaimed property is cumbersome for the government and impractical for individuals seeking to claim vacant or unclaimed property. Other jurisdictions, such as British Columbia, Alberta, Quebec, and Ontario, have introduced changes to modernize and improve legislation related to property that vests in the Crown.

This Consultation Report invites readers to provide their comments on ten issues for discussion. The issues identified in this report require input from interested organizations and individuals so that the Commission can craft recommendations that will be practical and meaningful to those affected by any contemplated changes to the legislation.

Chapter 2 provides background on the legal origins of escheats and vacant property and describes the current law and procedure in Manitoba. Chapter 3 explores recent legislative reforms in other jurisdictions. Chapter 4 discusses possible areas of reform to Manitoba's legal framework for escheats and unclaimed property, touching on important considerations should the

¹ One exception is for banks, which come under federal jurisdiction. Pursuant to *The Bank Act*, SC 1991, c 46, banks are under an obligation to report unclaimed accounts to the Bank of Canada.

² There are two types of property: real and personal. Personal property can further be divided into tangible personal property (chattels and goods with a physical form) and intangible personal property (lacks a physical existence – e.g. bank accounts, bonds, insurance policies, shares, credit balances). This report mainly focuses on intangible personal property.

³ RSM 1987, c. E140.

government wish to introduce a regime for unclaimed property. Chapter 5 provides a summary of the Issues for Discussion identified throughout the Consultation Report.

CHAPTER 2: BACKGROUND

The current laws regarding escheated and vacant property in Manitoba have their origins in early feudal society and were codified in Manitoba as early as 1884. This chapter provides a summary of the origins of these legal concepts and describes how they have made their way into the current legislative framework.

A. Common Law Origins of Escheats and *Bona Vacantia*

Escheat is an ancient legal principle derived from British feudal society which holds that if a person dies intestate without any known heirs, their estate goes to the Crown. This is based on the idea that all freehold estates originally came from a feudal lord. This concept evolved in Canada as estates originating with the Crown rather than a feudal lord.⁴

The doctrine of vacant property more generally or *bona vacantia* as it is often referred, derives from the common law. Essentially, the theory is that all property must vest in someone at all times without interruption.⁵ Therefore the Crown claims property which would otherwise have no owner. The Crown's title to the property is independent from the last owner, which means that laws addressing succession or distribution of property do not apply.⁶

Several decisions in the late 1800s and early 1900s established that property vests in the Crown in right of a province as opposed to the federal government.⁷ Note however that property coming under federal jurisdiction, such as unclaimed personal property held in banks, vests in the federal Crown.⁸

Under this doctrine, an interest vests in the Crown at the occurrence of certain events:

- An individual dies intestate with no known heirs;
- A corporation dissolves with property not disposed of;⁹ or
- Personal property is obtained in the commission of a crime.

⁴ See *Re Hole* (1948), [1948] 2 WWR 754 (Man KB).

⁵ *Ibid.*

⁶ *Ibid.* See also *Re Miller Estate* (1957), 22 WWR 571 (Man QB).

⁷ See *R v British Columbia (Attorney General)*(1923), [1923] 3 WWR 1252 (Canada PC); *Ontario (Attorney General) v Mercer* (1883), (1882-83) LR 8 App Cas 767 (Ontario PC); *Alberta (Attorney General) v Canada (Attorney General)* (1928), [1928] 3 WWR 97 (Canada PC). More recently in *Public Trustee v Her Majesty the Queen in the Right of the Province of New Brunswick*, 2018 NBQB 52(CanLII) at para 30, the Nova Scotia Queen's Bench confirmed that "by virtue of the *Constitution Act* of 1867 and in particular section 109, when personal property or "ownerless goods" are identified within a province, subject to certain requirements, the goods become the property of the Province by virtue of *bona vacantia*. Despite its rather archaic connotation, the common law principle remains in place."

⁸ See the *Bank Act*, SC 1991, c 46.

⁹ Corporations are only subject to escheat to the extent that their authorizing statute deals with the concept.

While the provinces have the right to vacant property in accordance with the common law, this legal doctrine has been codified in all Canadian jurisdictions.¹⁰

B. Manitoba's *Escheats Act* and *Vacant Property Act*

In Manitoba, vacant property is dealt with in *The Escheats Act*.¹¹ Escheats legislation was first enacted in Manitoba in 1884, and it remains largely unchanged since its enactment.¹² It applies to all vacant and escheated property for any cause except crime.¹³ *The Escheats Act* is a concise statute comprised of only seven sections. It appears to be modelled after Ontario's old *Escheats Act*¹⁴ (repealed in 2016). The statute provides direction on what the Crown can do when there is property held in the province (both real and personal) that, as a result of intestacy or forfeiture, may vest in the Crown.

The main thrust of Manitoba's *Escheats Act* is set out in section 1:

Minister of Justice may take possession of forfeited property

1 Where any lands, tenements, or hereditaments, have escheated to the Crown by reason of the person last seized thereof, or entitled thereto, having died intestate and without lawful heirs, or by reason of the failure of heirs, or a failure in the devises or bequests in any will, or when property of any kind has become forfeited for any cause to the Crown, the Minister of Justice may cause possession thereof to be taken in the name of the Crown; and, if possession is withheld, he may cause an action to be brought for the recovery thereof without an inquisition being first made.¹⁵

As this section suggests, the legislation captures all situations where property of any kind has become forfeited "for any cause." The Lieutenant Governor in Council (i.e. Cabinet) is responsible for administering the Act.¹⁶ In other words, Cabinet is charged with making any grants of property that have been escheated or forfeited to any person who has a legal or moral claim to the property. The bulk of the Act sets out the authority of the Lieutenant Governor in Council with respect to making grants, vesting property in others who may be entitled, and

¹⁰ *Escheats Act*, RSC 1985, c E-13; *Escheats Act, 2015*, SO 2015, c 38, Sch 4; *Forfeited Corporate Property Act, 2015*, SO 2015, c 38, Sch 7; *Escheat Act*, RSBC 1996, c 120; *The Escheats Act*, RSS 1978, c E-11; *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5; *The Escheats Act*, supra note 3; *Escheats Act*, RSNS 1989, c 151; *Escheats and Forfeitures Act*, RSNB 2014, c 107; *Escheats Act*, RSPEI 1988, c E-10.

¹¹ *The Escheats Act*, supra note 3. *The Vacant Property Act*, RSM 1987, c V10 affirms that vacant property is subject to the application of *The Escheats Act*.

¹² SM 1884, c 26.

¹³ *Ibid*, s 1. *The Criminal Property Forfeiture Act*, SM 2004, c 1 deals with property obtained in the commission of a crime. Section 22.1 of that Act specifically provides that *The Escheats Act* does not apply to property forfeited under the Act.

¹⁴ RSO 1990, c E 20.

¹⁵ *The Escheats Act*, supra note 3, s 3.

¹⁶ *Ibid*, ss 3-6.

assigning personal property.¹⁷ The authority of the LGC in administering *The Escheats Act* dates back to the first enactment of the statute in 1884.¹⁸ *The Escheats Act* can be found at Appendix A.

In Manitoba, unclaimed property is dealt with in the same way as escheated property. Unclaimed property in this context is largely intangible personal property, such as credit balances, safety deposit boxes, bonds, annuities, insurance policies or shares. In Manitoba, since there is no unclaimed property legislation, there is no legal requirement to report or remit most categories of unclaimed property. The only two exceptions are for the proceeds of a succession,¹⁹ as described above, or for property of a corporation that dissolves before its assets are disposed of.²⁰

For property to be considered unclaimed, it must be unclaimed for more than a statutory dormancy period, which varies by property type and jurisdiction. In Manitoba, *The Vacant Property Act* provides that unclaimed personal property which remains unclaimed for twelve years vests in the Crown and is administered in the same way as escheats and vacant property as described above:

Personal property deposited or held in trust

1 All personal property, including money or securities for money, deposited with or held in trust by any person in the province, which remains unclaimed by the person entitled thereto for 12 years from the time when that property, money or securities were first payable, notwithstanding that the deposit or trustee has delivered or paid or transferred that personal property, money, or securities to any other person or official within or without the province as deposit or trustee, vests in, and is payable to, Her Majesty in right of the Province of Manitoba subject only to Her Majesty's pleasure with respect to any claim thereafter made by any person claiming to be entitled to that property, money or securities.

Escheats Act to apply

2 The property set out in section 1 is subject to the application of The Escheats Act.²¹

Both *The Escheats Act* and *The Vacant Property Act* are quite sparse in terms of providing guidance on process for dealing with vested and unclaimed property. It appears that most practices have been dealt with through procedures established by the provincial government; however, the applicable legislation provides little guidance.

¹⁷ *Ibid.*

¹⁸ *The Escheats Act*, SM 1884, c 26, *supra* note 12, ss 3-9.

¹⁹ *The Intestate Succession Act*, SM 1989-90, c 43, s 7.

²⁰ *The Corporations Act*, RSM 1987, c C225, s 221. As will be discussed below, certain other types of property, such as balances in credit union accounts and unclaimed funds paid into court, are dealt with to a certain extent under other pieces of legislation; however, *The Vacant Property Act* is the overarching statute to which all types of unclaimed applies.

²¹ *The Vacant Property Act*, *supra* note 11.

C. Administration of Unclaimed Property in Manitoba

This section will describe the administration of unclaimed property in Manitoba. Unclaimed and vacant property arises in a number of contexts, and each situation is dealt with in a different way.

1. Succession Escheats

The Escheats Act provides that the Minister of Justice may administer the estate of any deceased person whose property (both real and personal) has escheated or been forfeited to the Crown.²² *The Public Guardian and Trustee Act* further provides that when a person dies without a will, the court may appoint the Public Guardian and Trustee as administrator of the estate.²³ This situation will sometimes arise when the Public Guardian and Trustee is acting as committee, attorney under a power of attorney or trustee to a person. In any case where the Public Guardian and Trustee is appointed as administrator to deal with an estate where the person died intestate, the Public Guardian and Trustee will try to identify any heirs who might be entitled to the property following the rules set out in *The Intestate Succession Act*.²⁴

While not prescribed by statute, the Public Guardian and Trustee's office will make all attempts to locate possible heirs to the property. It will typically publish notices and contact anyone who might know of existing heirs. In situations where the Public Guardian and Trustee acted as committee, attorney or trustee to the deceased person during their life, the office is well suited to investigate possible heirs. If all avenues have been exhausted and no heirs have been located, the property will be remitted to the Crown. The Department of Justice, acting for the Crown, will not destroy escheats files, just in case anyone with a claim to the estate comes forward. If a person makes a claim to the escheated property once it has been transferred to the Consolidated Fund, the claimant must bring forward sufficient evidence to the Department of Justice to show they are the rightful heir to the property.²⁵ In cases where funds have been moved into the Consolidated Fund, Cabinet approval and hence an Order in Council is required to release the funds.

2. Corporate Dissolution

Ordinarily, when a corporation dissolves, all assets of the corporation are dispersed.²⁶ However, this doesn't always happen in practice. The assets of the corporation may not be dispersed, for example, if, pursuant to s. 205(1) of *The Corporations Act*, the director dissolves the corporation for failing to submit any notice or document for two years, as required by the legislation.²⁷ If the

²² *The Escheats Act*, *supra* note 3 at s 7.

²³ *The Public Guardian and Trustee Act*, CCSM c P205, s 7(1).

²⁴ SM 1989-90, c 43.

²⁵ Based on conversations with Crown counsel on 29 April 2019.

²⁶ *Supra* note 20, s 203.

²⁷ *Ibid*, s 205(1).

corporation's property is not disposed of at the date of dissolution, the property (both real and personal) vests in the Crown pursuant to s. 221(1):

Vesting in Crown

221(1) Subject to subsection 219(2) and section 220, property of a corporation that has not been disposed of at the date of its dissolution vests in Her Majesty in right of the Province.

In such cases, the Crown will attempt to locate rightful owners of the property. If owners are not located, the property goes to the Crown's Consolidated Fund. This means that Cabinet approval is required to retrieve the property should an apparent owner come forward. There is no statutory dormancy period where property is held for a certain number of years before it is vested in the Crown, which means that Cabinet approval is required even if a corporation is revived a couple years after dissolving.

Subject to ss. 200 and 201 of *The Corporations Act*, a dissolved corporation can be revived. Upon revival, any property vested in the Crown and not disposed of is returned to the corporation:

Return of property on revival

221(2) If a corporation is revived under section 202, any property other than money that vested in Her Majesty pursuant to subsection (1) and that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Consolidated Fund

- (a) an amount equal to any money received by Her Majesty pursuant to subsection (1); and
- (b) where property other than money vested in Her Majesty pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of
 - (i) the value of the property at the date it vested in Her Majesty, and
 - (ii) the amount realized by Her Majesty from the disposition of the property.²⁸

There is no fee associated with the return of property on revival despite the cost to government to perform the administrative work to return the property to the revived corporation.

²⁸ *Ibid*, s 221(2).

3. Unclaimed Funds Paid Into Court

The procedure for payments into and out of court are set out in Queen's Bench Rule 73.²⁹ Payments are made payable to the Minister of Finance.³⁰ Pursuant to *The Suitors' Money Act*,³¹ money paid into court (not including interim custody deposits, fines or penalties³²) form part of the Consolidated Fund and are held in trust for the credit of the persons entitled to it.³³ Where money paid into court has not been paid out within five years, a notice is published in *The Manitoba Gazette*.³⁴ After six years have passed without an application for payment, the money (plus accumulated interest) becomes part of general revenue.³⁵ If a person comes forward and establishes that they have a legal claim to the money, the Minister will pay the person out of the Consolidated Fund.³⁶

4. Credit Unions

Credit unions are not under an obligation to remit unclaimed accounts to the Crown. Pursuant to *The Credit Union and Caisses Populaires Act*³⁷ and regulations, credit unions are able to transfer dormant or abandoned accounts into a special trust fund under certain circumstances:

s. 6(1) Where a member has a balance of \$1,000 or less in deposits with a credit union and has not transacted any business with the credit union for a period of two years or more, the directors, after giving notice to the member by mail sent to the last known address of the member, may, if the notice is not acknowledged, transfer the balance to a special trust fund established for the purpose of retaining unclaimed monies in the records of the credit union.³⁸

The legislation does not speak to situations where account balances are valued at more than \$1,000. It appears that at least some credit unions voluntarily report or remit unclaimed accounts to the government.

5. Other Types of Unclaimed Personal Property

Most other types of unclaimed property are not remitted to the government. Without a mandatory remitting scheme, many property holders are not under an obligation to remit unclaimed property to the government. They may have their own policies and procedures for tracking down apparent

²⁹ Man Reg 553/88, Rule 73.

³⁰ *Ibid*, Rule 73.02(2).

³¹ RSM 1987, c. S220.

³² *Ibid*, s 2.

³³ *Ibid*, s 3(3).

³⁴ *Ibid*, s 8(1).

³⁵ *Ibid*, s 8(2).

³⁶ *Ibid*, s 8(3).

³⁷ CCSM, c C301, s 39.

³⁸ Man Reg 361/87.

owners, but there is no legislated process for most other types of unclaimed property, nor is there a centralized database for tracking down unclaimed property.

Several Canadian jurisdictions have moved away from unclaimed property as being Cabinet's responsibility, and treat it more as a consumer protection matter. The following chapter will explore these legislative reforms.

CHAPTER 3: REFORM IN OTHER JURISDICTIONS

This section describes recent legislative reform in other jurisdictions regarding vacant and unclaimed property.

A. Uniform Law Conference of Canada's *Uniform Unclaimed Intangible Property Act*

In 2003, The Uniform Law Conference of Canada (“ULCC”)³⁹ drafted legislation designed to create a harmonized scheme for provinces and territories that want to enact unclaimed property legislation. The *Uniform Unclaimed Intangible Property Act* (“ULCC Act”)⁴⁰ creates an administrative scheme for governments to administer property until such time as it may be reclaimed, and for individuals to be reunited with their unclaimed or abandoned property. According to the ULCC, the purpose of the ULCC Act is “to provide a harmonized legislative scheme for the consideration of those provinces and territories which may wish to enact unclaimed intangible property legislation; and in particular, to offer a common means of addressing the interjurisdictional aspects which arise in unclaimed intangible property legislation.”⁴¹ The ULCC Act’s drafting was informed by the U.S. *Uniform Unclaimed Property Act of 1995*,⁴² and contains many parallel provisions.

The ULCC Act can be found at Appendix B. Specific sections of the ULCC Act will be discussed in the next chapter as they relate to particular areas of reform.

Those provinces that have adopted unclaimed property legislation no longer deal with unclaimed property through escheats legislation, instead opting to create a separate scheme to administer property that is presumed to be abandoned. Three Canadian provinces (British Columbia, Alberta and Quebec) have adopted the ULCC Act, with variations.⁴³

³⁹ The Uniform Law Conference of Canada’s [ULCC] objective is to promote uniformity of legislation among Canada’s provinces and territories on subjects where uniformity is possible and beneficial. See ULCC, *History of the Conference* at para 13, online: <<https://www.ulcc.ca/en/about-us-en-gb-1/history-of-the-conference>>.

⁴⁰ ULCC, *Uniform Unclaimed Intangible Property Act* [ULCC Act], online: <https://www.ulcc.ca/en/uniform-acts-en-gb-1/545-unclaimed-intangible-property-act/1114-unclaimed-intangible-property-act>. The ULCC Act can be found at Appendix B.

⁴¹ *Ibid.*

⁴² Uniform Law Commission, *Uniform Unclaimed Property Act of 1995*, available online: <<https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>>.

⁴³ Note that in 1994, Prince Edward Island enacted unclaimed property legislation, which was incorporated into its *Public Trustee Act*, c P-32.2, ss 4 & 5. Those provisions were later repealed by 2013, c 47, s 2. Section 4 provided that the “Public Guardian and Trustee is the administrator of unclaimed intangible property under this Act.”

B. OTHER CANADIAN JURISDICTIONS

1. British Columbia

The *Unclaimed Property Act*⁴⁴ was enacted in 1999 and replaced B.C.'s *Unclaimed Money Act*.⁴⁵ The legislation sets out, among other things, the type of property to which the statute applies, which entities are obligated to report and remit unclaimed property, procedures for reviewing and processing claims to the property, timelines, and an appeal process for denied claims.

The BC Unclaimed Property Society ("BCUPS"), a not-for-profit society, administers the unclaimed property program. The BCUPS is controlled by the Vancouver Foundation, and a portion of the unclaimed property funds is donated to the Vancouver Foundation every year. According to its 2018 Annual Report, BCUPS received over \$6 million from holders of unclaimed property in 2018 and returned over \$1.7 million of unclaimed funds to rightful owners, representing more than 1,200 individual accounts.⁴⁶ The largest proportion of unclaimed property funds comes from the courts (\$2.9 million), followed by the Public Guardian and Trustee (\$1.2 million), and financial institutions (\$1.2 million).⁴⁷ Funds held by BCUPS that are not distributed form part of the society's investment account. The income earned from investments pays for the operating expenses.⁴⁸

2. Alberta

The *Unclaimed Personal Property and Vested Property Act*⁴⁹ was enacted in 2007. Unlike the ULCC Act, Alberta's legislation combines both unclaimed personal property and other types of vested property (both real and personal), including intestate successions.

Similar to BC's statute, Alberta's legislation, among other things, establishes a central registry for owners to search for unclaimed property, facilitates the processing of claims to reunite owners with their property, and establishes procedures for administering property that vests in the Crown. Alberta's unclaimed property registry is maintained by the Alberta government's Tax and Revenue Administration ("TRA"). Unclaimed property is remitted to the TRA and held in trust until the end of the dormancy period.⁵⁰ According to the website, as of March 31, 2018,

⁴⁴ SBC 1999, c 48.

⁴⁵ RSBC 1996, c 467, repealed April 1, 2000.

⁴⁶ British Columbia Unclaimed Property Society, Annual Report 2018, "2018 Snapshot", online: <<https://unclaimedpropertybc.ca/wp-content/uploads/2014/01/Annual-Report-2018.pdf>>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ SA 2007, c U-1.5.

⁵⁰ *Ibid.*, s 36.

there were approximately 225,000 unclaimed items in the Alberta property registry, with an estimated value of \$82 million.⁵¹

3. Quebec

Quebec's *Unclaimed Property Act*⁵² was enacted in 1999. As part of 2011 amendments, Revenue Quebec maintains an inventory of unclaimed property. The object of the legislation is to “facilitate the recovery of unclaimed property by rights-holders and to ensure that property without an owner or property in respect of which the rights-holders remain unknown or untraceable is delivered to the State.”⁵³ Quebec's legislation captures a wide range of unclaimed property, including credit union accounts, securities, life insurance products, pension plans, safety deposit boxes, unclaimed successions, property of dissolved corporations, and even property recovered on deceased individuals.⁵⁴

4. Ontario

Rather than adopt unclaimed property legislation, Ontario's reforms focus on forfeited corporate property. Ontario recently amended its escheats legislation to essentially divide responsibility to different bodies for different types of unclaimed or vacant property.

In 2016, Ontario repealed its previous *Escheats Act*⁵⁵ and replaced it with the *Escheats Act, 2015*⁵⁶ and the *Forfeited Corporate Property Act, 2015*.⁵⁷ This means that the property of an intestate individual or property with no known owner is still dealt with via the *Escheats Act, 2015*, while forfeited corporate property from the dissolution of a corporation is addressed in the *Forfeited Corporate Property Act, 2015*. One important distinction in separating the two matters into different statutes is that different government bodies are responsible for administering the schemes: under the *Escheats Act, 2015*, the Public Guardian and Trustee is responsible for dealing with escheated property;⁵⁸ while under the *Forfeited Corporate Property Act, 2015*, the Minister of Economic Development, Employment and Infrastructure is responsible for administering the statute.⁵⁹

Prior to the introduction of the *Escheats Act, 2015* and the *Forfeited Corporate Property Act, 2015*, the Ontario government passed unclaimed property legislation. However, the *Unclaimed*

⁵¹ Alberta's Unclaimed Property website, online: <<https://www.alberta.ca/unclaimed-property.aspx>>.

⁵² CQLR c B-5.1.

⁵³ *Ibid*, s 1.

⁵⁴ *Ibid*.

⁵⁵ RSO 1990, c E 20.

⁵⁶ SO 2015, c 38, Sch 4.

⁵⁷ SO 2015, c 38, Sch 7.

⁵⁸ *Escheats Act, 2015*, *supra* note 10, ss 9-10.

⁵⁹ *Forfeited Corporate Property Act, 2015*, *supra* note 10, ss 3-4.

*Intangible Property Act*⁶⁰ was never proclaimed. If it had been proclaimed into force, the Public Guardian and Trustee would have been authorized to administer the legislative scheme.⁶¹ The purpose of the legislation was to “safeguard the rights of owners of intangible property by providing a method for them to recover, in perpetuity, their intangible property that has been held by others”⁶² and that “[t]his Act also allows unclaimed intangible property to be used for the benefit of the people of Ontario until the property is claimed by its owner.”⁶³ It appears that the Ontario government chose to abandon unclaimed property legislation, instead opting to focus on changes to forfeited corporate property.

5. Federal Government

Since banks come under federal jurisdiction, any unclaimed funds from banks are not subject to provincial unclaimed property legislation. Pursuant to the *Bank Act*⁶⁴, the Bank of Canada is considered the custodian of unclaimed balances held by a federally regulated bank or trust company. If there has been no activity on an account for ten years and the owner cannot be located (after repeated attempts to locate the account holder), the balance is remitted to the Bank of Canada along with any interest that may have accrued, and any information about the account holder’s identity.⁶⁵ The Bank of Canada will not attempt to locate account holders, although it has a searchable registry and a process to submit claim requests.⁶⁶

If the account holder is not located after the prescribed custody period (30 years for balances under \$1,000; 100 years for balances of \$1,000 or more), the Bank of Canada will transfer the funds to the Receiver General for Canada.⁶⁷ In 2018, the Bank of Canada held approximately two million unclaimed balances, valued at \$816 million and paid out \$11 million to balance holders.⁶⁸

In 2018, the federal government began a review of its unclaimed balances regime, which includes a proposal for an unclaimed pension balances framework.⁶⁹ To date, the federal government has not introduced any changes to the legislation.

⁶⁰ RSO, c U.1.

⁶¹ *Ibid*, ss 6-12.

⁶² *Ibid*, s 2(1).

⁶³ *Ibid*, s 2(2).

⁶⁴ SC 1991, c 46.

⁶⁵ *Ibid*, s 438.

⁶⁶ Bank of Canada, “Unclaimed Balances”, online: <<https://www.bankofcanada.ca/unclaimed-balances/>>.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

⁶⁹ Department of Finance, “Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework” (June 2018), online: <https://www.fin.gc.ca/activty/consult/mupr-mrsnr-eng.asp#_ftnref1>.

C. United States

All U.S. states have adopted some form of unclaimed property legislation, the majority of which is based on the U.S. 1995 draft *Uniform Unclaimed Property Act*.⁷⁰ States maintain registries of unclaimed property in their jurisdiction. As mentioned above, the ULCC Act is based on the U.S. *Uniform Unclaimed Property Act*.

⁷⁰ U.S. National Conference of Commissioners on Uniform State Laws, *Uniform Unclaimed Property Act* (1995), available online: <http://www.uniformlaws.org/shared/docs/unclaimed%20property/uupa95.pdf>. Note that the Act was amended in 2006 to update rules related to unclaimed gift cards, life insurance benefits, securities, dormancy periods and contract auditors. See 2006 update, online: <<https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>>.

CHAPTER 4: POTENTIAL REFORM IN MANITOBA

This chapter will discuss potential reform in Manitoba and consider the question: *should Manitoba enact unclaimed property legislation? If so, what elements should the legislation contain?* Rather than make recommendations, the Commission seeks input into the Issues for Discussion posed in this chapter.

A. Guiding Principles

In considering whether Manitoba should enact unclaimed intangible personal property legislation, the Commission is guided by certain principles:

- Unclaimed intangible personal property should not rest indefinitely with holders, who are not the rightful owners of the property.
- The legislative scheme should be harmonized with other jurisdictions that have enacted unclaimed property legislation.
- The process for maintaining and claiming unclaimed property should be efficient to administer and accessible for apparent owners.

Based on the current landscape on unclaimed property legislation in Canada and guided by the principles above, the Commission believes there are advantages to adopting unclaimed personal property legislation in Manitoba. In reaching this conclusion, the Commission emphasizes that an unclaimed personal property scheme is appropriate only for uncontested types of property. In other words, the intention is to allocate funds where there is no dispute as to the rightful owner and the apparent owner is able to establish a legal claim. The purpose of the scheme therefore is to facilitate the process so that owners are reunited with their property in a way that is efficient for the government to administer and accessible for apparent owners to use.

ISSUE FOR DISCUSSION 1: Do you think that an unclaimed personal property regime should be established in Manitoba?

B. Establishing an Unclaimed Property Regime

The key elements of unclaimed property legislation are:

- The type of property that comes within the scope of the legislation;
- The time period in order for property to be considered abandoned (dormancy period);
- The entities (holders) that are required or permitted to remit unclaimed property;
- The holder's responsibilities under the legislation;
- The administrator of unclaimed property's responsibilities under the legislation; and
- The process for an apparent owner to claim the property.

This section will consider the elements that make up unclaimed property legislation by canvassing other Canadian jurisdictions and noting the similarities and differences amongst the jurisdictions and the ULCC Act.

1. Property Type

One of the most important issues in establishing unclaimed property legislation is determining what types of property fit within the scope of the regime. This section will describe the relevant provisions in the ULCC Act and the enacting jurisdictions in Canada, followed by a discussion of how this might apply in Manitoba.

1.1 ULCC Act

The definition of property in the ULCC Act includes only intangible property:

“property” means an interest in intangible property that is held, issued or owed by a business organization, or by a government or governmental organization, including all income or increments from it, and includes, without limitation, property that is referred to as or is evidenced by

- (a) money or a cheque, money order, traveller’s cheque, draft, deposit, interest or dividend,
- (b) a credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage or salary, unused ticket or unidentified remittance,
- (c) a share or other evidence of ownership of an interest in a business organization,
- (d) a bond, debenture, note or other evidence of indebtedness,
- (e) money deposited to redeem shares, bonds, coupons or other securities or to make distributions,
- (f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance or health and disability insurance, and
- (g) an amount distributable from a trust or custodial fund established under a plan to provide education, health, welfare, pension, vacation, severance, retirement, death, share purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits, but does not include any thing or class of thing excluded by the regulations;⁷¹

The ULCC Act further provides that the definition of property is inclusive and the definition is not limiting. However, certain types of property may be excluded by regulation in the governing

⁷¹ ULCC Act, *supra* note 41, s 1(1).

jurisdiction.⁷² For instance, individual jurisdictions “may wish to exclude from the Act certain kinds of arrangements respecting types of unclaimed property for which there exists another well established process.”⁷³

The ULCC Act also addresses the question of jurisdiction:

Section 1(2) and (3) define the connections which a holder must have with the enacting jurisdiction in order for a holder to be subject to this Act in the enacting jurisdiction. Unlike the situation in the United States where legal obligations on holders arise from the United States Supreme Court decision in *Texas v New Jersey*, in Canada jurisdiction over holders must be found on legislative enactments in a given province or territory. Both the definitions in subsections (2) and (3) parallel similar definitions in the *Uniform Court Jurisdiction and Proceedings Transfer Act*.

Section 1(4) provides that the Lieutenant Governor in Council of one jurisdiction may prescribe that another jurisdiction is a reciprocating jurisdiction if satisfied that the other jurisdiction has legislation substantially similar in form and content. Reciprocity of legislation between jurisdictions is fundamental to addressing interjurisdictional elements. Reciprocal jurisdictions are expressly referred to in section 6 of the Act, which provides the basis upon which the enacting jurisdiction may properly claim and receive unclaimed property.⁷⁴

This comment speaks to the underlying purpose of ULCC legislation, which is to create uniformity and certainty across jurisdictions.

1.2 Alberta

Alberta’s *Unclaimed Personal Property and Vested Property Act* defines “intangible personal property” as “an interest that is held, issued or owing by a business organization or by a government or governmental organization” and includes, without limitation, such property as money orders; traveller’s cheques; deposits; dividends; unpaid wages; interest in a business organization; securities; bonds; debentures; amounts due under the terms of an insurance policy; and amounts distributable from a trust or custodial fund.⁷⁵

Alberta’s legislation applies not only to unclaimed intangible personal property, but extends as well to tangible personal property and vested property, whether real or personal.⁷⁶ It specifically provides that the legislation applies to the property of an individual, a dissolved corporation, a dissolved society and a dissolved cooperative.⁷⁷

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*, at comments below s 1.

⁷⁵ *Unclaimed Personal and Vested Property Act*, *supra* note 50, s 1.

⁷⁶ *Ibid.*, s 3(1).

⁷⁷ *Ibid.*

Property is excluded from the legislation if the value is less than \$250 for intangible personal property and less than \$1,000 for tangible personal property.⁷⁸ The Act also excludes funds held or benefits payable under other enactments, as set out in s. 4(c), such as the *Legal Profession Act* (presumably funds held in lawyer’s trust accounts) and the pension plan legislation of certain professions.⁷⁹ The regulations exclude loyalty programs, gift certificates, and retail business credit from the definition of tangible or intangible property, and exclude abandoned vehicles from the definition of tangible personal property.⁸⁰

1.3 British Columbia

Under BC’s *Unclaimed Property Act*, “property” includes such things as money received as a deposit; securities; an amount due under the terms of an insurance policy; an amount distributable from a trust or custodial fund (e.g. health plan, severance, share purchase, etc.); and any other personal property that is not a chattel or a mortgage.⁸¹ BC’s legislation specifically excludes money held by government or property held in a lawyer’s trust account.⁸² Unclaimed court funds come under the purview of the *Unclaimed Property Act* if they have been paid into court in a proceeding and have remained in court for at least 5 years, if a judicial officer for that court so determines.⁸³ Judicial interim release funds are excluded from the legislation.⁸⁴

1.4 Quebec

Quebec’s unclaimed property legislation applies to a broad range of unclaimed and vacant property, including property of an absentee (unless an administrator has been appointed by the court);⁸⁵ property found on the body of an unknown person or on an unclaimed body;⁸⁶ property of dissolved legal person;⁸⁷ property of a succession when a person dies with unknown heirs;⁸⁸ as well as the kinds of intangible personal property found in the ULCC Act (credit union accounts, securities, life insurance products, pension plans, safety deposit boxes, etc.).⁸⁹

⁷⁸ *Ibid*, s 4(b).

⁷⁹ *Ibid*, s 4(c).

⁸⁰ Alta Reg 104/2008, s 2(1).

⁸¹ *Unclaimed Property Act*, *supra* note 45, s 1.

⁸² *Ibid*.

⁸³ BC Reg 37/2005, s 2.

⁸⁴ *Ibid*.

⁸⁵ *Unclaimed Property Act*, *supra* note 53, s 2(1).

⁸⁶ *Ibid*, s 2(2).

⁸⁷ *Ibid*, s 2(3).

⁸⁸ *Ibid*, s 2(4).

⁸⁹ *Ibid*, s 3.

1.5 Summary

The ULCC Act and BC’s legislation only include intangible personal property in the scope of the legislation. In other words, their legislation does not deal with real property or chattels (i.e. goods.) However, Alberta incorporates its escheats regime and its unclaimed personal property regime into one statute, which includes tangible personal property and real property.

The following table provides a summary of most types of property encompassed in the enacting jurisdictions:

Table 1 – Types of Property Encompassed in Unclaimed Property Legislation in Canada

Type of Property	ULCC Act	BC ⁹⁰	Alberta ⁹¹	Quebec
Unclaimed court fees	Yes	Yes	Yes	No
Corporate property not dispersed before dissolution	Yes	Yes	Yes	Yes
Credit unions	Yes (presumably)	Yes	No	Yes
Securities (bonds, dividends, etc.)	Yes	Yes	Yes	Yes
Insurance products	Yes	Yes	Yes	Yes
Trust or custodial funds (health, pension, etc.)	Yes	Yes	Yes	Yes
Money received as a deposit	Yes	Yes	Yes	Yes
Safety deposit boxes	Yes	Yes	Yes	Yes
Unclaimed successions	Yes	Yes	Yes	Yes
Property recovered on deceased persons	Silent	Silent	Silent	Yes
Unpaid wages	Yes	Yes	Yes	No
Money orders	Yes	Yes	Yes	Yes

Given that there is already an established process in place for succession estates through the Public Guardian and Trustee’s office, there may be sound policy reasons to keep intestate succession out of any contemplated unclaimed property regime.

In order to promote interjurisdictional harmony, the Commission concludes that unclaimed property in Manitoba should only depart from the ULCC Act where there are policy reasons to do so, in consultation with the relevant organizations and industries, or where there is already a process in place. An example would be unclaimed funds in lawyers’ trust accounts, as there is already an established process under *The Legal Profession Act*.⁹² In order to avoid overburdening

⁹⁰ As per the discussion above, BC’s legislation distinguishes between mandatory and voluntary holders.

⁹¹ Alberta’s legislation applies to intangible and tangible personal property, and vested property (whether real or personal.) Property is excluded if the value is less than \$250 for intangible personal property and less than \$1,000 for tangible personal property.

⁹² SM 2002, c 44; CCSM, c L107.

the administrative system with a great deal of claims of low value, the Commission believes that property should be excluded from the legislation if the value is less than a prescribed amount.

ISSUE FOR DISCUSSION 2: What types of property should be included or excluded in an unclaimed property regime in Manitoba?

ISSUE FOR DISCUSSION 3: Are there any types of intangible personal property that pose unique challenges in terms of adapting to an unclaimed property regime?

2. Dormancy Periods

The dormancy period refers to the period of time that must lapse for property to be presumed abandoned.

2.1 ULCC Act

Property is presumed to be abandoned if it is unclaimed by the apparent owner within a prescribed time period under the ULCC Act. The applicable time period for each type of property depends on the nature of the property. Section 2 of the ULCC Act sets out dormancy periods for various types of property to be presumed abandoned. According to the ULCC, the dormancy periods are based on commercial experience respecting appropriate periods of time. For example:

- For a money order, 7 years after issuance;⁹³
- For property distributable by a business organization in the course of a dissolution, one year after the property becomes distributable;⁹⁴
- For property received by a court as proceeds of a class action, and not distributed under the judgment, one year after the distribution date;⁹⁵ and
- For money in a registered retirement savings plan, pension plan or education plan, 5 years after the registration of the plan is revoked or the plan is deregistered.⁹⁶

Property not expressly provided in the ULCC Act is subject to a 5 year dormancy period, which starts to run on the date on which the apparent owner's right to demand the property arises or the date on which the obligation to pay or distribute the property arises, whichever comes first.⁹⁷

“Apparent owner” is defined as the person whose name appears on the records of a holder as the person entitled to the property held, issued or owing by the owner.⁹⁸ For the purposes of the

⁹³ ULCC Act, *supra* note 41, s 2(1)(b).

⁹⁴ *Ibid*, s 2(1)(i).

⁹⁵ *Ibid*, s 2(1)(j).

⁹⁶ *Ibid*, s 2(1)(l).

⁹⁷ *Ibid*, s 2(1)(p).

⁹⁸ *Ibid*, s 1(1).

ULCC Act, property is unclaimed if the apparent owner has not communicated with the holder concerning the property or the account within the applicable time period.⁹⁹

2.2 Alberta

The *Unclaimed Personal and Vested Property Act* provides that personal property is presumed to be abandoned if it is unclaimed by the apparent owner within the applicable periods prescribed in the regulations.¹⁰⁰ Like the ULCC Act, Alberta's legislation indicates that personal property is unclaimed if, within the applicable time period, the apparent owner has not communicated with the holder.¹⁰¹

The dormancy periods closely parallel the ULCC Act. For all personal property not explicitly provided for in the regulations, the dormancy period is 5 years after the earlier of: (i) the date on which the apparent owner's right to demand the personal property arises; and (ii) the date on which the obligation to pay or distribute the personal property arises.¹⁰²

2.3 British Columbia

Under BC's legislation, the circumstances in which property becomes unclaimed depend on whether the government or a non-governmental entity holds the property.

When property is held by government, all money that is held by the government on behalf of an owner becomes an unclaimed money deposit if the owner does not claim the money within the applicable time period.¹⁰³ Pursuant to the regulations, the applicable time period is 5 years:

When money held by government becomes an unclaimed money deposit

2 For the purposes of section 2(1) of the Act, the prescribed period is 5 years after whichever of the following dates is applicable:

- (a) in the case of money received in connection with a court file, the date on which the court file was declared inactive;
- (b) in any other case, the date on which the money was deposited to the government.

In the case of non-government holders, a detailed table in the regulations sets out the circumstances under which property becomes unclaimed depending on things like the type of property, relevant dates, and dollar amount.¹⁰⁴

⁹⁹ *Ibid*, s 2(3).

¹⁰⁰ *Unclaimed Personal and Vested Property Act*, *supra* note 50, s 4(1); Alta Reg 104/2008.

¹⁰¹ *Ibid*, s 4(3).

¹⁰² *Ibid*, s 6(1)(q).

¹⁰³ *Unclaimed Property Act*, *supra* note 45, s 2(1).

¹⁰⁴ BC Reg 463/99, s 8.

2.4 Quebec

Under Quebec’s unclaimed property legislation, in most cases, property is considered abandoned three years after the property became due or payable and the right-holder has not given any instruction or made any claim in relation to it.¹⁰⁵

2.5 Summary

The Commission recognizes that the question of dormancy period is more of a policy choice, based on commercial experience in different industries. Therefore, the Commission simply notes that any decisions regarding dormancy period should be made in consultation with the relevant institutions and entities, keeping mind the guiding principles of efficiency, simplicity, and interjurisdictional harmonization.

3. Definition of Property Holders

An enacting jurisdiction must consider who is required or permitted to remit unclaimed property under the legislation. In most instances, the term “holder” refers to the individual or entity that holds the unclaimed property and is either under an obligation to remit the property, or has the discretion to remit the property, as the case may be.

3.1 ULCC Act

The ULCC Act defines a holder as follows:

“holder” means, in relation to property that is subject to this Act, the entity, including a business organization and a governmental organization, that is or becomes obligated to hold the property for the account of, or to deliver, pay or transfer the property to, the apparent owner;¹⁰⁶

According to the ULCC Act, all holders are treated the same. In other words, there is no distinction between mandatory remitting and voluntary remitting (as is the case in B.C., noted below.)

The ULCC Act does not apply to individuals who are holders by virtue of any loan or extension of credit that is primarily for that individual’s personal, family or household purposes.¹⁰⁷

3.2 Alberta

Alberta’s unclaimed property legislation defines a holder as follows:

¹⁰⁵ *Unclaimed Property Act*, *supra* note 53, ss 3(1)-(12).

¹⁰⁶ ULCC Act, *supra* note 41, s 1.

¹⁰⁷ *Ibid*, s 3.

“holder” means the individual or entity, including a business organization, a governmental organization, the personal representative of a deceased person, a securities intermediary who maintains a securities account for an entitlement holder and any issuer of an uncertificated security or of a certificated security in registered form, that is or becomes obligated to hold property for the account of an apparent owner, but does not include any class of individual or entity exempted by the regulations;¹⁰⁸

As mentioned above, the regulations exempt certain types of unclaimed property from the scope of the legislation if there is already a process in place through another legislative scheme.

3.3 British Columbia

Under BC’s legislation, different parts of the legislation apply depending on whether the unclaimed property is held by government or not. Unlike the other enacting jurisdictions, BC’s legislation allows for voluntary transfers of unclaimed property to the administrators in some circumstances (unlike the other enacting jurisdictions, where remitting the unclaimed property is mandatory.)

For non-government entities, “holder” is defined as:

"holder" means

- (a) a corporation, partnership, sole proprietorship, association, society, fraternal or mutual benefit organization or other entity, whether or not operated for profit, that holds property on behalf of an owner, or
- (b) an individual who holds property on behalf of an owner and who is one of a prescribed class of individuals,

and includes a government body as defined in the *Financial Administration Act*, but does not include the government, a court or the Public Guardian and Trustee;¹⁰⁹

The duties of non-government holders are set out in sections 10 to 12 of BC’s Act:

Duties of holders of unclaimed property

- 11** (1) Subject to subsection (2), a holder of unclaimed property must do all of the following:
- (a) maintain a database of all unclaimed property held by the holder;
 - (b) include in the database the prescribed particulars for each item of unclaimed property;
 - (b.1) make reasonable efforts to ensure that the existence of the database and the means by which it may be accessed are known to the public;
 - (c) make the database available to the public, subject to any restrictions imposed by regulation for the purpose of protecting the privacy of owners;
 - (d) meet the standards, set by regulation, respecting
 - (i) the collection and recording of information concerning the unclaimed property, and
 - (ii) the retention of records containing that information;
 - (e) meet the standards, set by regulation, respecting
 - (i) the processing of claims, and

¹⁰⁸ *Unclaimed Personal Property and Vested Property Act*, *supra* note 50, s 1(r).

¹⁰⁹ *Unclaimed Property Act*, *supra* note 45, s 1.

(ii) the management or control of the unclaimed property.

(2) A holder is deemed to have met the holder's obligations under subsection (1) (a) to (c) if the holder has provided to the administrator, with the administrator's consent, the particulars referred to in subsection (1) (b) for inclusion in the database referred to in section 4.

Voluntary transfer of unclaimed property to the administrator

12 (1) A holder may transfer property to the administrator if the following conditions are met:

- (a) the property is unclaimed property or is property to which sections 9 (1) and 10 would apply but for any reference to July 1, 2000 in the circumstances or applicable date prescribed for the purposes of section 9 (1);
- (b) the property is money;
- (c) the holder provides the administrator with any information relating to the property that may reasonably be requested by the administrator;
- (d) the administrator consents to the transfer.

(2) The administrator's receipt for unclaimed property transferred by a holder under subsection (1) is an effective discharge to the holder for that property.

After time lapse unclaimed property may be treated as income of holder

13 Without limiting the owner's rights, the holder may treat unclaimed property as income of the holder if

- (a) that property is money,
- (b) the property is not claimed by the owner within the prescribed time period after the date on which under section 10 it became unclaimed property, and
- (c) the holder is not prohibited by law from treating the property as income.

Note that the language of BC's Act is permissive; that is, non-government holders *may* transfer unclaimed property to the administrator but they are not obligated to do so if certain conditions are met as set out in the Act (for example, if they maintain their own records and make their records available to the administrator.) The regulations exclude certain holders from the obligations, including holders whose gross annual revenue is \$250,000 or less¹¹⁰ or where the value of the unclaimed property is less than \$50.¹¹¹

BC's legislation specifically provides for remitting unclaimed court funds to the administrator:

Unclaimed court funds

18.2 (1) Despite the Supreme Court Rules and despite any other enactment, if money paid into, or deposited in, court becomes unclaimed court funds, any of the following persons may authorize the Minister of Finance or any person designated by that minister to pay the unclaimed court funds to the administrator:

- (a) a justice, judge or registrar of the court;
- (b) in the case of the Supreme Court, a master.

¹¹⁰ BC Reg 463/99, s 7(1).

¹¹¹ *Ibid*, s 7(2).

(2) After receipt of an authorization referred to in subsection (1), the Minister of Finance or the person designated by that minister may pay to the administrator the unclaimed court funds in respect of which the authorization was provided.

(3) Despite Rule 23-4 of the Supreme Court Civil Rules and despite any other enactment, unclaimed court funds paid to the administrator under this section are deemed to be an unclaimed money deposit under this Act and are not trust funds.

(4) Despite any other provision of this Act, the administrator must comply with all court orders and regulations relating to unclaimed court funds paid to the administrator under this section.

As mentioned in the previous chapter, unclaimed court funds represent the largest proportion of unclaimed property remitted to BCUPS.

3.4 Quebec

Quebec’s legislation does not define “holder”. Presumably, anyone is a holder if they hold unclaimed property as prescribed by the Act and are not otherwise excluded.

3.5 Summary

Each enacting jurisdiction has chosen a different definition of holder, or, in Quebec, the legislation does not provide a definition at all. One of the main considerations on this point is whether holders have the option of maintaining a record of unclaimed property themselves, or whether they are required to transfer the property to the administrator in all circumstances. The Commission seeks input from relevant institutions and entities to reach a determination on this issue.

ISSUE FOR DISCUSSION 4: How should “holder” be defined?

ISSUE FOR DISCUSSION 5: Should it be mandatory for some or all holders to remit property to the administrator?

4. Property Holder’s Responsibilities

Property holders have certain responsibilities before remitting unclaimed property to the administrator. Each jurisdiction has its own rules regarding the obligations of a property holder.

4.1 ULCC Act

Before reporting and delivering unclaimed property as required under the ULCC Act, the holder must give notice to the apparent owner:

- 4(1) A holder of unclaimed property must provide a written notice that complies with subsection (2) to the apparent owner of that unclaimed property at least 3 months, but not more than 6 months, before complying with section 6 in relation to that unclaimed property.
- (2) A notice required under subsection (1) must be delivered to the apparent owner's last known address and must
 - (a) identify the unclaimed property,
 - (b) state that the unclaimed property is subject to this Act,
 - (c) identify the holder and state that the holder is holding the unclaimed property, and
 - (d) contain any other prescribed information.
- (3) Subsection (1) does not apply if the holder has reasonable grounds to believe that
 - (a) the correct address for the apparent owner cannot reasonably be ascertained, or
 - (b) the value of the unclaimed property is less than \$100.

According to the ULCC, the purpose of this provision is to “afford the holder one last opportunity for reuniting the owner with his or her property.”¹¹² Presumably, this provision would also reduce the number of claims that the administrator would have to deal with.

The ULCC Act sets out the obligations of a holder to report and maintain records of unclaimed property. It also clarifies the circumstances that must be in place to determine which jurisdiction the property must be remitted to (for example, to the jurisdiction in which the holder's central management is exercised.)¹¹³ The ULCC Act also provides that holders who deliver unclaimed intangible property as required under the ULCC Act are relieved of all liability respecting the property.¹¹⁴

In situations where the last known address of the apparent owner is in a non-reciprocating jurisdiction (i.e. a jurisdiction without unclaimed property legislation), the holder is not required to report and deliver the unclaimed property. As the ULCC explains in its comments to the ULCC Act, this avoids the possibility of a holder being subject to conflicting requirements from different legislative regimes.¹¹⁵

5.2 Alberta

Under Alberta's legislation, unclaimed personal property held by a holder must be paid or delivered to the Minister within four months after the calendar year during which the property became unclaimed.¹¹⁶

¹¹² ULCC Act, *supra* note 41, Comments below s 4.

¹¹³ *Ibid*, s 6.

¹¹⁴ *Ibid*, s 12.

¹¹⁵ *Ibid*, s 6. Note however that in circumstances where s 6 doesn't apply, s 14 might apply.

¹¹⁶ *Unclaimed Personal Property and Vested Property Act, supra* note 50, s 7.

5.3 British Columbia

According to BC's unclaimed property legislation, holders are required to maintain records of unclaimed property and must make reasonable efforts to locate and notify holders if the prescribed circumstances exist.¹¹⁷ As mentioned earlier, holders are not obligated to transfer the unclaimed property to the administrator. They may do so voluntarily or they may maintain the property themselves so long as certain conditions under the Act are adhered to, including providing their records to the administrator so that the property can be included in the administrator's searchable database:¹¹⁸

Voluntary transfer of unclaimed property to the administrator

12 (1) A holder may transfer property to the administrator if the following conditions are met:

(a) the property is unclaimed property or is property to which sections 9 (1) and 10 would apply but for any reference to July 1, 2000 in the circumstances or applicable date prescribed for the purposes of section 9 (1);

(b) the property is money;

(c) the holder provides the administrator with any information relating to the property that may reasonably be requested by the administrator;

(d) the administrator consents to the transfer.

(2) The administrator's receipt for unclaimed property transferred by a holder under subsection (1) is an effective discharge to the holder for that property.

After time lapse unclaimed property may be treated as income of holder

13 Without limiting the owner's rights, the holder may treat unclaimed property as income of the holder if

(a) that property is money,

(b) the property is not claimed by the owner within the prescribed time period after the date on which under section 10 it became unclaimed property, and

(c) the holder is not prohibited by law from treating the property as income.

In other words, if the holder keeps the property they may treat it as income in some circumstances. However, the holder is required to maintain their own records and report to

¹¹⁷ *Unclaimed Property Act*, *supra* note 45, ss 8-9.

¹¹⁸ *Ibid*, s 11(2).

the administrator. If the holder decides instead to transfer the property to the administrator, then the holder is discharged of their responsibilities in relation to the property.

4.5 Quebec

Any debtor or holder must attempt to contact the apparent owner, giving them notice that the property will be delivered to the Minister of Revenue.¹¹⁹ If no one comes forward within the prescribed time period, the unclaimed property is delivered to the Minister of Revenue once per year along with a statement containing a description of the property and all information needed to assist the Minister in identifying the owner.¹²⁰

4.5 Summary

This issue is related to the previous question regarding definition of a holder. The responsibilities of the holder depend, to a certain extent, on whether they are under an obligation of transfer property or not. If the holder transfers the property to the administrator, their obligations toward the unclaimed property are extinguished at that point.

ISSUE FOR DISCUSSION 6: What responsibilities should holders have in relation to unclaimed property?

5. The Administrator of Unclaimed Property's Powers and Responsibilities

Once unclaimed property is transferred from a holder to an administrator, the next issue is to determine the authority of the administrator in relation to the property. This issue also requires the enacting jurisdiction to determine how the administration of unclaimed property is to be structured. The enacting jurisdictions in Canada vary with respect to how unclaimed property is administered. The varying structures are discussed below.

5.1 ULCC Act

The ULCC Act defines “administrator” as “*the Public Guardian and Trustee or equivalent office.*”¹²¹ Pursuant to s. 13(1), the unclaimed property administrator may exercise “all the rights and powers of a legal and equitable owner of that unclaimed property” and:

- (a) may dispose of the unclaimed property in any manner the administrator considers reasonable,
- (b) must, when investing the unclaimed property or amounts under subsection (2), invest in

¹¹⁹ *Unclaimed Property Act*, *supra* note 53, s 13.

¹²⁰ *Ibid*, s 6.

¹²¹ ULCC Act, *supra* note 41, s 1(1) [emphasis in original].

investments that a prudent investor would make,

(c) if the unclaimed property is a security, may make an endorsement, instruction or order by which may be invoked the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security in accordance with applicable law, and

(d) if the unclaimed property is a security, has the same right to obtain a replacement certificate for that security as does the owner of the security.¹²²

The ULCC Act also sets out the administrator's rights and obligations in relation to foreign administrators, to deal with situations where unclaimed property received by the enacting jurisdiction may be claimed by another jurisdiction.¹²³

The ULCC Act requires that the administrator establish and maintain a separate account of unclaimed property, which is separate from the jurisdiction's consolidated revenue fund. The administrator must record the particulars of the unclaimed property received and how it is being invested or disposed.¹²⁴ In addition, the administrator must maintain and make available to the public a database of the names of apparent owners and of unclaimed property received.¹²⁵

5.2 Alberta

The Minister of Treasury Board and finance is responsible for the administration of Alberta's unclaimed property regime. Since Alberta's unclaimed property legislation deals with both unclaimed property and vested property, two separate administration streams address these different types of property.¹²⁶

The Act gives the administrator similar powers as the ULCC Act; that is, the Minister may exercise all legal rights as an owner.¹²⁷ Unclaimed personal property held by the Minister must be held in trust until the end of the claim period.¹²⁸ The claim period is generally 10 years after the receipt of the unclaimed property. After the claim period has passed, the former owner loses their right to the unclaimed property.¹²⁹

Similar to the ULCC Act, Alberta's legislation provides that there can be no liability against the Crown respecting its actions and authority under the Act. Pursuant to sections 46 and 47, Alberta maintains a searchable unclaimed property registry.

¹²² *Ibid*, s 13(1).

¹²³ *Ibid*, s 14.

¹²⁴ *Ibid*, s 15.

¹²⁵ *Ibid*, s 16.

¹²⁶ *Unclaimed Personal Property and Vested Property Act*, *supra* note 50, ss 36 & 37.

¹²⁷ *Ibid*, s 38.

¹²⁸ *Ibid*, s 36.

¹²⁹ *Ibid*, s 48(8) & (9).

5.3 British Columbia

Under BC's legislation, the government may enter into an administration agreement with a non-profit entity to administer the unclaimed property regime.¹³⁰ The administrator of unclaimed property is the BCUPS, described in the previous chapter.

Unclaimed property held by the government must be transferred to the BCUPS.¹³¹ Certain non-governmental holders are also required to remit unclaimed property to the BCUPS, as set out in the legislation. Other holders have the discretion to remit unclaimed property. The BCUPS maintains a registry of unclaimed property and an online searchable database.¹³²

5.4 Quebec

Similar to the other enacting jurisdictions, the Minister of Revenue must maintain a registry of all unclaimed property.¹³³ When unclaimed property is delivered to the Minister, it becomes property of the state and must be paid (to the extent determined by government) to the Generations Fund.¹³⁴

5.5 Commission's Conclusions

The Commission is aware of the administrative burden that currently exists in Manitoba when unclaimed property must be recovered from the Consolidated Fund. Rather than require Cabinet approval in every instance, the Commission is of the view that it would be more efficient to maintain a separate account as per the ULCC Act. In order to remove some of the administrative burden, unclaimed property should be held in a separate account.

ISSUE FOR DISCUSSION 7: What administrative structure would best serve the purposes of an unclaimed intangible property regime?

ISSUE FOR DISCUSSION 8: What should the responsibilities of the administrator of unclaimed property be?

¹³⁰ *Unclaimed Property Act*, *supra* note 45, s 2.1.

¹³¹ *Ibid*, s 2.5.

¹³² BCUPS, online: <<https://unclaimedpropertybc.ca>>.

¹³³ *Unclaimed Property Act*, *supra* note 53, s 18.

¹³⁴ *Ibid*, s 30. The Generations Fund is a fund dedicated exclusively to repaying Québec's debt.

6. How to Make a Claim

In order for an unclaimed property scheme to work, there must be a process for owners to make claims. Each enacting jurisdiction has created a claim process.

6.1 ULCC Act

The ULCC Act establishes a process for applicants to claim property if they can show that they are the rightful owner. Pursuant to s. 17, a person who asserts a claim to the property can file a claim with the administrator.¹³⁵ Within 90 days, the administrator must consider the claim and allow it if the administrator is satisfied that the claimant is the owner.¹³⁶ The claimant is also given the discretion to allow the claim if the administrator is satisfied that a claimant has a valid entitlement but not meet all the procedural requirements as set out in the ULCC Act. If the claim is allowed, the administrator must deliver the property or equivalent amount to the owner, along with any interest, dividends, or increment realized on the property.¹³⁷ However, the administrator may also deduct reasonable costs and prescribed fees of administration.¹³⁸

If a dispute arises between a claimant and the administrator, the superior court of the enacting jurisdiction may determine a claimant's rights on application.¹³⁹

6.2 Alberta

If a person asserts a right over unclaimed property (including an owner or a creditor), they can make a claim to the Alberta Tax and Revenue Administrator ("TRA").¹⁴⁰ A person can file a claim online at no charge (though there may be an administration fee to get the property back.) Claims must be submitted within 10 years from the date the property was received by TRA.¹⁴¹ Claims are reviewed within 120 days.¹⁴² If approved, the property will be returned to the owner or creditor within 30 days.

If the claim is denied, a person can file a Notice of Objection with the Minister. The Minister will either allow the claim or deny it, in accordance with the Act.¹⁴³

If the owner or creditor is not satisfied with the Minister's decision, the claimant may appeal the decision to the Alberta Court of Queen's Bench within 30 days.¹⁴⁴ The Court of Queen's Bench

¹³⁵ ULCC Act, *supra* note 41, s 17(1).

¹³⁶ *Ibid.*, s 17(2).

¹³⁷ *Ibid.*, s 17(3).

¹³⁸ *Ibid.*, s 17(5).

¹³⁹ *Ibid.*, s 17(6).

¹⁴⁰ *Unclaimed Personal Property and Vested Property Act, supra* note 50, Part 6. Pursuant to s 49, a person or organization claiming to be a creditor must have obtained a judgment of an Alberta Court against the owner or apparent owner of the unclaimed property.

¹⁴¹ *Ibid.* See Alberta, "Unclaimed Property", online: <<https://www.alberta.ca/unclaimed-property.aspx>>.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*, s 59(1).

¹⁴⁴ *Ibid.*, s 60(1).

will allow the appeal in whole or in part, refer the determination back to the Minister for reconsideration, or dismiss the appeal.¹⁴⁵

6.3 British Columbia

Like Alberta, a person who asserts a claim to unclaimed property may file a claim online.¹⁴⁶ The administrator has the power to grant all or part of a claim, or disallow it.¹⁴⁷ If the claim is in regards to unclaimed court funds that are held by the court, the administrator must allow the claim if there has been a determination in the proceedings that the claimant is the owner, or direct the claimant to the court to obtain a determination.¹⁴⁸

If a claim is disallowed, in whole or in part, the claimant may appeal the decision to the administrator.¹⁴⁹ If still not satisfied, the claimant may apply to the BC Supreme Court for a determination.¹⁵⁰

6.4 Quebec

Quebec's unclaimed property legislation does not provide the process for making a claim, only noting that "it is incumbent upon persons who claim property or want to recover a sum of money from the Minister to establish their quality."¹⁵¹ However, Revenu Québec's website provides the relevant information on making a claim.¹⁵² Claims can be filed online. The Act allows the Minister to charge an administration fee for filing a claim.¹⁵³

6.5 Commission's Conclusions

Turning to the Commission's guiding principles, any claims process must be straightforward and accessible, so that Manitobans from anywhere in the province will be able to access the database and make a claim. The Commission suggests looking to the enacting jurisdictions as examples. Based on the lack of reported cases in the enacting jurisdictions, it appears that having an appeal process through the administrator as a first step (i.e. before a claimant can apply to the court for a determination) may be an effective way of preventing unclaimed property claims from overburdening the justice system.

¹⁴⁵ *Ibid*, s 60(2). There are no reported cases on this point.

¹⁴⁶ *Unclaimed Property Act*, *supra* note 35, s 4.2(1). See BCUPS, "Claimant Log In", online: <<https://unclaimedpropertybc.ca/claim/claimant-login/>>.

¹⁴⁷ *Ibid*, s 4.2(3).

¹⁴⁸ *Ibid*, s 4.2(4).

¹⁴⁹ *Ibid*, s 5.1.

¹⁵⁰ *Ibid*, s 5.1(2). There are no reported cases on this point.

¹⁵¹ *Unclaimed Property*, *supra* note 53, s 31.

¹⁵² Revenu Québec, "Unclaimed Property", online: <<https://www.revenuquebec.ca/en/unclaimed-property/information/unclaimed-financial-assets/>>.

¹⁵³ *Regulation respecting the application of the Unclaimed Property Act*, CQLR c B-5.1, r 1, s 6.

ISSUE FOR DISCUSSION 9: Should Manitoba adopt a similar claim process to the process set out under the ULCC Act and the enacting jurisdictions?

C. Other Possible Areas of Reform

1. Reforms Specific to Corporate Dissolutions

As discussed in Chapter 2, if a corporation's property is not disposed of at the date of dissolution, the property (both real and personal) vests in the Crown pursuant to s. 221(1) of *The Corporations Act*. This means that Cabinet approval is required to retrieve the property should an apparent owner come forward or should the dissolved corporation be revived.¹⁵⁴ The Commission has learned that the process of returning property to revived corporations is onerous for the government to administer, in part because of the need for Cabinet approval.¹⁵⁵ The Commission is therefore interested in studying whether specific reforms are required to improve the process for escheated property related to corporate dissolutions.

This issue is beyond the scope of the previous discussion on unclaimed intangible personal property, as it may involve both real and personal (intangible and tangible) property and implicate other legislative schemes or government policy, so it is not the main focus of this project. However, the Commission invites comment on issues of reform to *The Corporations Act* that may improve the process for retrieving the property of a corporation upon revival, such as: whether the government has the option of acquiring corporate property or not; whether there should be dormancy periods before the property of the dissolved corporation becomes part of general revenue, and whether there should be a fee associated with recovering property upon revival. The Commission notes that any contemplated reform to *The Corporations Act* should also address parallel provisions of *The Co-operatives Act*.¹⁵⁶

ISSUE FOR DISCUSSION 10: How can the process for escheated corporate property under *The Corporations Act* together with *The Escheats Act* be improved?

2. Other Issues

As mentioned above, Manitoba's escheats and vacant property legislation does not provide a great deal of guidance in terms of understanding the roles and responsibilities of the individuals and entities involved. Therefore, the Commission is aware that there may be other related areas of reform not addressed in this paper. In providing the Commission with feedback on this Consultation Report, please consider other related areas of reform and issues that might be addressed in a Final Report.

¹⁵⁴ *The Corporations Act*, *supra* note 20, s 221.

¹⁵⁵ Based on conversations with Crown counsel, dated 29 April, 21 May 2019 and 5 June 2019.

¹⁵⁶ SM 1998, c 52.

CHAPTER 5: SUMMARY OF THE ISSUES FOR DISCUSSION

The following list provides a summary of all issues for discussion contained in this Consultation Report.

ISSUE FOR DISCUSSION 1: Do you think that an unclaimed personal property regime should be established in Manitoba? (p. 15)

ISSUE FOR DISCUSSION 2: What types of property should be included or excluded in an unclaimed property regime in Manitoba? (p. 20)

ISSUE FOR DISCUSSION 3: Are there any types of intangible personal property that pose unique challenges in terms of adapting to an unclaimed property regime? (p. 20)

ISSUE FOR DISCUSSION 4: How should “holder” be defined? (p. 25)

ISSUE FOR DISCUSSION 5: Should it be mandatory for some or all holders to remit property to the administrator? (p. 25)

ISSUE FOR DISCUSSION 6: What responsibilities should holders have in relation to unclaimed property? (p. 28)

ISSUE FOR DISCUSSION 7: What administrative structure would best serve the purposes of an unclaimed intangible property regime? (p. 30)

ISSUE FOR DISCUSSION 8: What should the responsibilities of the administrator of unclaimed property be? (p. 30)

ISSUE FOR DISCUSSION 9: Should Manitoba adopt a similar claim process to the process set out under the ULCC Act and the enacting jurisdictions? (p. 33)

ISSUE FOR DISCUSSION 10: How can the process for escheated corporate property under *The Corporations Act* together with *The Escheats Act* be improved? (p. 34)

APPENDIX A: THE ESCHEATS ACT

C.C.S.M. c E140

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Minister of Justice may take possession of forfeited property

1 Where any lands, tenements, or hereditaments, have escheated to the Crown by reason of the person last seized thereof, or entitled thereto, having died intestate and without lawful heirs, or by reason of the failure of heirs, or a failure in the devises or bequests in any will, or when property of any kind has become forfeited for any cause to the Crown, the Minister of Justice may cause possession thereof to be taken in the name of the Crown; and, if possession is withheld, he may cause an action to be brought for the recovery thereof without an inquisition being first made.

Proceedings

2 The proceedings in the action may be in all respects similar to those in other actions for the recovery of land.

L. G. in C. may make grants

3 The government, if authorized by an order of the Lieutenant Governor in Council, may make any grant of lands, tenements, or hereditaments, that have so escheated or become forfeited, or at any time so escheat or become forfeited, for any cause except crime, or of any portion thereof, or of any interest therein, to any person, for the purpose of transferring or restoring them to any person having a legal or moral claim upon the person to whom they had belonged, or of carrying into effect any disposition thereof that that person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant Governor in Council may seem meet.

Without entry or prior inquisition

4 Any such grant may be made without actual entry or inquisition being first necessary, and although the lands, tenements, or hereditaments, are not in the actual possession of the Crown, and notwithstanding that some person claims title thereto adversely to the person whose estate they had been; and if possession of the lands, tenements, or hereditaments, is withheld, the person to whom the grant is made is thereupon entitled to institute in any court of competent jurisdiction proceedings for the recovery of the lands, tenements, or hereditaments.

L. G. in C. may release or waive

5 Where a forfeiture takes place of any lands, tenements, or hereditaments, or any interest therein, as aforesaid, the Lieutenant Governor in Council may waive or release any right to which the Crown may thereby have become entitled, so as, by the waiver or release, to vest the property, either absolutely or otherwise, in the persons who would have been entitled thereto but for the forfeiture; and the waiver or release may be either for valuable consideration or otherwise, and may be upon such terms and conditions as to the Lieutenant Governor in Council may seem fit.

Assign personal property

6 The government, if authorized by an order of the Lieutenant Governor in Council, may make an assignment of personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other persons entitled to succeed thereto, or by reason of it having become forfeited to the Crown for any cause except crime; or, if so authorized, the government may make an assignment of any portion of such personal property, for the purpose of transferring or restoring it to any person having a legal or moral claim upon the person to whom it had belonged, or for carrying into effect any disposition thereof that that person may have contemplated, or of rewarding the person making the discovery of the right of the Crown to the property, as to the Lieutenant Governor in Council may seem meet.

Minister of Finance may administer estate

7 The Minister of Finance may administer the estate of any deceased person whose property has escheated or been forfeited to the Crown.

APPENDIX B: UNIFORM UNCLAIMED INTANGIBLE PROPERTY ACT

[available online: <https://www.ulcc.ca/en/uniform-acts-en-gb-1/545-unclaimed-intangible-property-act/1114-unclaimed-intangible-property-act>]

Introduction

The purpose of the *Uniform Unclaimed Intangible Property Act* is to provide a harmonized legislative scheme for the consideration of those provinces and territories which may wish to enact unclaimed intangible property legislation; and in particular, to offer a common means of addressing the interjurisdictional aspects which arise in unclaimed intangible property legislation. In the past several years, three provinces: British Columbia, Quebec and Prince Edward Island have enacted unclaimed intangible property legislation.

Unclaimed intangible property statutes offer a means of endeavouring to reunite owners with their unclaimed intangible property. Such statutes typically require holders of intangible property which is unclaimed after a specified period, to endeavour to notify the owner of the property, and if unsuccessful, to report on and deliver that property to the appropriate province or territory. Upon doing so, a holder's obligations to an owner are extinguished. The provincial or territorial administrator responsible would preserve the property on behalf of owners and endeavour to draw the existence of the unclaimed property to the attention of owners. If no claim is made within a certain period, the province or territory may have the use of the property, subject to the continuing right of the owner to recover the property.

The nature of unclaimed intangible property is such that difficulties and uncertainties could arise as a result of inconsistent and possibly conflicting requirements in different statutes. These could include the difficulty of ascertaining what constitutes unclaimed intangible property and when it should be transferred to a particular province or territory.

Uniformity would be of fundamental benefit and importance in addressing these concerns. Most crucially, the *Uniform Unclaimed Intangible Property Act* provides a harmonized basis for determining the particular province or territory to which unclaimed intangible property should be reported and transferred.

In providing this basis, the *Uniform Unclaimed Intangible Property Act* adopts the principle in the Quebec *Public Curator Amendment Act of 1997* and the US *Uniform Unclaimed Property Act of 1995*, that an enacting province or territory would be entitled to receive unclaimed intangible property if the property belongs to an owner whose last known address as shown on the holder's records is in that province or territory. Section 6 of the *Uniform Unclaimed Intangible Property Act* sets out the manner in which this principle would apply. This is the fairest, clearest, and most practical basis for determining the jurisdiction to which unclaimed intangible property should be reported and transferred.

In addition to providing a harmonized resolution of interjurisdictional matters, the *Uniform Unclaimed Intangible Property Act* contains uniform provisions respecting the definition of unclaimed intangible property, reporting and transfer of unclaimed intangible property, and inspection and administration. In so doing, it will benefit holders by providing for clarity and consistency in their obligations. A number of

key provisions in the *Uniform Unclaimed Intangible Property Act* are similar to parallel provisions in the US *Uniform Unclaimed Property Act of 1995*. The US Act is the predominant unclaimed intangible property statute in North America, and is accordingly legislation with which Canadian holders carrying on business in the United States have had considerable experience.

Uniform Unclaimed Intangible Property Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of [Enacting Jurisdiction], enacts as follows:

Part 1 – Interpretation and Application

Definitions 1(1) In this Act:

“administrator” means [*the Public Guardian and Trustee or equivalent office*];

“apparent owner” means, in relation to property, the person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder;

“based”, except in sections 2(1)(h) and 29(3), means based within the meaning of subsection (2) of this section;

“business organization” means a corporation, partnership, organization or other entity, whether operated for profit or not and, without limitation, includes a mutual fund, an insurer, a sole proprietorship and a fraternal or mutual benefit association;

“carry on business” means carry on business within the meaning of subsection (3);

[“deliver”, with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person’s mail box or receptacle at the person’s residence or place of business;] [*Interpretation Act definition*]

“governmental organization” means

(a) a [*ministry*] of the government or a government agency, board or commission,

(b) a local government within the meaning of the [*Provincial or Territorial statute governing local governments*] or

(c) a government corporation within the meaning of the [*Provincial or Territorial statute governing Crown corporations*];

“holder” means, in relation to property that is subject to this Act, the entity, including a business

organization and a governmental organization, that is or becomes obligated to hold the property for the account of, or to deliver, pay or transfer the property to, the apparent owner;

“ inspector” means a person carrying out an inspection under the authority of section 20(1);

“ owner” means a person who has a legal or equitable interest in property that is subject to this Act, and includes the person’s legal representative;

[“person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;] [*Interpretation Act definition*]

“ property” means an interest in intangible property that is held, issued or owed by a business organization, or by a government or governmental organization, including all income or increments from it, and includes, without limitation, property that is referred to as or is evidenced by

- (a) money or a cheque, money order, traveller’s cheque, draft, deposit, interest or dividend,
- (b) a credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage or salary, unused ticket or unidentified remittance,
- (c) a share or other evidence of ownership of an interest in a business organization,
- (d) a bond, debenture, note or other evidence of indebtedness,
- (e) money deposited to redeem shares, bonds, coupons or other securities or to make distributions,
- (f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance or health and disability insurance, and
- (g) an amount distributable from a trust or custodial fund established under a plan to provide education, health, welfare, pension, vacation, severance, retirement, death, share purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits, but does not include any thing or class of thing excluded by the regulations;

- “reciprocating jurisdiction” means a jurisdiction that is prescribed by the Lieutenant Governor in Council under subsection (4) to be a reciprocating jurisdiction;
- “reporting holder” means a person who, under section 6 (1), is obligated to comply with section 6(2);
- “unclaimed property” means property that is presumed to be abandoned within the meaning of section 2. (2)

For the purposes of this Act, a person that is not an individual is based in a jurisdiction if the person's central management is exercised in that jurisdiction. (3) For the purposes of this Act, a person that is not an individual carries on business in a jurisdiction if

(a) it has or is required by law to have, in that jurisdiction,

(i) a registered office, or

(ii) in the case of a partnership, a registered office or business address,

(b) according to law, it

(i) has registered an address in that jurisdiction at which process may be served generally, or

(ii) has nominated an agent in that jurisdiction on whom process may be served generally,

(c) it has a place of business in that jurisdiction, or

(d) its central management is exercised in that jurisdiction. (4) If the Lieutenant Governor in Council is satisfied that a jurisdiction has enacted unclaimed property legislation that is substantially similar to this Act in form and content, the Lieutenant Governor in Council may prescribe that jurisdiction to be a reciprocating jurisdiction for the purposes of this Act.

Comment: "Apparent owner" is defined as the person whose name appears on the holder's records as the person entitled to the property held by the holder. A jurisdiction's right to require a holder to transfer unclaimed intangible property depends upon the information concerning the last known address of the apparent owner that is in the holder's records. The holder is not required to undertake an inquiry as to the name or address of the actual owner, nor to resolve disputes amongst persons contesting ownership. However, the actual owner may claim the property from the administrator. Also, the administrator of a reciprocating jurisdiction where the last known address of the actual owner is located, may claim and receive the property from the jurisdiction which initially received it.

The definition of "property" is inclusive. The descriptions of property interests set out in the definition are not limiting, but are stated to help holders identify kinds of property which might otherwise be overlooked. The definition expresses the principle that property is the underlying right or interest evidenced by a given instrument.

Certain types of property may also be excluded by regulation. Individual jurisdictions may wish to exclude from the Act certain kinds of arrangements respecting types of unclaimed property for which there exists another well established process.

Section 1(2) and (3) define the connections which a holder must have with the enacting jurisdiction in order for a holder to be subject to this Act in the enacting jurisdiction. Unlike the situation in the United States where legal obligations on holders arise from the United States Supreme Court decision in *Texas v*

New Jersey, in Canada jurisdiction over holders must be found on legislative enactments in a given province or territory. Both the definitions in subsections (2) and (3) parallel similar definitions in the *Uniform Court Jurisdiction and Proceedings Transfer Act*.

Section 1(4) provides that the Lieutenant Governor in Council of one jurisdiction may prescribe that another jurisdiction is a reciprocating jurisdiction if satisfied that the other jurisdiction has legislation substantially similar in form and content. Reciprocity of legislation between jurisdictions is fundamental to addressing interjurisdictional elements. Reciprocal jurisdictions are expressly referred to in section 6 of the Act, which provides the basis upon which the enacting jurisdiction may properly claim and receive unclaimed property.

When property is abandoned

2(1) Property is presumed to be abandoned if it is unclaimed by the apparent owner, within the meaning of subsection (3), within the following applicable period:

- (a) for a traveller's cheque, 15 years after issuance;
- (b) for a money order, 7 years after issuance;
- (c) for a share or any other equity interest in a business organization, 5 years after the earliest of
 - (i) the date of the earliest dividend, share split or other distribution unclaimed by the apparent owner,
 - (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable, and
 - (iii) the date on which the holder discontinued mailings, notifications or communications to the apparent owner;
- (d) for a debt of a business organization that accrues interest, 5 years after the date of the earliest interest payment unclaimed by the apparent owner;
- (e) for a demand deposit, savings deposit, certificate of deposit, guaranteed investment certificate, guaranteed investment confirmation or other deposit made for a fixed period that has matured, including a deposit that is automatically renewable, 5 years after the later of
 - (i) maturity, and
 - (ii) the date of the last indication by the apparent owner of interest in the property,

and, for the purposes of this paragraph, a deposit that is automatically renewable is deemed matured on its initial date of maturity, unless the apparent owner has consented to a renewal at or about the time of the

renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) for money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) for a gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60% of the certificate's face value;

(h) for an amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable on proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) for property distributable by a business organization in the course of a dissolution, one year after the property becomes distributable; [*may be dealt with by enacting jurisdiction's corporation statutes*]

(j) for property received by a court as proceeds of a class action, and not distributed under the judgment, one year after the distribution date; [*money in court may be dealt with by enacting jurisdiction's rules of court*]

(k) for property held by a court, government or governmental organization, one year after the property becomes distributable; [*money in court may be dealt with by enacting jurisdiction's rules of court*]

(l) for wages or other compensation for personal services, one year after the compensation becomes payable; [*may be dealt with by enacting jurisdiction's employment standards statutes*]

(m) for a deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(n) for money in a registered retirement savings plan, a registered retirement income fund, a registered pension plan, a deferred profit sharing plan, a registered education savings plan or any other plan that is qualified for tax deferral under the income tax laws of the jurisdiction in which the plan is registered, 5 years after the registration of the plan is revoked or the plan is deregistered, as the case may be;

(o) for money paid out of a plan or fund referred to in paragraph (n), 5 years after the date of the payment;

(p) for all other property, 5 years after the earlier of

(i) the date on which the apparent owner's right to demand the property arises, and

(ii) the date on which the obligation to pay or distribute the property arises.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the apparent owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) For the purposes of subsection (1), property is unclaimed if, within the applicable period referred to in subsection (1), the apparent owner has not

(a) communicated with the holder concerning the property or the account in which the property is held

(i) in writing, or

(ii) by other means reflected in a contemporaneous record prepared by or on behalf of the holder, or

(b) otherwise indicated an interest in the property. (4) For the purposes of subsection (3)(b), an indication of an apparent owner's interest in property includes,

(a) in the case of a dividend or other distribution made with respect to an account or underlying share or other interest in a business organization, the presentation of a cheque or other instrument of payment of a dividend or other distribution or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received,

(b) in the case of an account in which the property is held, apparent owner directed activity in the account including a direction by the apparent owner to increase, decrease or change the amount or type of property held in the account,

(c) in the case of a bank account, the making of a deposit to or withdrawal from the account, and

(d) in the case of an insurance policy, the payment of a premium with respect to a property interest in the policy, but does not include a communication with the apparent owner by a person other than the holder or its representative who has not in writing identified the property to the apparent owner.

(5) Despite subsection (4) (d), the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(6) Property is payable or distributable for the purposes of this Act despite the apparent owner's failure to make a demand or present an instrument or document otherwise required to obtain payment.

Comment: Section 2 sets out the periods of time for various types of property to be presumed abandoned. Section 2 parallels Section 2 of the U.S. *Uniform Unclaimed Property Act*, which is based on commercial experience respecting appropriate periods of time. Property not expressly mentioned is subject to a 5 year dormancy period.

Application

3 This Act does not apply to an individual who is a holder by virtue of any loan or other extension of credit to that individual that is primarily for that individual's personal, family or household purposes.

Comment: The Act does not apply to individuals who receive a loan or extension of credit for their personal, family or household purposes.

Part 2 – Rights and Duties of Holders and Administrators

Notice to apparent owner

4(1) A holder of unclaimed property must provide a written notice that complies with subsection (2) to the apparent owner of that unclaimed property at least 3 months, but not more than 6 months, before complying with section 6 in relation to that unclaimed property.

(2) A notice required under subsection (1) must be delivered to the apparent owner's last known address and must

(a) identify the unclaimed property,

(b) state that the unclaimed property is subject to this Act,

(c) identify the holder and state that the holder is holding the unclaimed property, and

(d) contain any other prescribed information. (3) Subsection (1) does not apply if the holder has reasonable grounds to believe that

(a) the correct address for the apparent owner cannot reasonably be ascertained, or

(b) the value of the unclaimed property is less than \$100.

Comment: Before reporting and delivering unclaimed property as required under the Act, the holder is required to give notice to the apparent owner and provide the apparent owner with the information described in section 4(2). The purpose of this is to afford the holder one last opportunity for reuniting the owner with his or her property. The holder need not provide this notice if the address of the apparent owner cannot reasonably be ascertained or if the value of unclaimed property is less than \$100.00.

Fees

5(1) A holder must not charge a fee for sending a notice to an apparent owner under section 4 (1) unless

(a) the fee is authorized by a written contract between the holder and the apparent owner,

(b) the fee is reasonable and does not exceed any amount prescribed for the purposes of this paragraph, and

(c) the holder regularly imposes the fee, which fee is not regularly reversed or cancelled. (2) A holder must not impose a charge against an owner or an apparent owner because the owner or apparent owner has failed to communicate with the holder or because there have been no transactions with respect to the property unless

(a) the charge is authorized by a written contract between the holder and the owner or apparent owner, as the case may be,

(b) the charge is reasonable and does not exceed any amount prescribed for the purposes of this paragraph, and

(c) the holder regularly imposes the charge, which charge is not regularly reversed or cancelled. (3) For the purposes of this section, ceasing to make payment of interest is deemed to be the imposition of a charge and the amount of the unpaid interest is deemed to be the amount of the charge.

Comment: Section 5(1) limits the circumstances in which notice fees may be charged by a holder to an apparent owner. Section 5(2) limits the circumstances for dormancy service charges. Section 5(3) provides that ceasing to pay interest is deemed to be a charge.

Holder must report and pay or deliver unclaimed property 6(1) A person who, in a calendar year, is or becomes a holder of unclaimed property must, within 4 months after the end of that calendar year or within any longer period that the administrator may determine under subsection (4), comply with subsection (2) if the person remains a holder of some or all of that unclaimed property and if

(a) the holder is an individual who is ordinarily resident in [*Enacting Jurisdiction*], or

(b) in the case of a holder that is not an individual,

(i) the last known address for the apparent owner shown in the records of the holder is in [*Enacting Jurisdiction*] and the holder carries on business in [*Enacting Jurisdiction*],

(ii) the last known address of the apparent owner shown in the records of the holder is in a reciprocating jurisdiction in which the holder does not carry on business and the holder is based in [*Enacting Jurisdiction*], or

(iii) the records of the holder do not show the identity of the apparent owner, or, if an identity is shown, do not show any address for the apparent owner, and the holder is based in [*Enacting Jurisdiction*].

(2) A reporting holder must, within the time required by subsection (1),

(a) prepare a report, in the prescribed form, respecting the unclaimed property of which the person remains a holder,

(b) identify, in the report,

(i) the unclaimed property to which the report refers,

(ii) the name, if known, the last known address, if any, the social insurance number, if known, and the date of birth, if known, of the apparent owner of the unclaimed property,

(iii) the date that begins the period that, under section 2 (1), is applicable to the property, and the date of the last transaction with the apparent owner with respect to the property,

(iv) whether the holder is a successor to another person who previously held the property for the apparent owner, or whether the holder has changed its name while holding the property, and the known names and addresses of all previous holders of the property, if any, and

(v) any other prescribed information,

(c) deliver the report to the administrator, and

(d) subject to section 12 (2), with that report, pay or deliver to the administrator the unclaimed property to which the report refers.

(3) If a reporting holder fails to maintain the prescribed records such that the records available to the holder are not sufficiently complete to allow the holder to prepare the report required under subsection (2), the reporting holder must, within the time required by subsection (1),

(a) deliver to the administrator a report that complies with subsection (2) (a) and (b) to the extent possible, and

(b) pay or deliver the unclaimed property to the administrator or, if the reporting holder is not able to effect that payment or delivery, pay to the administrator, in compensation for that unclaimed property, the amount that the administrator reasonably estimates, on the basis of the reporting holder's records or other reasonable method of estimation, is equal to the value of the unclaimed property that ought to have been paid or delivered by the reporting holder under subsection (2) (d).

(4) Before the date for filing the report, a reporting holder may request the administrator to extend the time for filing the report and paying or delivering the unclaimed property, and the administrator may grant the extension for good cause including, without limitation, if the property is an automatically renewable deposit and payment or delivery of the unclaimed property within the time required under this section would result in a penalty or forfeiture in the payment of interest.

Comment: Section 6 sets out the obligations of a holder to report and deliver unclaimed property to the administrator, and correspondingly establishes the entitlement of the enacting jurisdiction to receive unclaimed property and reports thereof.

Section 6(1)(a) provides that if the holder is an individual, he or she should report and deliver unclaimed property to the enacting jurisdiction to receive unclaimed property and reports thereof. Section 6(1)(b) sets out the three situations in which a holder that is not an individual should report and deliver unclaimed property to the enacting jurisdiction.

Section 6(1)(b)(i) provides that if the last known address of the apparent owner shown on the records of the holder is in the enacting jurisdiction and the holder is carrying on business in the enacting jurisdiction, then the holder must report and deliver the unclaimed property to the administrator of the enacting jurisdiction.

Section 6(1)(b)(ii) provides that if the last known address of the apparent owner, as shown on the holder's records, is in a reciprocating jurisdiction in which the holder does not carry on business and the holder is based in the enacting jurisdiction (that is, its central management is exercised in the enacting jurisdiction), then the holder must report and deliver the unclaimed property to the enacting jurisdiction.

Section 6(1)(b)(iii) provides that if the holder's records do not show the identity of the apparent owner, or if shown, do not show any address for the apparent owner, and the holder is based in the enacting jurisdiction, then the holder must report and deliver the unclaimed property to the enacting jurisdiction.

There is, therefore, in each of the three situations a single jurisdiction to which a holder must report and deliver unclaimed property. In section 6(1)(b)(i), it is to the jurisdiction in which the holder is carrying on business and in which the last known address of the apparent owner is located. In sections 6(1)(b)(ii) and (iii), it is to the jurisdiction in which the holder's central management is exercised.

Section 6 does not require a holder to report and deliver unclaimed property if the last known address of the apparent owner, shown on the holder's records, is in a non-reciprocating jurisdiction, that is, a jurisdiction without comparable legislation. This avoids the possibility of a holder being subject to conflicting requirements from different legal regimes. Section 14 is the companion section to section 6. It provides for the circumstances in which unclaimed intangible property may be delivered from the enacting jurisdiction to another jurisdiction.

Additional requirement to provide unclaimed property

7(1) The administrator may, in writing, claim unclaimed property from a holder.

(2) Whether or not a holder is a reporting holder when a claim is made under subsection (1), the holder must, subject to section 12(2), pay or deliver to the administrator, within 21 days after receiving that claim, the unclaimed property referred to in the claim along with a report in the form included with the claim, unless

(a) the unclaimed property is not within the holder's power or control, in which case the holder must pay to the administrator, in compensation for that unclaimed property, an amount that the administrator reasonably estimates, on the basis of the holder's records or other reasonable method of estimation, is equal to the value of the unclaimed property that ought to have been paid or delivered by the holder under this subsection, or

(b) the holder, by completing and returning to the administrator the form included with the claim, disputes the holder's obligation to pay or deliver the unclaimed property and satisfies the administrator that the holder need not, or must not, pay or deliver the unclaimed property to the administrator.

Comment: This section permits the administrator to claim unclaimed property in exceptional circumstances prior to the property becoming deliverable and reportable. Section 7(2) requires the holder to deliver the unclaimed property claimed. If the property is not within the holder's control, the administrator may estimate the amount to be paid, based on the holder's records or other reasonable method of estimation, equal to the value of the unclaimed property that ought to have been delivered under this subsection.

Voluntary payment or delivery of property

8(1) Subject to section 12(2), a holder may, with the written consent of the administrator and on any terms and conditions the administrator may impose, pay or deliver property to the administrator

(a) before that property becomes unclaimed property, or

(b) in the case of unclaimed property in respect of which a report is not yet required under section 6, at any time.

(2) The administrator must hold property paid or delivered to the administrator under subsection (1) (a) until it becomes unclaimed property and, after that, the provisions of this Act relating to unclaimed property in the possession of the administrator apply to the property.

(3) A holder who pays or delivers property to the administrator under this section must provide with that property a report that complies with section 6 (2).

Comment: This section permits a holder who is not otherwise obliged to report and deliver unclaimed property under the Act, to do so voluntarily with the consent of the administrator.

Delivery of records

9(1) If, under section 6, 7 or 8, a holder pays or delivers property, or pays an amount in compensation for property, to the administrator, the administrator may request the holder to deliver to the administrator the records related to that property.

(2) A holder who, under section 6, 7 or 8, paid or delivered property, or paid an amount in compensation

for property, to the administrator

- (a) must promptly comply with any request made under subsection (1) of this section, and
- (b) may, whether or not a request is made under subsection (1), deliver to the administrator any record in relation to that property that the administrator is willing to accept.

Comment: This section enables the administrator to require the delivery of records relevant to the unclaimed property in addition to the report that has been filed with the property. With the administrator's consent, the holder may also deliver to the administrator any records relating to the property.

Administrator may demand additional information

10(1) Whether or not property of which a person is a holder is paid or delivered to the administrator under this Act, the administrator may, for the purpose of ensuring compliance with this Act and the regulations, demand that the holder of the property do one or both of the following:

- (a) file with the administrator a report or a supplementary report, in the prescribed form, in relation to the property;
- (b) deliver to the administrator any information or records, specified by the administrator in the demand, in any way relating to the property or the apparent owner.

(2) A demand under subsection (1) must be provided to the holder by

- (a) personal delivery,
- (b) registered mail, or
- (c) any other prescribed manner.

(3) A holder who receives a demand under this section must comply with the demand within 21 days after receipt.

(4) In the event of a conflict between this section and the [*Provincial Privacy Acts*], the [*Provincial Privacy Acts*] prevails.

Comment: Section 10 gives the administrator the authority to require a holder to file a report or a supplementary report, or to deliver any information or documents specified, where the administrator deems it necessary for the purpose of ensuring compliance with the Act.

Retention of records

11 A holder who, under section 6, 7 or 8, delivers a report to the administrator respecting property must

maintain in that person's possession or control, for 10 years after complying with section 6, 7 or 8, as the case may be, all of the records relating to the property that are not delivered to the administrator under section 9.

Comment: This section requires holders to maintain records respecting unclaimed property for a period of 10 years after delivering the property to the administrator.

Payment or delivery relieves holder from liability

12(1) A holder who, in accordance with section 6, 7 or 8, pays or delivers property, or pays an amount in compensation for unclaimed property, to the administrator is relieved of all liability in relation to the property paid or delivered or in relation to which the amount was paid.

(2) The holder must, in relation to any payment or delivery the holder may or must make to the administrator under this Act, make the same withholdings and remittances that the holder would be required to make, under the *Income Tax Act* (Canada) or otherwise, were the holder making the payment or delivery to the owner, and the administrator is entitled to receive from the holder only that portion of the payment or delivery that the owner would be entitled to receive from the holder after all those withholdings and remittances had been made.

(3) Nothing in subsection (1) relieves a holder from the holder's obligations under subsection (2) or sections 9 to 11.

Comment: This section provides that holders who deliver unclaimed intangible property or an amount in compensation for that property as required under the Act are relieved of all liability respecting the property delivered or the amount paid. Subsection (2) provides that the obligations under the Act are subject to obligations under the *Income Tax Act* (Canada).

Administrator has rights of owner

13(1) Subject to this Act, the administrator may, in relation to the unclaimed property or amounts delivered to the administrator under section 6, 7, 8 or 14(3), exercise all the rights and powers of a legal and equitable owner of that unclaimed property or those amounts and, without limitation and despite any other enactment, the administrator

(a) may dispose of the unclaimed property in any manner the administrator considers reasonable,

(b) must, when investing the unclaimed property or amounts under subsection (2), invest in investments that a prudent investor would make,

(c) if the unclaimed property is a security, may make an endorsement, instruction or order by which may be invoked the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security in accordance with applicable law, and

(d) if the unclaimed property is a security, has the same right to obtain a replacement certificate for that security as does the owner of the security.

(2) Subject to subsection (3), the administrator must invest

(a) the unclaimed property he or she receives under section 6, 7, 8 or 14(3),

(b) any amounts he or she receives from the disposition of that unclaimed property,

(c) the amounts he or she receives in compensation for unclaimed property under section 6(3)(b) or 7(2)(a), and

(d) any other amounts the administrator receives under this Act.

(3) The administrator need not invest unclaimed property he or she receives under section 6, 7, 8 or 14 (3) in accordance with subsection (2) if the administrator considers that it is prudent to retain the unclaimed property in the form in which it was delivered to the administrator.

(4) The administrator may employ or otherwise contract with any persons the administrator considers appropriate for the purpose of locating owners of unclaimed property, or owners of amounts paid in compensation for unclaimed property, received by the administrator under this Act.

(5) No issuer, no holder and no transfer agent or other person acting or purporting to act under the instructions of and on behalf of the issuer or holder of a security is liable to the owner or apparent owner for complying with any endorsement, instruction or order of the administrator acting under the powers available to the administrator under subsection (1) (c) or (d).

(6) The administrator is not liable for any loss, cost or damages suffered by any person as a result of any action taken or decision made by the administrator under this section unless the action or decision was taken or made in bad faith.

Comment: Section 13 sets out the administrator's authority with respect to property received. So that the administrator may have sufficient authority to preserve and invest the unclaimed property received, he or she may exercise the rights and powers of an owner. The administrator may dispose of unclaimed property as he or she considers reasonable. When investing, the administrator must do so as would a prudent investor.

Section 13(1)(c) and (d) provide for the ability of the administrator, should it be necessary or appropriate, to deal with investment securities. These subsections are similar to the language in section 8 of the United States *Uniform Unclaimed Property Act of 1995*. Should the Uniform Law Conference adopt the proposed *Uniform Securities Transfer Act*, section 13(1)(c) and (d) should be modified to make express reference to that Act.

Section 13(2) requires the administrator to invest unclaimed property received unless the administrator

considers it prudent to retain the property in that form. Section 13(5) relieves those who comply with an endorsement or other direction of the administrator respecting securities from liability to the owner or apparent owner.

Administrator's rights and obligations relative to foreign administrators

14(1) In this section, "foreign administrator" means, in relation to a jurisdiction other than [*Enacting Jurisdiction*], the person who, in that jurisdiction, exercises a similar role and function to that of the administrator in relation to unclaimed property.

(2) If the administrator receives unclaimed property under section 6, 7 or 8 or under subsection (3) of this section, or receives an amount in compensation for unclaimed property under section 6(3)(b) or 7(2)(a), and a foreign administrator claims that unclaimed property or amount from the administrator, the administrator must pay or deliver to the foreign administrator the unclaimed property or amount along with any related records in the possession of the administrator if

(a) the last known address of the owner is in the foreign administrator's jurisdiction or, if no address is known for the owner, the last known address of the apparent owner is in that other jurisdiction, or

(b) no address is known for the owner or the apparent owner and the holder is based in the foreign administrator's jurisdiction. (3) If a foreign administrator receives unclaimed property, the administrator may claim and receive from the foreign administrator the unclaimed property along with any related records in the possession of the foreign administrator if

(a) the last known address of the owner is in [*Enacting Jurisdiction*] or, if no address is known for the owner, the last known address of the apparent owner is in [*Enacting Jurisdiction*], or

(b) no address is known for the owner or the apparent owner and the holder is based in [*Enacting Jurisdiction*].

Comment: Section 14 is the companion section to section 6. It provides for the circumstances in which unclaimed property received by the enacting jurisdiction may be claimed by another jurisdiction; and in which case, the enacting jurisdiction must deliver that property to the other jurisdiction. The circumstances are as follows:

- if the last known address of the owner, or if the owner is unknown, of the apparent owner, is in the other jurisdiction. This circumstance might arise where the holder of the unclaimed property does not carry on business in that other jurisdiction, and is therefore not subject to its jurisdiction. In this situation, the other jurisdiction is not able to claim the property directly from the holder.
- if the last known address of the owner or apparent owner is unknown and the holder is based in that other jurisdiction.
- Section 14(2) provides for the corresponding right of the enacting jurisdiction to claim and receive unclaimed intangible property from another jurisdiction in parallel circumstances.

Unclaimed property account

15(1) The administrator must prepare and maintain as a separate account in the accounts of the [*office of the Public Trustee, or equivalent office, in the Enacting Jurisdiction*] an unclaimed property account consisting of all unclaimed property paid or delivered, and all amounts paid, to the administrator under this Act.

(2) The administrator must, in relation to the unclaimed property account, prepare and maintain records respecting particulars of the unclaimed property and amounts referred to in subsection (1) and their investment and disposal.

(3) At the end of each fiscal year of the administrator, the administrator must deliver to the [*Enacting Jurisdiction*] Minister for deposit into the consolidated revenue fund the balance remaining in the unclaimed property account at that time less a reasonable reserve, in an amount approved of by the [*Enacting Jurisdiction*] Minister, against future claims against the account including, without limitation, claims by the administrator under subsection (5).

(4) If the amount at any time held in the unclaimed property account is not sufficient to meet the claims against it, the [*Enacting Jurisdiction*] Minister is to pay from the consolidated revenue fund to the credit of the unclaimed property account, without any appropriation other than this section, an amount sufficient to allow the administrator to meet those claims.

(5) The administrator is entitled to claim against the unclaimed property account the prescribed expenses of administration in relation to property and amounts received and administered by the administrator under this Act.

Comment: The administrator must establish and maintain a separate account of unclaimed property, and must record the particulars of the unclaimed property received and how it was invested or otherwise disposed. Section 15(3) and (4) provide for the transfer to the enacting jurisdiction's consolidated revenue fund of the balance of the unclaimed property account, while maintaining a reasonable reserve to permit prompt payment of future claims. The transfer is subject to the obligation to meet claims against the unclaimed property account. The Minister responsible is required, should it be necessary, to pay to the unclaimed property account amounts sufficient to meet the obligations of the program.

Public notice by administrator

16(1) In addition to preparing and maintaining the records referred to in section 15 (2), the administrator must

(a) maintain an electronic or other database of the names of every apparent owner on whose behalf property has been paid or delivered, and amounts in compensation for property have been paid, to the administrator under section 6, 7, 8 or 14(3), and

(b) make the database available to the public in any manner that the administrator considers appropriate.

(2) In addition to preparing and maintaining the records referred to in section 15(2) and the database referred to in subsection (1) of this section, the administrator must, for all property paid or delivered, and for all amounts in compensation for property paid, to the administrator under section 6, 7, 8 or 14(3) that have been in the custody or control of the administrator for at least 24 months,

(a) maintain an electronic or other database of that property and those amounts,

(b) include in the database the prescribed particulars for that property and those amounts, and

(c) make the database available to the public in any manner that the administrator considers appropriate, subject to any restrictions imposed by regulations.

(3) At least annually, the administrator must publicize the existence of and means of accessing the databases in a manner that, in the opinion of the administrator, is reasonably sufficient to bring the databases to the attention of the public.

(4) The administrator is not liable for any loss, cost or damages suffered by any person as a result of any information included in or omitted from a database referred to in this section unless the inclusion or omission was in bad faith.

Comment: After receiving unclaimed property under the Act, the administrator must endeavor to draw the existence of the unclaimed property to the attention of owners. The administrator must maintain and make available to the public a database of the names of apparent owners; and a database of unclaimed property received. Further, the administrator must, at least annually, publicize the existence and means of accessing the databases.

Claims respecting property

17(1) If, under this Act, property is paid or delivered to the administrator or an amount is paid to the administrator in compensation for unclaimed property, a person who asserts a claim to that property or amount may claim that property or amount by filing with the administrator a claim that includes

(a) the full name and address of the claimant,

(b) the basis on which the claim is made, and

(c) any other information the administrator may reasonably require in support of the claim.

(2) The administrator must, within 90 days after a claim is filed under subsection (1), consider the claim and must

(a) allow the claim if the administrator is satisfied that the claimant

(i) is the owner of the property or amount, or

(ii) has a valid entitlement to the property or amount but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming those ownership rights, including, without limitation, in the case of an entitlement arising under an estate, the fact that the estate has not yet been probated, or

(b) if not so satisfied, deny the claim.

(3) Subject to subsection (5), if the administrator allows a claim filed under subsection (1), the administrator must, within 30 days after the claim is allowed,

(a) do one of the following:

(i) pay or deliver to the claimant the property or amount;

(ii) for unclaimed property that has been sold by the administrator, pay to the claimant the proceeds of the sale, net of all costs reasonably incurred in conducting that sale, and

(b) do whichever of the following apply:

(i) if and to the extent that the property was paid or delivered to the administrator as money, pay to the claimant interest on that money calculated from the time the property was paid or delivered to the administrator;

(ii) if and to the extent that the claim relates to an amount received by the administrator under section 6 (3) (b) or 7 (2) (a) in compensation for unclaimed property, pay to the claimant interest on that amount calculated from the time the amount was paid to the administrator;

(iii) if and to the extent that the property was paid or delivered to the administrator in a form other than money,

(A) pay to the claimant any dividend, interest or increment realized on the property calculated from the date that the property was paid or delivered to the administrator to the date that the property was converted into money, and

(B) pay to the claimant interest on the property calculated from the time of its conversion into money;

(iv) if and to the extent that the property was disposed of by the administrator, pay to the claimant interest on the proceeds of disposition calculated from the time of the disposal of that property.

(4) Interest payable under subsection (3) (b) must be calculated at a yearly rate that is [2% below the prime lending rate of the principal banker to the government] [*appropriate government interest amount applicable to the Enacting Jurisdiction*].

(5) The administrator may deduct from the money that the administrator is required to pay to a claimant under subsection (3)

(a) the reasonable costs and expenses incurred, and the prescribed fees of administration charged, by the administrator or the government in relation to

(i) the property received and administered under this Act, or

(ii) the amounts paid in compensation for unclaimed property received and administered under this Act, and

(b) if the claimant was located through the efforts of a person employed or contracted with under section 13(4), the reasonable costs and expenses incurred by the administrator in employing or contracting with that person. (6) On application by a claimant or the administrator, the [superior court] may determine the rights of a claimant under this section. (7) An application to court by a claimant under subsection (6) must be brought

(a) after the expiry of the period of time within which the administrator is required to allow or deny the claim under this Part, and

(b) within any period of time prescribed by the regulations.

Comment: This section establishes the right of an owner of unclaimed property to claim that property. The administrator must, within 90 days of a claim being made, consider and allow the claim if he or she is satisfied that the claimant is the owner. The administrator is also given the discretion to allow a claim if he or she is satisfied that an applicant has a valid entitlement but is prevented from asserting his or her full rights due to a procedural impediment. If the administrator allows a claim, he or she must deliver the property or amount to the owner together with any interest, dividends, or increment realized on the property. The administrator may deduct reasonable costs and prescribed fees of administration. In the event of a dispute between a claimant and the administrator, the superior court of the enacting jurisdiction may determine a claimant's rights on application.

Agreements with other jurisdictions

18(1) For the purpose of locating owners of unclaimed property, the government may enter into one or more agreements with the government of Canada, the government of any province or territory of Canada or the government of any other jurisdiction, and the administrator may enter into one or more agreements with the person who, in another jurisdiction, carries on a role or function similar to the role and function carried on by the administrator under this Act, to enable one or both of the contracting parties

(a) to determine the unclaimed property or amounts to which a contracting party is entitled, or

(b) to exchange information and deliver property or amounts to facilitate the return of unclaimed property

or its value to its rightful owner.

(2) The government may enter into one or more agreements with the government of Canada or the government of any province or territory of Canada to provide for a joint or multi-jurisdictional unclaimed property program to be administered by any party to the agreement.

Comment: Given the interjurisdictional scope of unclaimed property, and the importance of cooperation amongst jurisdictions, section 18 enables the government and the administrator to enter into interjurisdictional agreements. Section 18(1) enables agreements with other jurisdictions to determine unclaimed property to which a contracting jurisdiction is entitled; and to exchange information and to deliver property to facilitate the return of property to its rightful owner. Section 18(2) allows the government to enter into agreements with one or more Canadian jurisdictions to establish joint or multi-jurisdictional unclaimed property programs.

Part 3 – Inspections

Definition

19 In this Part, “holder” has the same meaning as in section 1 (1), and includes a person who the administrator or the inspector has reasonable grounds to believe is a holder.

Comment: Holder is defined in this part to include a person who the administrator or an inspector reasonably believes to be a holder when carrying out inspections under the Act.

Inspection

20(1) For the purpose of ensuring compliance with this Act and the regulations, the administrator or a person authorized in writing by the administrator may conduct an inspection under subsection (2).

(2) In an inspection under this Part, an inspector

(a) may

(i) require the holder of property to produce any records, applicable to the property, that are in the possession or control of the holder, and

(ii) inspect or retain others to inspect any of the records produced under subparagraph (i) that are relevant to the inspection for the purpose of making copies or extracts,

(b) may, for the purposes of paragraph (a) or otherwise, attend at any business premises of a holder during business hours and remove any records referred to in paragraph (a)(i) and inspect those premises and the operations carried on at those premises,

(c) may question a person who the inspector has reasonable grounds to believe has information relevant

to the matters that the inspector considers are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the questioning,

(d) must carry identification in the prescribed form, and

(e) must present the identification to the registered owner or occupant of the premises.

(3) Without limiting subsection (2) (a), an inspector may require the production of all business records of a holder that may be relevant to the inspection, including, without limitation, any of the following:

(a) accounting books;

(b) cash;

(c) bank account records;

(d) vouchers;

(e) correspondence;

(f) contracts.

(4) A holder and the holder's employees must cooperate with an inspector by

(a) permitting that inspector, during business hours, to enter any business premises of the holder at which the inspector has reasonable grounds to believe that records of the holder that are relevant to the inspection are located,

(b) producing and permitting examination of those records, and

(c) providing any assistance and information that the holder or employee is reasonably able to give respecting those records and respecting any property being held for an apparent owner.

(5) If an inspector removes any records under subsection (2) (b), he or she must give a receipt for them to the person from whom they are taken.

(6) A person must not obstruct an inspector or withhold, destroy, conceal or refuse to produce any information, record or thing that is required by the inspector or is otherwise relevant to any of the matters in relation to which the inspection may be conducted.

(7) If, in an inspection, it is determined that the holder was required to but failed to comply with section 6 or 7, the administrator may assess the holder for the prescribed costs of the inspection and the holder must promptly pay those costs to the administrator.

Comment: The inspection provisions allow the administrator, where necessary in a given instance, to obtain information required to ensure compliance with the Act. Section 20(2) provides that the administrator may require a holder to produce applicable records, and may inspect and make copies of such records. An inspector may inspect a holder's premises and question relevant persons. A holder and its employees are required to cooperate with an inspector and must produce business records when required.

Warrants

21(1) A justice may, in relation to an inspection under section 20, issue a warrant authorizing the person named in the warrant and, if appropriate, any peace officer that the person may call on for assistance under subsection (8) of this section, to do one or more of the following:

(a) enter any business premises of the holder being inspected for the purpose of searching for, inspecting and removing any records and things relevant to the inspection;

(b) enter any other property, including a room actually used as a dwelling, or to search any thing, for the purpose of searching for, inspecting and removing any records and things relevant to the inspection.

(2) A warrant may be issued under subsection (1) if the justice is satisfied on information under oath that,

(a) in the case of a warrant to be issued under subsection (1) (a), there are reasonable grounds to believe that a person who has possession of or control over records of the holder that are relevant to the inspection has not produced or will refuse to produce one or more of those records to an inspector, or

(b) in the case of a warrant to be issued under subsection (1) (b), there are reasonable grounds to believe that

(i) an offence under section 27 has been committed, and

(ii) there is, on or in the premises, record or thing to be searched, as the case may be, a record or thing that will provide evidence of the commission of the offence.

(3) A warrant issued under this section must specify the hours and days during which it may be executed.

(4) Unless renewed, a warrant issued under this section expires not later than 30 days after the date on which it is made.

(5) An application for the issue or renewal of a warrant under this section may be made without notice.

(6) A warrant issued under this section may be renewed for any reason for which it may be issued.

(7) An inspector may call on any experts that are reasonably necessary to assist the person in carrying out the inspection.

(8) A person doing anything under the authority of a warrant issued under this section, whether or not the warrant expressly authorizes a peace officer to assist the person, may call on peace officers to assist, if necessary, in the execution of the warrant. [*Different jurisdictions may wish to prepare different warrant provisions*]

Comment: This section is square bracketed as different provinces or territories may wish to include their own warrant provisions.

Copies of records

22(1) An inspector who removes any records may make copies of them, take extracts from them or otherwise record them, and must return them within a reasonable time.

(2) Copies of or extracts from records removed under section 20 or 21 are admissible in evidence to the same extent, and have the same evidentiary value, as the original records if those copies or extracts are certified by the person who made them as being true copies of or extracts from the originals.

Comment: Section 22(1) enables an inspector to make copies or make extracts of records and requires them to be returned in a reasonable time. This power is ancillary to the general inspection powers. Section 22(2) provides for the evidentiary status of certified copies or extracts of records.

Confidentiality

23 A person, including the administrator, must not disclose or be compelled to disclose any information or record that is obtained in the course of an inspection authorized by or under this Act unless

(a) the disclosure is necessary in the administration of this Act or under an agreement referred to in section 18, or

(b) the disclosure is required in a court proceeding. **Comment:** This section requires confidentiality of information or records unless required pursuant to the Act, an agreement entered into between jurisdictions, or a court proceeding.

Part 4 – Enforcement

Determination and review

24(1) If the administrator determines that a reporting holder has not paid or delivered unclaimed property as required by this Act, the administrator may make a determination as to

(a) the unclaimed property that is payable or deliverable,

(b) the value of that unclaimed property as of April 30 of the year in which the holder was required to pay or deliver the unclaimed property, and

(c) the amount of interest that, under section 28, has accrued and will continue to accrue until

(i) the unclaimed property is paid or delivered, or

(ii) an amount in compensation for that unclaimed property is paid under section 6(3)(b) or 7(2)(a).

(2) A determination made under subsection (1) must be provided to the holder by

(a) personal delivery,

(b) registered mail, or

(c) any other prescribed manner.

(3) Unless the holder to whom a determination is provided under subsection (2) objects in accordance with subsection (4), the determination is final and the holder must, within 60 days after receipt of that determination,

(a) pay or deliver the unclaimed property as required by this Act, and

(b) pay to the administrator any interest referred to in the determination.

(4) A holder to whom a determination is provided under subsection (2) may object to that determination by filing with the administrator, within 60 days after receipt of the determination, a written objection setting out the facts on which the objection is based.

(5) If the administrator receives a notice of objection under subsection (4), the administrator must reconsider the determination and, after that, must

(a) determine the unclaimed property, if any, that is payable or deliverable,

(b) determine the value of the unclaimed property as of April 30 of the year in which the holder was required to pay or deliver the unclaimed property,

(c) determine the amount of interest, if any, that, under section 28, has accrued and will continue to accrue until

(i) the unclaimed property is paid or delivered, or

(ii) an amount in compensation for that unclaimed property is paid under section 6(3)(b) or 7(2)(a),

(d) advise the holder by personal delivery or registered mail of the final determination arising from the review, and

(e) return to the holder any property that the holder has paid or delivered to the administrator and that the administrator has determined should be returned. (6) A holder must, within 60 days after receipt of a final determination under subsection (5) and whether or not an appeal is brought under section 25,

(a) pay or deliver the unclaimed property in accordance with the final determination, and

(b) pay to the administrator any interest referred to in the final determination.

Comment: The purpose of section 24 is to provide a process by which the administrator and a holder may endeavour to resolve a disagreement where property has not been delivered to the administrator as required. If the administrator determines that a holder has not delivered unclaimed property as required under the Act, the administrator may make an initial determination respecting the property that is deliverable, its value and interest. Unless the holder objects within 60 days, the initial determination becomes final. If a holder files an objection setting out the facts on which the objection is based, the administrator must reconsider the initial determination. Should the administrator confirm the initial determination, the holder must comply within the time required.

Appeal from determination of the administrator

25(1) A holder who disputes a reconsideration of the administrator made under section 24 or under subsection (2) (b) of this section may, within 30 days after receipt of the administrator's decision, appeal that decision to [a superior court].

(2) On an appeal under subsection (1), the [court] may

(a) allow the appeal or part of the appeal and vacate or vary the determination,

(b) refer the determination back to the administrator for reconsideration and redetermination, or

(c) dismiss the appeal.

Comment: This section enables a holder who disputes the administrator's reconsideration to appeal to the superior court of the jurisdiction. A jurisdiction may prefer that appeals be to an administrative tribunal, perhaps with further appeals on questions of law to a superior court or court of appeal.

Court may enforce obligations

26 On application by the administrator, the [superior court] may order a holder of unclaimed property or any other person or entity to provide records, deliver property or pay any amount in accordance with this Act or the regulations, or to otherwise comply with this Act and the regulations.

Comment: Should it be necessary, the administrator may apply for a court order to enforce compliance with the Act and Regulations.

Offences

27(1) A person commits an offence who

(a) knowingly obstructs or hinders an inspector carrying out or attempting to carry out an inspection under this Act,

(b) knowingly participates in, assents to or acquiesces in the making of an incorrect statement or omission in a report or return under this Act or the regulations,

(c) without reasonable excuse, fails to maintain, in accordance with this Act or the regulations, a record that the person is required under this Act to maintain,

(d) without reasonable excuse, fails to file a report, pay or deliver unclaimed property or pay an amount in compensation for property as required by this Act or the regulations, or

(e) without reasonable excuse, fails to comply with a demand of the administrator under section 10.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction to a fine of not more than \$5 000, or, if the person is a corporation, to a fine of not more than \$25 000.

(3) If a corporation commits an offence under subsection (1), any director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence, and is liable on summary conviction to a fine of not more than \$5 000 whether or not the corporation has been prosecuted or convicted.

(4) A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

(5) [*Provincial or territorial statutory offence Act*] does not apply to this Act or the regulations.

Comment: This section sets out the types of misconduct which constitute offences under the Act.

Interest 28(1) Unless exempted from doing so by the administrator, a holder who has not paid or delivered unclaimed property in the manner and time required under section 6 or 7(2) or who has not paid an amount to the administrator in compensation for that unclaimed property in the manner and time required under section 6(3)(b) or 7(2)(a), must pay to the administrator interest on the value of the unclaimed property. (2) Interest payable under subsection (1) of this section must be paid

(a) at [a yearly rate that is 2% above the prime lending rate of the principal banker to the government or at such other rate as may be prescribed or] [*appropriate government interest amount applicable to the*

Enacting Jurisdiction], and

(b) from April 30 of the year in which the holder was required to pay or deliver the unclaimed property to the administrator up to and including the date on which the unclaimed property is paid or delivered or the amount is paid to the administrator.

Comment: This section provides that, unless otherwise exempted by the administrator, a holder must pay interest as prescribed on property or amounts unpaid.

Part 5 – General

Agreements to locate property

29(1) An agreement by which one party to the agreement agrees to locate or recover unclaimed property for an owner

(a) must clearly set out the terms of the agreement, including the value of the unclaimed property and the total cost of the contract to the owner, and

(b) must be in writing and signed by the owner.

(2) A provision in an agreement referred to in subsection (1) is of no force or effect if it provides for unreasonable compensation or expenses or both or is otherwise unconscionable.

(3) The Lieutenant Governor in Council, for the purposes of subsection (2), may prescribe a maximum amount of compensation or expenses or both and may prescribe different maximum amounts based on different values of the unclaimed property involved, and, if a regulation is made under this subsection, any compensation or expenses or both provided for in an agreement that exceed that prescribed maximum are, for the purposes of subsection (2), unreasonable.

(4) Despite any provision of an agreement referred to in subsection (1), of an assignment, of a transfer, of a power of attorney or of any other similar record, the administrator may pay or deliver any unclaimed property or pay any amount directly to a claimant who satisfies the administrator under section 17(2)(a).

(5) An agreement referred to in subsection (1) is of no force or effect if it is made within the period beginning on the date on which the property becomes unclaimed property under this Act and ending on the date that is 24 months after the date on which the administrator obtains the unclaimed property under this Act.

(6) This section does not apply to an agreement between an owner and a lawyer under which the lawyer agrees to act in his or her professional capacity, as lawyer for the owner, to assist the owner to locate or recover unclaimed property.

Comment: This section provides for rules respecting agreements to locate or recover unclaimed property

entered into between owners and property locator firms. Section 29(3) permits the Lieutenant Governor in Council to prescribe maximum amounts of compensation or expenses.

Section 29(4) provides that the administrator may deliver unclaimed property directly to a claimant who satisfies the administrator that he or she is entitled to the property.

Section 29(5) limits agreements to locate unclaimed property to the period beginning 24 months after the administrator obtains the property. This section does not apply to agreements between an owner and a lawyer acting in his or her professional capacity as a lawyer on behalf of the owner.

No contracting out

30 An agreement excluding or purporting to exclude one or more provisions of this Act has no effect.

Comment: In order to protect owners of unclaimed property, the provisions of the Act may not be excluded by agreements.

Rights unaffected by limitation periods

31(1) The expiration, before or after the coming into force of this Act, of a period of limitation in relation to property or any person's rights in relation to that property does not

(a) affect the person's rights to receive or recover the property from the administrator or a holder, whether or not those rights are derived from or specified by contract, statute or court order,

(b) preclude the property from being or becoming unclaimed property, and

(c) affect any duty, arising under this Act, to

(i) provide any notice,

(ii) deliver any report,

(iii) maintain any records,

(iv) pay any amount, or

(v) pay or deliver the property.

(2) Without limiting subsection (1), if there is a conflict or an inconsistency between this Act and the Limitation Act, this Act prevails.

Comment: This section ensures that the rights and obligations under the Act are not affected by periods of limitation. It should be noted that this does not extend the liability of a holder after he or she has complied with the Act.

Power to make regulations

32(1) [The Lieutenant Governor in Council may make regulations that are considered necessary and advisable for, ancillary to and not inconsistent with this Act.]

(2) Without limiting subsection (1) and section 29

(3), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing things or classes of things that do not constitute property;
- (b) designating one or more jurisdictions as reciprocating jurisdictions;
- (c) prescribing any or all of the form of any records, the information to be contained in any records and the manner of providing any records, that are to be provided to or by the administrator;
- (d) prescribing the maximum amount of any fees or charges that a holder may charge an owner or an apparent owner under section 5;
- (e) respecting the records that must be maintained by a holder in relation to property;
- (f) respecting any fee or expense that may be charged or deducted by the administrator under this Act;
- (g) respecting the time within which an application may be brought under section 17 (7) (b);
- (h) respecting the form of identification to be carried by an inspector under this Act;
- (i) respecting the inspection costs that may be assessed under section 20 (7);
- (j) prescribing the rate of interest, or the manner of calculating the rate of interest, that is payable under section 28;
- (k) for any other matter necessary or advisable to carry out this Act.

Comment: This section sets out the matters upon which the Lieutenant Governor in Council may make regulations with respect to administrative rules which may require periodic alteration due to changing circumstances.

Transition

33(1) Subject to subsection (2), the periods of time set out in this Act and the regulations for calculating when property becomes unclaimed property may include or consist of periods of time occurring before as well as after the coming into force of this Act. (2) This Act applies to all unclaimed property unless

(a) all legal and equitable interests in that property were extinguished or forfeited, before the coming into force of this Act, in accordance with a provision of an enactment or of a contract, bylaws, letters patent, articles of association or incorporation or any other similar instrument, or

(b) the property would have become unclaimed property more than 5 years before the coming into force of this Act had the definition of that term in section 1 and any regulations made in relation to that definition been in force at that time.

Comment: This section provides that the Act does not apply to property in respect of which the owner's interest has been extinguished at law or to property which has become abandoned within the meaning of section 2 more than five years before the coming into force of this Act.

Commencement

34 This Act comes into force by regulation of the Lieutenant Governor in Council.

Comment: This section provides that the Act comes into force by regulation of the Lieutenant Governor in Council. This would permit a sufficient period of time for affected parties to prepare for the coming into force of the Act.