



**Manitoba Law
Reform Commission**

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

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**Abandoned Accounts and Missing Money: Establishing a Process for Unclaimed Intangible
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.

Commissioners: Cameron Harvey, Q.C., President
Jacqueline Collins
Michelle Gallant
Sacha Paul
Myrna Phillips

Legal Counsel: Kristal Bayes-McDonald
Elizabeth McCandless
Stefanie Goldberg

Administrator: Linda Manson

The Commission offices are located at 432–405 Broadway, Winnipeg, MB R3C 3L6.

Tel: (204) 945-2896 **Email:** mail@manitobalawreform.ca

Fax: (204) 948-2184 **Website:** <http://manitobalawreform.ca>

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

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EXECUTIVE SUMMARY

Personal property, such as account balances, insurance policies, wages owed, and deposits, can and do become abandoned or forgotten. In other provinces and international jurisdictions, established laws and processes enable the reunification of individuals with their unclaimed property. In Manitoba, no such process exists.

The Manitoba Law Reform Commission (the “Commission”) decided to study the issue of whether this province should enact unclaimed property legislation similar to the legislation enacted in Alberta, British Columbia, Quebec and New Brunswick and recommended by the Uniform Law Conference of Canada (“ULCC”) in its draft Act.¹ The Commission has, therefore, conducted extensive research, conferred with individuals in the enacting jurisdictions and consulted with interested parties to determine the benefits and difficulties of establishing an unclaimed property program in this province.

The Commission recommends that Manitoba establish a process for the management of unclaimed intangible personal property. In doing so, the Commission recommends that both the types of intangible unclaimed property to be covered under the Act and the definition of “holder”, who will be subject to the requirements to remit property to the administrator, be broadly defined. Remittance of unclaimed property by the holder to the administrator of unclaimed property should be mandatory after an enumerated period of time.

In considering whether Manitoba should enact unclaimed intangible personal property legislation, the Commission started from the position that unclaimed personal property should not rest indefinitely with holders who are not the rightful owners of the property. The main objective of such legislation should, therefore, be the facilitation of a process to reunite owners with their property in a way that is efficient for the government or third party to administer and accessible for the owners of such property to use.

¹ Uniform Law Conference of Canada, *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 A.

RÉSUMÉ

Les biens personnels, comme les soldes de compte, les polices d'assurance, les salaires dus et les dépôts peuvent être oubliés ou laissés à l'abandon; cette situation se produit régulièrement. Ailleurs au Canada et dans d'autres pays, des lois et processus sont établis pour permettre aux gens d'entrer en possession de leurs biens non réclamés. Au Manitoba, de tels processus n'existent pas.

La Commission de réforme du droit du Manitoba (la « Commission ») a décidé de se pencher sur l'opportunité, pour la Province, d'édicter des mesures législatives semblables à celles qui existent en la matière en Alberta, en Colombie-Britannique, au Québec et au Nouveau-Brunswick et qui sont recommandées par la Conférence pour l'harmonisation des lois au Canada (« CHLC ») dans son avant-projet de loi. La Commission a donc procédé à des recherches approfondies, s'est entretenue avec différentes personnes dans les provinces qui ont légiféré en la matière et a consulté des parties intéressées pour connaître les avantages et les difficultés de l'établissement d'un programme concernant les biens non réclamés au Manitoba.

La Commission recommande que le Manitoba mette sur pied un processus de gestion des biens personnels incorporels non réclamés. La Commission recommande que, ce faisant, les types de biens incorporels non réclamés qui seront visés par la loi et la définition de « détenteur », c'est-à-dire la personne qui sera assujettie à l'obligation de remettre les biens à l'administrateur, soient formulés en termes larges. La remise des biens non réclamés par le détenteur à l'administrateur des biens non réclamés devrait être obligatoire au terme d'une période déterminée.

Lorsqu'elle s'est demandé si le Manitoba devrait édicter des mesures législatives concernant les biens personnels incorporels non réclamés, la Commission est partie du principe que les biens personnels non réclamés ne devraient pas demeurer indéfiniment entre les mains de détenteurs qui n'en sont pas les propriétaires légitimes. Par conséquent, le principal objectif de ces mesures devrait être de faciliter l'instauration d'un processus visant à remettre les biens non réclamés à leurs propriétaires de manière efficace pour le gouvernement ou le tiers chargé de son administration et accessible pour les propriétaires de ces biens.

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.

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.² Even where unclaimed personal property is remitted to holders and the government, the legislation provides no guidance for an individual to find out if they are the rightful owner and to apply to claim the money if they establish that 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 has considered 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.³ In Manitoba, both these situations are addressed in the same piece of legislation, *The Escheats Act*.⁴ The full version of this Act can be found at Appendix “B”.

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, Ontario and New Brunswick, have introduced changes to modernize and improve legislation related to property that vests in the Crown.

In October 2019, the Commission released a Consultation Paper inviting readers to provide their comments on ten issues for discussion. The feedback received through this consultation process assisted the Commission in crafting the recommendations for legislative change contained in this Final Report.

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

² 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.

³ 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.

⁴ RSM 1987, c E140.

jurisdictions. Chapter 4 sets out the recommended reforms to Manitoba's legal framework for escheats and unclaimed property, including the establishment of an unclaimed property program to be established by legislation. Chapter 5 provides a summary of the Recommendations contained throughout the Final 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 derived from the Crown. This concept evolved in Canada as estates originating with the Crown rather than a feudal lord.⁵

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.⁶ 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.⁷

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.⁸ Note, however, that property coming under federal jurisdiction, such as unclaimed personal property held in banks, vests in the federal Crown.⁹

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;¹⁰ or
- Personal property is obtained in the commission of a crime.

⁵ See *Re Hole* (1948), [1948] 2 WWR 754 (Man KB).

⁶ *Ibid.*

⁷ *Ibid.* See also *Re Miller Estate* (1957), 22 WWR 571 (Man QB).

⁸ 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."

⁹ See the *Bank Act*, SC 1991, c 46.

¹⁰ 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.¹¹

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

In Manitoba, vacant property is dealt with in *The Escheats Act*.¹² Escheats legislation was first enacted in Manitoba in 1884, and it remains largely unchanged since its enactment.¹³ It applies to all vacant and escheated property for any cause except crime.¹⁴ *The Escheats Act* is a concise statute composed of only seven sections. It appears to be modelled after Ontario's old *Escheats Act*¹⁵ (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.¹⁶

As this section suggests, the legislation captures all situations where property of any kind has become forfeited "for any cause." The Lieutenant Governor in Council¹⁷ (LGC) is responsible for administering the Act.¹⁸ In practice, this means that the Executive Council of Government, or 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 LGC with respect to making grants, vesting property in others who may be entitled, and

¹¹ *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 4; *Escheats Act*, RSNS 1989, c 151; *Escheats and Forfeitures Act*, RSNB 2014, c 107; *Escheats Act*, RSPEI 1988, c E-10.

¹² *The Escheats Act*, *supra* note 4. *The Vacant Property Act*, RSM 1987, c V10 affirms that vacant property is subject to the application of *The Escheats Act*.

¹³ SM 1884, c 26.

¹⁴ *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.

¹⁵ RSO 1990, c E 20.

¹⁶ *The Escheats Act*, *supra* note 4, s 3.

¹⁷ Pursuant to *The Interpretation Act*, CCSM c I80, "Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of the Executive Council (i.e. Cabinet).

¹⁸ *Ibid*, ss 3-6.

assigning personal property.¹⁹ The authority of the LGC in administering *The Escheats Act* dates back to the first enactment of the statute in 1884.²⁰ *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, 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 an intestate,²¹ as described above, or for property of a corporation that dissolves before its assets are disposed of.²²

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*.²³

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.

¹⁹ *Ibid.*

²⁰ *The Escheats Act*, SM 1884, c 26, *supra* note 13, ss 3-9.

²¹ *The Intestate Succession Act*, SM 1989-90, c 43, s 7.

²² *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 property applies.

²³ *The Vacant Property Act*, *supra* note 12.

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.²⁴ *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.²⁵ 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*.²⁶

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.²⁷ In cases where funds have been moved into the Consolidated Fund, LGC 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.²⁸ This does not, however, 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.²⁹ If the corporation's property is not disposed of at the date of dissolution, pursuant to the Act, the property (both real and personal) vests in the Crown:

²⁴ *The Escheats Act*, *supra* note 4 at s 7.

²⁵ *The Public Guardian and Trustee Act*, CCSM c P205, s 7(1).

²⁶ SM 1989-90, c 43.

²⁷ Based on conversations with Crown counsel on 29 April 2019.

²⁸ *Supra* note 22, s 203.

²⁹ *Ibid*, s 205(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.

Despite the direction in s. 221(1) that property held by a dissolved corporation vests in the Crown, this rarely occurs in practice. No formal process exists for the Crown to be made aware of the dissolution of a corporation or the existence of undisbursed assets in its name. Assets typically remain in the name of the corporation and are made available to the corporation upon its revival.

Where the property is, in fact, transferred to the Crown, attempts are made to attempt to locate the rightful owner. Where such attempts are unsuccessful, the property is transferred to the Crown's Consolidated Fund. This means that LGC 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 LGC 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.³⁰

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.

³⁰ *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 73.³¹ Payments are made payable to the Minister of Finance.³² Pursuant to *The Suitsors' Money Act*,³³ money paid into court (not including interim custody deposits, fines or penalties³⁴) form part of the Consolidated Fund and are held in trust for the credit of the persons entitled to it.³⁵ Where money paid into court has not been paid out within five years, a notice is published in *The Manitoba Gazette*.³⁶ After six years have passed without an application for payment, the money (plus accumulated interest) is treated as general revenue.³⁷ 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.³⁸ Currently, there is no time limit for rightful claimants to make a claim to unclaimed funds held by the court.

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*³⁹ 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.⁴⁰

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.

³¹ Man Reg 553/88, Rule 73.

³² *Ibid*, Rule 73.02(2).

³³ RSM 1987, c S220.

³⁴ *Ibid*, s 2.

³⁵ *Ibid*, s 3(3).

³⁶ *Ibid*, s 8(1).

³⁷ *Ibid*, s 8(2).

³⁸ *Ibid*, s 8(3).

³⁹ CCSM, c C301, s 39.

⁴⁰ Man Reg 361/87.

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 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 the responsibility of the LGC and Cabinet, 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")⁴¹ drafted legislation for provinces and territories that may want to enact unclaimed property legislation. The *Uniform Unclaimed Intangible Property Act* ("ULCC Act")⁴² 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."⁴³ The ULCC Act's drafting was informed by the U.S. *Uniform Unclaimed Property Act of 1995*,⁴⁴ 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.⁴⁵

B. Other Canadian Jurisdictions

1. British Columbia

The *Unclaimed Property Act*⁴⁶ was enacted in 1999 and replaced the *Unclaimed Money Act*.⁴⁷ The legislation sets out, among other things, the type of property to which the statute applies, which

⁴¹ 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>>.

⁴² ULCC Act, supra note 1.

⁴³ *Ibid.*

⁴⁴ U.S. National Conference of Commissioners on Uniform State Laws, *Uniform Unclaimed Property Act* (1995), available online: <https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>.

⁴⁵ 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."

⁴⁶ SBC 1999, c 48 [BC Act].

⁴⁷ RSBC 1996, c 467, repealed April 1, 2000.

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 British Columbia 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.⁴⁸ 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).⁴⁹ 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.⁵⁰

2. Alberta

The *Unclaimed Personal Property and Vested Property Act*⁵¹ 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 British Columbia’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.⁵² According to the website, as of March 31, 2018, there were approximately 225,000 unclaimed items in the Alberta property registry, with an estimated value of \$82 million.⁵³

3. Quebec

Quebec’s *Unclaimed Property Act*⁵⁴ 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

⁴⁸ British Columbia Unclaimed Property Society, Annual Report 2018, “2018 Snapshot”, online: <<https://unclaimedpropertybc.ca/wp-content/uploads/2014/01/Annual-Report-2018.pdf>>.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ SA 2007, c U-1.5 [Alberta Act].

⁵² *Ibid.*, s 36.

⁵³ Alberta’s Unclaimed Property website, online: <<https://www.alberta.ca/unclaimed-property.aspx>>.

⁵⁴ CQLR c B-5.1 [QB Act].

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.”⁵⁵ 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.⁵⁶

4. New Brunswick

On March 17, 2020, New Brunswick became the latest province to enact unclaimed property legislation with the proclamation of the *Unclaimed Property Act*.⁵⁷ Under this new legislation, the province’s businesses and government entities holding lost or forgotten financial property are required to make attempts to locate the rightful owners and, if unsuccessful, to report and remit the property to the Unclaimed Property Program administered by The Financial and Consumer Services Commission of New Brunswick (“FCNB”). While this legislation is in force and establishes the rights and duties of holders and the director of the program, the claims process, record-keeping requirements, and compliance and enforcement provisions have yet to be finalized.⁵⁸

5. 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*⁵⁹ and replaced it with the *Escheats Act, 2015*⁶⁰ and the *Forfeited Corporate Property Act, 2015*.⁶¹ 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

⁵⁵ *Ibid*, s 1.

⁵⁶ *Ibid*.

⁵⁷ SNB 2020, c 5 [NB Act].

⁵⁸ Proposed rules and fee schedules were published on September 8, 2020. The Financial Services Commission sought comments on the proposed rules and the deadline for written comments was November 23, 2020.

⁵⁹ RSO 1990, c E 20.

⁶⁰ SO 2015, c 38, Sch 4.

⁶¹ SO 2015, c 38, Sch 7.

with escheated property,⁶² while under the *Forfeited Corporate Property Act, 2015*, the Minister of Economic Development, Employment and Infrastructure is responsible for administering the statute.⁶³

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 Intangible Property Act*⁶⁴ was never proclaimed. If it had been proclaimed into force, the Public Guardian and Trustee would have been authorized to administer the legislative scheme.⁶⁵ 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”⁶⁶ and to allow “...unclaimed intangible property to be used for the benefit of the people of Ontario until the property is claimed by its owner.”⁶⁷ It appears that the Ontario government chose to abandon unclaimed property legislation, instead opting to focus on changes to forfeited corporate property.

6. 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*⁶⁸, 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.⁶⁹ The Bank of Canada will not attempt to locate account holders, although it will use available information to send notices and has both a searchable registry and a process to submit claim requests.⁷⁰ 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.⁷¹ In 2018, the Bank of Canada held approximately two million unclaimed balances, valued at \$816 million and paid out \$11 million to balance holders.⁷²

⁶² *Escheats Act, 2015*, *supra* note 11, ss 9-10.

⁶³ *Forfeited Corporate Property Act, 2015*, *supra* note 11, ss 3-4.

⁶⁴ RSO, c U.1.

⁶⁵ *Ibid*, ss 6-12.

⁶⁶ *Ibid*, s 2(1).

⁶⁷ *Ibid*, s 2(2).

⁶⁸ SC 1991, c 46.

⁶⁹ *Ibid*, s 438.

⁷⁰ Bank of Canada, “Unclaimed Balances”, online: <<https://www.bankofcanada.ca/unclaimed-balances/>>.

⁷¹ *Ibid*.

⁷² *Ibid*.

In 2018, the federal government began a review of its unclaimed balances regime, which includes a proposal for an unclaimed pension balances framework.⁷³ To date, the federal government has not introduced any changes to the legislation.

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*.⁷⁴ 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*.

D. Internationally

In addition to the United States, many other countries have enacted unclaimed property legislation either at the national or state level. These include Australia⁷⁵, the United Kingdom⁷⁶, Japan⁷⁷, New Zealand⁷⁸ and Kenya⁷⁹.

⁷³ 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 >.

⁷⁴ U.S. National Conference of Commissioners on Uniform State Laws, *Uniform Unclaimed Property Act* (1995), available online: <https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>. Note that the Act was amended in 2016 to update rules related to unclaimed gift cards, life insurance benefits, securities, dormancy periods and contract auditors. See 2016 update, online: <<https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>>.

⁷⁵ *Banking Act 1959*, (Austl), 1959/6, s 69 federally as well as each territory: *Unclaimed Money Act* (ACT), 1995/A1950-15; *Unclaimed Money Act* (NSW), 1995/75; *Public Trustee Act* (QLD), 1978; *Unclaimed Monies Act* (SA), 1891/ 1.7.1999; *Unclaimed Money Act* (Vic), 2008/44; and *Unclaimed Money Act* (WA), 1990/31.

⁷⁶ *Dormant Bank and Building Society Accounts Act* (UK), 2008. Separate laws exist in Scotland, Wales, Guernsey, Jersey, and Ireland.

⁷⁷ *Dormant Deposit Utilization Act* (JN) 2016.

⁷⁸ *Unclaimed Money Act* (1971) no 28.

⁷⁹ *Unclaimed Financial Assets Act* (2011) no 40.

CHAPTER 4: POTENTIAL REFORM IN MANITOBA

Having described the current escheats and vacant property statutes and processes in Manitoba and the unclaimed property Acts existing in other Canadian and international jurisdictions, the following section will consider whether Manitoba should enact unclaimed property legislation and, if so, what it should entail.

A. The Consultation Process

On October 24, 2019, the Commission released a Consultation Paper titled *Abandoned Accounts and Missing Money: Establishing a Process for Unclaimed Intangible Personal Property*. The purpose of the consultation process was to gather a broad range of perspectives on Manitoba's current escheats and vacant property laws, consider whether to recommend the enactment of unclaimed property legislation and, if so, what elements such legislation should include.

The Consultation Paper was posted on the Commission's website, circulated to the Commission's mailing list, and sent directly to certain individuals and organizations. The Commission received a number of written submissions and informal responses to its proposed recommendations and spoke to many individuals both within and outside Manitoba.

B. Recommendations for Reform

Establishing an Unclaimed Property Regime in Manitoba

The main issue considered by the Commission is whether Manitoba should enact unclaimed property legislation and, if so, what elements should be contained in the legislation. In considering whether Manitoba should enact unclaimed intangible personal property legislation, the Commission was 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 as much as possible.
- The process for maintaining and claiming unclaimed property should be efficient to administer and accessible for apparent owners.

Several benefits of enacting unclaimed property legislation have been identified. For the holders of such property, legislation would provide clarity around the rules regarding remittance, recording and reporting obligations. Additionally, the establishment of a system would free holders from the expense and liability of carrying unclaimed property on their books. From the perspective of property owners, legislation can centralize the claims process. From a societal perspective, reuniting owners with their unclaimed assets would return such funds into circulation instead of sitting dormant in various accounts.

Additionally, 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 LGC 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.

Based on the current landscape on unclaimed property legislation in Canada, guided by the principles above, and supported by the feedback received in response to the Consultation Paper, the Commission believes that Manitoba should adopt unclaimed personal property legislation.

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.

Recommendation 1: The Province of Manitoba should establish an unclaimed personal property regime enacted through stand-alone unclaimed property legislation.

Elements of an Unclaimed Property Regime

The key elements of unclaimed property legislation are:

- Whether remittance of unclaimed property to the administrator should be mandatory or voluntary;
- 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.

1. Mandatory vs. Voluntary Remittance of Unclaimed Property

In the jurisdictions that have adopted unclaimed property legislation, two main models exist for the administration of property that meets the legislative definition of "unclaimed property":

- i. *Remittance Model*- where after the expiration of a dormancy period, property that remains unclaimed by the owner must be remitted to a designated administrator of unclaimed property; and
- ii. *Public Database Model*- where holders of unclaimed property retain the property and are subject to legislative and regulatory obligations to attempt to reunite potential owners with the unclaimed property.

In Canada, each enacting jurisdiction has established a remittance model of unclaimed property administration with the exception of British Columbia, which adopted a hybrid of the two main models.⁸⁰

Feedback on whether holders should be required to mandatorily remit unclaimed property in their possession to an administrator was mixed. Some industry groups were supportive of the public database model which they tout as being more consumer-friendly, affordable for government and business, and capable of preserving the character of unclaimed assets and their underlying policy rationale.⁸¹

Others advised that enabling individual holders to retain individuals' unclaimed property and administer their own processes to attempt to locate potential owners and return their assets to them would require a significant amount of oversight on the part of the administrator tasked with ensuring holders' compliance with their statutory obligations. Inevitably, there would be holders who would not meet their obligations resulting in owners who would not be made aware of and reunited with their property. Additionally, for smaller businesses, requirements to establish publicly accessible databases and administer claims processes would be financially and administratively onerous.

For these reasons, the Commission recommends that all holders of property be required to remit property that meets the definition of "unclaimed" pursuant to the Act to remit the property to the statutorily-appointed administrator of the unclaimed property program.

Recommendation 2: Manitoba should adopt a remittance model of unclaimed property administration and the Act should establish that all holders, as defined in the legislation, should be required to remit property encompassed under the legislation to the administrator of unclaimed property after the prescribed dormancy period.

⁸⁰ Under British Columbia's legislation, some holders are obligated to report and remit unclaimed property to the third-party administrator, including municipal and provincial courts, credit unions, and real estate agencies, while all others are subject to obligations to attempt to locate owners and to maintain their own separate public and searchable databases of unclaimed property held by their organizations. Pursuant to s 12(1) of the *Unclaimed Property Act*, in certain circumstances, those holders who are not subject to mandatory remittance requirements may voluntarily remit unclaimed property to the administrator.

⁸¹ Examples of these assets include securities and registered savings plans.

2. Types of Property Included

One of the most important issues in establishing unclaimed property legislation is determining what types of property fit within the scope of the legislation.

2.1 Property Included in Other Jurisdictions

The definition of property contained 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;⁸²

The ULCC Act further provides that the definition of property is non-exhaustive and the definition is not limiting. Certain types of property can be excluded by regulation in the governing jurisdiction.⁸³ 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.”⁸⁴

Interestingly, no Canadian jurisdiction has adopted the ULCC Act’s definition of property *verbatim*.

⁸² ULCC Act, *supra* note 41, s 1(1).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

The following table provides a summary of the major 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	British Columbia ⁸⁵	Alberta ⁸⁶	Quebec	New Brunswick ⁸⁷
Unclaimed court fees	Yes	Yes	Yes	No	Yes
Corporate property not dispersed before dissolution	Yes	Yes	Yes	Yes	Yes
Credit unions	Yes (presumably)	Yes	No	Yes	Yes
Securities (bonds, dividends, etc.)	Yes	Yes	Yes	Yes	Yes
Insurance products⁸⁸	Yes	Yes	Yes	Yes	Yes
Trust or custodial funds (health, pension, etc.)	Yes	Yes	Yes	Yes	Yes
Money received as a deposit⁸⁹	Yes	Yes	Yes	Yes	Yes
Safety deposit boxes	Yes	Yes	Yes	Yes	
Unclaimed successions	Yes	Yes	Yes	Yes	Yes
Property recovered on deceased persons	Silent	Silent	Silent	Yes	Silent
Unpaid wages	Yes	Yes	Yes	No	Yes
Money orders	Yes	Yes	Yes	Yes	Yes

2.2 General Principle of Inclusion

In accordance with the guiding principles established by the Commission and set out on page 17, the Commission’s view is that the types of property covered under unclaimed property legislation should be broadly construed and only where there is a valid reason should exclusions be made. While there should be exemptions where existing legal and regulatory requirements are effective or where another persuasive rationale exists for exclusion, the rules should be broadly applied.

⁸⁵ *Unclaimed Property Act*, *supra* note 45, s 1.

⁸⁶ *Unclaimed Personal and Vested Property Act*, *supra* note 50, s 1.

⁸⁷ *Unclaimed Property Act*, *supra* note 57, s 1.

⁸⁸ As discussed in Chapter 4, each jurisdiction includes different property loosely categorized as “insurance proceeds” in this table.

⁸⁹ Refers to monies received by a holder as a deposit for the purchase of an item or service.

In the Consultation Paper, the Commission concluded that unclaimed property covered under Manitoba legislation should only depart from the ULCC Act where there are policy reasons to do so or where there is already a process in place. As discussed below, the Commission stands by this conclusion except in certain circumstances.

2.3 Tangible vs. Intangible Personal Property

The ULCC Act as well as the legislation of British Columbia, New Brunswick and Quebec only include intangible personal property in the scope their unclaimed property schemes. In other words, their legislation does not deal with real property or chattels (i.e. goods). Both New Brunswick⁹⁰ and British Columbia⁹¹ have retained separate escheats legislation that addresses both real property and personal property that escheats to the Crown.

In contrast, 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.⁹² Alberta's Act incorporates its escheats regime and its unclaimed personal property regime into one statute.

In addition to the question of whether tangible property ought to be included under a statutory unclaimed property regime, a second issue is how such property may be remitted and managed by the administrator practically. Notably, in Alberta, the only jurisdiction to include tangible property under its Act and require the remittance of such property, the Ministry of Treasury Board and Finance has never received tangible property and has not established a system to receive it.⁹³

Consistent with the ULCC Act and the majority of other jurisdictions in Canada, the Commission recommends that Manitoba's legislation cover only intangible property. Consideration should also be given to whether changes are required to *The Escheats Act* where tangible and real property are unclaimed and escheat to government.

Instead of including real property in the proposed unclaimed property legislation, the Commission recommends that *The Escheats Act* be amended to provide additional direction to the Crown on the handling of escheated real property. While New Brunswick's escheats legislation is as vague as Manitoba's⁹⁴, British Columbia's *Escheats Act* provides the Crown with additional powers in managing and liquidating escheated real property. For example, ss. 11 & 12 of the Act provide

⁹⁰ *Escheats and Forfeitures Act*, RSNB 2014, c 107.

⁹¹ *Escheat Act*, RSBC 1996, c 120

⁹² *Ibid*, s 3(1).

⁹³ The Commission has been advised by the Manager of Unclaimed Property for Alberta Treasury Board & Finance that, should a holder attempt to remit real or personal property, the administrator would refuse to accept it.

⁹⁴ The exception to this statement is that, unlike Manitoba's escheats legislation, the *Escheats and Forfeitures Act*, RSNB 2014, c 107 of New Brunswick expressly provide for the sale of personal property.

that, the Attorney General may sell escheated land by private sale, public auction or by tender, rent it, or appoint a person to take possession of the land and manage it. British Columbia's legislation provides that the Attorney General or a person designated by the Attorney General may restore escheated or forfeited land or transfer such land to an individual with a legal or moral claim to it. In Manitoba, such actions can only be fulfilled by the LGC, or more specifically, a decision of Cabinet. Removing the cumbersome requirement that only Cabinet can waive the Crown's rights to escheated real property and vest the property in a claimant and establish that such actions can be made by a representative of the Attorney General would go a long way in reuniting real property with the individuals with claims to the property. Additionally, the Act should provide the Crown with the powers to manage real property through sale, rent or ongoing management.

Recommendation 3: The unclaimed property legislation enacted in Manitoba should only cover intangible personal property.

Recommendation 4: *The Escheats Act* of Manitoba should continue to apply to real property that has 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 Act should be amended to grant the Crown powers to deal with the escheated property including the power of sale, rent, or the appointment of a person to take possession of and manage the property on behalf of the Crown.

Recommendation 5: *The Escheats Act* should be amended to enable the Attorney General or a representative of the Attorney General to waive or release the rights of the Crown to escheated or forfeited real property and, therefore, restore the land or any portion of or interest in it to a person with a legal or moral claim to the property.

2.4 Specific Intangible Property Included

As discussed above, the Commission believes that the best way to meet the objective of reuniting as many property owners with their previously unclaimed property as possible is to broadly include as many types of intangible personal property as possible under the legislation. In its Consultation Paper, the Commission requested feedback on what certain types of intangible property pose specific challenges. Through research and consultation, the Commission has identified several categories of intangible personal property that, although they should be included, pose unique challenges that legislators should be aware of.

2.4.1 Securities

Securities are included in the definition of “property” in the ULCC Act and under the legislation of each enacting jurisdiction in Canada.

Through both its research and consultations, the Commission has identified securities as a particularly difficult form of intangible property for inclusion under unclaimed property legislation.⁹⁵ In fact, while each Canadian jurisdiction with unclaimed property legislation has included securities in its definition of “unclaimed property”, several jurisdictions continue to grapple with implementation of the system as it relates to accepting remitted securities.

In both Quebec and New Brunswick, securities are treated differently depending on their value and characteristics. For example, as administrator, Revenu Quebec differentiates between securities held in registered pension plans and retirement plans and registered and unregistered securities and mutual funds that are not part of such a plan.⁹⁶ In the former case, where the asset is a pension/retirement plan, the administrator will accept securities with a value of less than \$1000 and authorize the dealer to convert the security to cash before it is accepted by the administrator. Where the assets have a value greater than \$1000, the holder must liquidate the assets and transfer them to a third-party trust company. Where securities are not part of a pension or retirement plan, the holder shall transfer ownership of the securities into the name of the administrator and hold the assets while awaiting further instructions from the administrator.⁹⁷ The result is that assets not

⁹⁵ The term “security” has no one legal definition. Under *The Securities Act* CCSM c S50, a “security” includes

- (a) any document, instrument, or writing commonly known as a security,
- (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
- (c) any document constituting evidence of an interest in an association of legatees or heirs,
- (d) any document constituting evidence of an option, subscription, or other interest in or to a security,
- (e) any bond, debenture, share, stock, note, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription,
- (f) any agreement providing that money received will be repaid or treated as a subscription to shares, stocks, units or interests at the option of the recipient or of any person or company,
- (g) any certificate of share or interest in a trust, estate or association,
- (h) any profit-sharing agreement or certificate,
- (i) any certificate of interest in an oil, natural gas or mining lease, claim or royalty, or a royalty voting trust certificate,
- (j) any oil or natural gas royalties or leases or fractional or other interest therein,
- (k) any collateral trust certificate,
- (l) any income or annuity contract not issued by an insurance company licensed under *The Insurance Act*,
- (m) any investment contract, including an investment contract as defined in Part XVI, and
- (n) any document constituting evidence of an interest in a scholarship or education plan or trust, whether any of the foregoing relate to a person, proposed company or company, as the case may be”.

⁹⁶ Revenu Quebec, *Guide for Holders, Unclaimed Property*. Available electronically at: <https://www.revenuquebec.ca/documents/en/formulaires/bd/BD-81.5.G-V%282018-12%29.pdf>. This is a policy decision of Revenu Quebec and is not set out in legislation or regulation.

⁹⁷ *Ibid.*

part of a pension/retirement plan are remitted as is while those in such plans are converted to cash prior to remittance.

Like in Quebec, New Brunswick's legislation does not speak to whether the security should be converted to cash before being remitted to the administrator. In proposed rules published for comment on September 8, 2020, however, the Financial and Consumer Services Commission of New Brunswick proposes that securities with an estimated fair market value of \$1000 or less shall be liquidated and remitted to the administrator whereas those with a total fair market value over \$1000 shall submit a report to the administrator and hold the property until permission is received for remittance.⁹⁸

In British Columbia, the third-party administrator will not accept remitted securities as is but will accept them after they have been converted to cash.⁹⁹ In Alberta, while securities have been covered under the *Unclaimed Personal Property and Vested Property Act* since its enactment in 2008, the administrator will not accept the remittance of securities from holders due to various ongoing logistical issues and until legislative amendments are added to clarify the process.¹⁰⁰

A number of issues were identified during the consultation phase regarding the inclusion of securities in any potential unclaimed property legislation. These include:

- the high cost associated with carrying unconverted securities which would be necessarily carried by the administrator;
- the need for transparency over decisions on the purchasing and sale of security assets;
- potential liability assumed by the administrator associated with the management of securities;
- difficulties determining who was the holder of a given security in practice and with whom the statutory obligations of a holder should fall;
- tax consequences of remitting securities to an administrator or converting securities to cash for remittance; and
- loss of investment growth opportunity upon the cashing in of securities for remittance.

Regarding the issue of potential tax consequences specifically, cashed in securities including stocks and bonds are generally included in the taxable income of the owner or recipient. When securities and pension benefit payments are included under an unclaimed property program, the following must be considered:

⁹⁸ Financial and Consumer Services Commission, Government of New Brunswick, "Financial and Consumer Services Commission Rule UP-001 *Unclaimed Property -General*, r 3.4. Available online: <https://fcnb.ca/sites/default/files/2020-09/RULE%20UP-001%20Unclaimed%20Property%20-%20General.pdf>

⁹⁹ Note that this is a policy of the third-party administrator and is not contained in the legislation or regulations.

¹⁰⁰ In a Special Notice Vol 9 No 5 "Extension of Abandonment Period for Securities and Contents of Safety Deposit Boxes" dated August 18, 2018, the Alberta Tax and Revenue Administration provided that [they] will not require reporting for, and not accept delivery of, unclaimed securities or safety deposit box contents until further notice."

- (i) which entity (the holder, the administrator, or, eventually, the located owner) should be required to withhold and remit tax;
- (ii) at what point the tax should be payable; and
- (iii) whether securities held in registered and tax-deferral vehicles should lose their registration or tax-deferred status.

The tax consequences for each party would need to each be carefully considered during the implementation of the unclaimed property system.

Despite the concerns described above, the feedback received during the consultation phase of the project was overwhelmingly in favor of including securities as property for the purpose of applying the legislation. The feedback revealed that relevant industries, including brokerages, transfer agents, etc. would benefit from clear rules on how unclaimed securities should be treated, and that many would welcome the opportunity to clear unclaimed securities from their books through remittance to an administrator. This is in addition to the benefits to potential owners and beneficiaries with rights to the assets.

For the sake of consistency with other Canadian jurisdictions, and given the potentially high value of total unclaimed assets in the securities market, the Commission recommends that securities should be included in the definition of “unclaimed property” in Manitoba’s unclaimed property legislation.

In addition to the consideration of whether securities ought to be included is the question of whether a holder should be required to convert the assets to cash prior to remittance to the administrator. One Manitoba lawyer with expertise in securities law suggested that an administrator, whether government or third party, should not be in the business of managing securities. Accepting securities as bonds, shares, mutual funds, etc. would place a legal obligation on the administrator to manage the assets in accordance with *The Securities Act*.¹⁰¹ In practice, this would require the administrator to employ licensed traders registered with the Manitoba Securities Commission. Instead, he is of the opinion that securities should be converted to cash before being mandatorily remitted to the administrator for management. The Commission agrees with this assessment.

An issue that arises with the conversion of unclaimed securities to cash prior to remittance is whether a brokerage or individual broker is entitled to cash in the security without the authorization of the owner (which would not be attainable given that the property is unclaimed and the owner unfindable).¹⁰² This would depend on the agreement entered into by the broker and the owner.

¹⁰¹ CCSM c S50.

¹⁰² This issue was brought to the Commission’s attention by the British Columbia Unclaimed Property Society.

The ULCC Act attempts to address this problem:

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

(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 [...].

Manitoba's Act could adopt sections 13(1)(c) of the ULCC Act, enabling the administrator to exercise all the rights and powers of a legal and equitable owner of unclaimed property, should it be determined that security assets must be converted to cash prior to remittance.

No Act of any Canadian jurisdiction has legislated the method of delivering securities to the administrator. The Commission believes that it is not necessary for Manitoba's legislation to establish in what form securities should be accepted by the administrator. Instead, ongoing dialogue with the industry and careful consideration should be given to the relevant securities laws,¹⁰³ tax consequences (as noted above), and input from the legal profession. Regardless of the method of delivering securities to the administrator, it is likely that corresponding legislative changes would be necessary to Manitoba's securities laws.

Another issue brought to the Commission's attention is the matter of who has possession or control of an unclaimed security. The Commission heard from several parties that determining ownership and possession of securities is complicated by the complex systems that may be used to hold and trade securities. For example, securities may be held in nominee form in the name of one individual or firm to facilitate transactions with the investor as the beneficial owner. In this case, no share certificate is issued in the name of the investor and, instead, share certificates are held in electronic form within the Canadian Depository for Securities. Therefore, the Commission cautions that careful consideration must be made to who constitutes the "holder" respecting security assets.

¹⁰³ As pointed out by British Columbia's administrator, an issue that arises is whether a broker is legally entitled to convert a security to cash without the authorization of the owner (which won't be attainable given that the property is unclaimed and the owner unfindable).

2.4.2 Insurance Policies and Proceeds

While each enacting jurisdiction includes insurance products as unclaimed property, the specific assets covered vary from province to province. Quebec's legislation covers only unclaimed proceeds of a life insurance policy while leaving out proceeds of accident and sickness insurance policies.¹⁰⁴ While not expressly excluded under New Brunswick's legislation, proposed rules circulated by the Financial and Consumer Services Commission for comment do include accident and sickness insurance in a list of excluded property. In contrast, British Columbia's Act applies broadly to "the right to an amount due and payable by an insurer under the terms of an insurance policy".¹⁰⁵ Similarly, Alberta's Act applies to "an amount due and payable under the terms of an annuity or insurance policy, including a policy providing life insurance property and casualty insurance, workers' compensation insurance or accident and sickness insurance".¹⁰⁶

The Commission received input on specific issues to be considered when determining how an unclaimed property regime should cover insurance products and proceeds of insurance claims. Like with security assets, the unique characteristics of some insurance products pose challenges where a remittance model of unclaimed property administration is established.

As with other types of property, there are concerns with the administrative and compliance burden on holders with the inclusion of small unclaimed proceeds, such as those paid out under accident and sickness insurance policies, including reimbursements for health professional, dental or prescription drug expenses. In contrast with amounts payable under life and health insurance policies, the amounts owed to the policy-holder are typically smaller and of a higher volume. Requests were made to consider the exclusion of proceeds from accident and sickness insurance policies for this reason.

The Commission is cognizant of the fact that compliance costs and systems implications must be balanced with the benefits to the rightful owners of unclaimed assets. Ensuring that the burden imposed on businesses and other holders is proportionate to the benefit to an owner of property applies across all categories of property – not just proceeds from accident and sickness insurance policies. Instead of excluding a whole category of property, a minimum value for unclaimed property to fall under the unclaimed property legislation is more appropriate and will be discussed later in this chapter.

The very nature of life and health insurance policies poses a challenge to including the unclaimed proceeds of such policies in proposed legislation. First, due to the long-term nature of insurance contracts and corresponding liabilities of policy holders as well as the common provisions of life

¹⁰⁴ Quebec Act supra note 53, s 3(9).

¹⁰⁵ British Columbia Act supra note 45, 1- 'definition of property' (d).

¹⁰⁶ Alberta Act supra note 50, s 1(vii).

insurance contracts, it is typical for there to be extended periods of time without policy holder-initiated contact and communications between the parties.¹⁰⁷ Therefore, a definition of “unclaimed property” that requires communication or an action by the apparent owner during a determined period is not appropriate for all unclaimed proceeds of insurance policies.

With respect to insurance policies, the ULCC Act provides that:

When property is 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,
[...]

(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.

In other words, the ULCC considered the challenge of determining when the proceeds from and premiums for life and health insurance policies ought to be considered “unclaimed” for the purpose of taking steps to address unclaimed and forfeited monies. The ULCC proposes that, where automatic loan provisions or other non-forfeiture clauses keep non-payment of

¹⁰⁷ Some life insurance policies have provisions to ensure premium payments will be made even if the policyholder does not contact the insurer. A life policy may require premiums be paid over a limited time period, but with coverage persisting throughout the life of the policyholder. Policies that build cash values typically contain an automatic non-forfeiture option which, depending on the structure of the policy, would allow for premiums due to be paid automatically by triggering a non-repayable loan against the policy’s cash value or a simple charge against that value.

premiums from cancelling an insurance policy, the dormancy period would commence only where the insured died or where the insured or beneficiary otherwise became entitled to the proceeds under the terms of the policy. The holder would not be required to make additional inquiries of the apparent owner of the policy until either of those instances occurred.

New Brunswick adopted the same language as the ULCC Act.¹⁰⁸

Given the significant value of many life and health insurance policies, the Commission believes it is crucial that amounts due and payable under such insurance policies are included as “unclaimed property” once the appropriate dormancy period has expired. The Commission also recommends that the appropriate provisions from the ULCC Act set out above be adopted in Manitoba.

Recommendation 6: The Act should contain a provision akin to sections 2(3)(d) & (5) of the ULCC Act, which provides that, where an insurance plan contains a non-forfeiture clause, it does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary has otherwise become entitled to the proceeds before the cash surrender value of the policy is depleted.

2.4.3 Property of Dissolved Corporations

As discussed in Chapter 2, the law on property held by dissolved corporations is set out in ss. 200 to 221 of *The Corporations Act*. The Act provides that, where the corporate directors or officers fail to submit a notice or document within the statutorily-mandated timeframe, the corporation is dissolved by the Director.¹⁰⁹ Any property distributable to a creditor or shareholder who cannot be located at the time of the dissolution is converted to cash and paid to the Minister of Finance and becomes part of the Consolidated Fund.¹¹⁰ The Act also establishes that property that has been transferred to the Minister of Finance pursuant to s. 221(1) but has not vested in the Crown shall be returned to the corporation upon the corporation’s revival.¹¹¹

The unclaimed property legislation of Alberta, British Columbia, Quebec and New Brunswick all cover unclaimed property of dissolved corporations. This is consistent with the ULCC Act, which provides that property distributable by a business in the course of a dissolution is considered “unclaimed” for the purpose of the Act one year after it becomes distributable.¹¹²

¹⁰⁸ New Brunswick Act, *supra* note 56, ss 4(4)(d)&4(5).

¹⁰⁹ *The Corporations Act*, *supra* note 22, s 205(1).

¹¹⁰ *Ibid*, s 220(1).

¹¹¹ *Ibid*, s 221(2).

¹¹² ULCC Act *supra* note 1, s 2(1)(i).

Consistent with legislation in other Canadian jurisdictions, the Commission recommends that unclaimed property of dissolved corporations be included in unclaimed property legislation in Manitoba, such that the current process set out in s. 221(1) of *The Corporations Act*, providing that property of dissolved corporations escheats to the Crown, be replaced with remittance to the administrator under unclaimed property legislation. While the Commission has been advised that the Crown is rarely made aware of the existence of unclaimed assets held by dissolved corporations and that rarely does the property transfer out of the name of the corporation, including property of dissolved corporations in proposed unclaimed property legislation would catch those rare situations.

Note that the inclusion of intangible personal property in the context of corporate dissolution under proposed unclaimed property legislation would require corresponding changes to Part XVII of *The Corporations Act*. Additionally, amendments to the treatment of unclaimed property of a dissolved corporation would require consideration of similar changes to unclaimed property of cooperatives and amendments to *The Cooperatives Act*.¹¹³

2.4.4 Credit Unions

As discussed in Chapter 2, credit unions are not currently obligated to remit unclaimed accounts to the Crown pursuant to Manitoba's vacant property legislation. Instead, pursuant to *The Credit Union and Caisses Populaires Act* and regulations, credit unions are able to transfer dormant accounts into a special trust fund. The legislation limits account balances that may be transferred into such accounts to \$1000.00 or less and doing so is voluntary.

Many of Manitoba's credit unions have instituted their own internal processes for transferring unclaimed accounts into special trust funds and instituting reporting procedures for dormant account holdings. In fact, the Credit Union Central of Manitoba Ltd., the trade association for credit unions in the province, has created and distributed a number of guiding materials and sample policies it recommends for adoption by each individual operation. It is unclear, however, what proportion of credit unions have adopted such policies.

Every jurisdiction in Canada includes credit unions in its definition of "property" except Alberta. As in Manitoba, Alberta has stand-alone legislation which directs how unclaimed assets held by credit unions ought to be treated. Unlike Manitoba's legislation, the *Credit Union Act*¹¹⁴ of Alberta requires credit unions to make reasonable efforts to locate the account holder and, after an account

¹¹³ CCSM c C223.

¹¹⁴ RSA 2000, c C-32.

has been dormant for 10 years, unclaimed assets must be transferred to a third party, the Credit Union Deposit Guarantee Corporation.¹¹⁵

The Commission is of the view that assets held by credit unions should fall within the definition of “property” and be subject to all requirements of the unclaimed property legislation, including the notice, reporting and remittance requirements recommended in this report. Like with securities brokers, credit unions, especially smaller ones, would benefit from the certainty of legislation and opportunity provided by mandatory remittance requirements that would offload dormant accounts from their books and remove the need for smaller credit unions to administer their own claims processes.

Including intangible property held in dormant credit union accounts in unclaimed property legislation would require complimentary amendment to s. 6(1) of *The Credit Union and Caisses Populaires Act*.

2.5 Special Exceptions

2.5.1 Court Fees

The ULCC Act requires the remittance of funds paid into court after the expiration of the dormancy period established by the enacting jurisdiction.¹¹⁶ With the exception of Quebec, each province has also included funds held in court in its unclaimed property regime, although the specific provisions vary from jurisdiction to jurisdiction.

In British Columbia, for example, unclaimed court funds come under the purview of the *Unclaimed Property Act* if a judicial officer determines that the funds have been paid into court in a proceeding and have remained in court for at least five years.¹¹⁷ Judicial interim release funds are excluded from the legislation.¹¹⁸ In fact, funds paid into court composed the largest percentage of funds received from any source, approximately 46%, or \$2,960,186 of unclaimed property administered in British Columbia in 2018.

Currently, in Manitoba, monies that have been paid into court and are unclaimed are not covered under *The Escheats Act* but by *The Suitors’ Moneys Act*.¹¹⁹ Pursuant to *The Suitors’ Moneys Act*,

¹¹⁵ *Ibid*, s 117(11).

¹¹⁶ ULCC Act supra note 1, s 2(1)(j)&(k). The ULCC Act recommends a dormancy period of 1 year after the property held in court becomes distributable or, where the property is received by a court as proceeds of a class action and is not distributed under the judgment, one year after the distribution date. The ULCC Act notes that money in court may be dealt with by the enacting jurisdiction’s rules of court.

¹¹⁷ BC Reg 37/2005, s 2.

¹¹⁸ *Ibid*.

¹¹⁹ CCSM c S220.

after funds have been unclaimed for five years, a report of these sums is published in the Manitoba Gazette. After six years, the funds must be transferred out of the suitor's trust account and escheat to the Crown.¹²⁰

Despite the direction in *The Suitors' Moneys Act* that unclaimed monies form part of the government's general revenue after six years, the Commission has been advised that, procedurally, unclaimed funds paid into court are not remitted to the provincial government. Instead, they are held in a separate consolidated account of the court. The Commission has also been advised that the current process for claiming unclaimed court funds is the same for the claimant regardless of whether the funds have been transferred into the court's consolidated fund. Where the amount is under the small claims threshold¹²¹, the claimant makes a requisition to court and the funds are released. When the funds have been in court for more than six years, deputy registrars must fill out a second application for the funds to be transferred out of the consolidated fund. Typically, such requisitions are performed through counsel but can also be done by self-represented litigants. In contrast, where the amount is greater than the small claims limit, a court order is required to have the funds paid out regardless of whether the funds have been transferred to the consolidated fund and how much time has passed.

In considering whether funds paid into court should be covered under a statutory unclaimed property regime, the Commission considered that the system the court currently has in place is easily manageable from the claimant's perspective. Claimants seeking to be reconnected with funds paid into court are not in the same position as those seeking unclaimed funds that have escheated to the Crown. There is no need for an order of Executive Council to have the funds paid out to the rightful owner. For small dollar amounts, the process is a simple administrative requisition process. For larger amounts, a court order is rightfully required. Therefore, the Commission considers it appropriate to exclude unclaimed funds held in court from the unclaimed property statutory regime. It is cognizant that this represents a marked departure from the ULCC Act and the majority of other Canadian jurisdictions. However, the divergence is justified given the system that is currently in place.

<p>Recommendation 7: Unclaimed proceeds held by the Court of Queen's Bench, Court of Appeal, and Provincial Court should be exempt from the application of the unclaimed property legislation.</p>

¹²⁰ *Ibid.*, s 8(2).

¹²¹ Based on conversations with the court registrar.

2.5.2 Enumerated Exclusions

Each jurisdiction expressly excludes certain property. This is typically in scenarios where the property is already covered under another legislative process.

The ULCC Act advises that individual jurisdictions “may wish to exclude from the kinds of arrangements respecting types of unclaimed property for which there exists an established process.”¹²²

For example, Alberta’s Act 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.¹²³ 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.¹²⁴

British Columbia’s legislation specifically excludes money held by government or property held in a lawyer’s trust account.¹²⁵

As previously stated, the Commission believes that the proposed legislation should apply as broadly as possible to as many types of property as possible. As previously stated, to promote interjurisdictional harmony, the Commission concludes that Manitoba should depart from the ULCC Act only where necessary. Therefore, the Commission considers the only necessary exemption to be unclaimed funds in lawyers’ trust accounts, as there is already an established process under *The Legal Profession Act*¹²⁶ which appropriately protects clients’ funds and attempts to reunite owners with their assets. The proposed legislation should also provide that additional exclusions may be established by regulation.

Recommendation 8: Property held in lawyer’s trust account should be expressly excluded from the definition of “unclaimed property” contained in the Act. Additionally, the Act should provide that property may be excluded by regulation.

In its Consultation Paper, the Commission suggested that, given that there is already an established process in place for succession estates through the Office of the Public Guardian and Trustee, there may be sound policy reasons to keep intestate succession out of a contemplated unclaimed property regime.

¹²² ULCC Act, supra note 1, s 1(1).

¹²³ *Ibid.*, s 4(c).

¹²⁴ Alta Reg 104/2008, s 2(1).

¹²⁵ *Ibid.*

¹²⁶ SM 2002, c 44.

Notably, exempting intangible personal property that forms part of an estate would be unique to Manitoba as all other Canadian enacting jurisdictions include succession estates under their legislation.

The Office of the Public Guardian and Trustee has the expertise and experience to attempt to locate beneficiaries of unclaimed estate assets and successors under an intestate succession. However, pursuant to the current law, the assets of such estates and successions eventually escheat to the Crown.¹²⁷ For consistency, it makes sense that intangible personal property forming part of an unclaimed estate or intestate succession would eventually be remitted to the unclaimed property administrator. Therefore, the Commission is not recommending that such property be excluded from the unclaimed property regime.

2.6 Other Categories of Property

The definition of “property” in the ULCC Act is not limited to the categories of property listed. The definitions of both “tangible” and “intangible property” in Alberta’s legislation are similarly not exclusive. British Columbia’s Act defines “property” as “any other personal property that is not a chattel or a mortgage and is designated by regulation [...]”. Quebec’s Act also provides that, in addition to those categories of property listed, the definition of “property” includes any type of property “determined by regulation”. New Brunswick’s legislation also enables unlisted categories of property to be prescribed by regulation.¹²⁸

Novel types of intangible personal property that are held by another party and can become unclaimed or forfeited exist other than the major categories considered elsewhere in this paper. Missing categories brought to the Commission’s attention during the consultation process include: disbursements made by municipal governments, emerging payment mediums including cryptocurrencies and store credits.

Legislators are often unable to consider every single scenario whereby legislative requirements would appropriately apply. Therefore, Manitoba’s legislation should also enable the definition of “property” to be expanded by regulation.

<p>Recommendation 9: The definition of “property” contained in Manitoba’s Act, which establishes the types of intangible personal property covered under the legislation, should enable other categories of property to be added by regulation</p>

¹²⁷ *The Escheats Act*, supra note 4, s 1.

¹²⁸ New Brunswick Act, s 1, definition of “property”.

2.7 Minimum Value

Neither the ULCC Act nor the legislation of Quebec, British Columbia or New Brunswick set a minimum value for property before it is included in the unclaimed property system. Holders of any unclaimed property, regardless of its value, are required to fulfil the statutory obligations and to remit the property whether the holder and the type of property are both included in the legislative regime.

In contrast, Alberta's Act imposes a minimum value of \$250.00 on intangible personal property and of \$1000.00 on tangible personal property that falls under the legislative scheme.¹²⁹

Establishing a minimum value on property to be included reflects an attempt to make the burden imposed on holders and administrators proportionate to the value of the property to potential owners. While Alberta is the only Canadian jurisdiction to have set a minimum value for property falling under the Act, every other province has attempted to make the obligations on holders proportionate to the value of the unclaimed property. In New Brunswick and Quebec, holders are only required to provide notice to the potential owner that property is unclaimed where the value of the property is more than \$100.00.¹³⁰ Under British Columbia's legislation, the holder's obligations to provide notice only apply to property valued over \$50.00.¹³¹

While the Commission believes that the legislative scheme should apply as broadly as possible to all types of intangible unclaimed property, it acknowledges the substantial administrative burden that such a system imposes on holders. For the sake of proportionality and to avoid overburdening the administrative system with voluminous claims of low value, the Commission believes that property should be excluded from the legislation if the value is less than \$500.00.

Recommendation 10: The Act or its accompanying regulations should prescribe a minimum value for property covered under the Act of \$500.00.

¹²⁹ Alberta Act, *supra* note 51, s 3(4)(b).

¹³⁰ New Brunswick Act, *supra* note 56, s 7(4)(b); Quebec Act, *supra* note 53, s 5.

¹³¹ BC Reg 463/99, s 7(2).

3. Jurisdiction of Property

The ULCC Act addresses the question of jurisdiction:

1(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.

1(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.

Commentary in the ULCC Act provides:

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*¹³², 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*.

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

Alberta¹³³ and New Brunswick¹³⁴ have adopted ss. 1(2)-(3) of the ULCC legislation. In contrast, Quebec determines whether the Act applies based on the location of the owner or other right-holder and whether they are domiciled in Quebec, not based on the location of the holder.¹³⁵ British Columbia's Act does not offer guidance on the jurisdiction of the administrator.

¹³² 379 US 674 (1965).

¹³³ Alberta Act, supra note 50, ss 2(2) & 43.

¹³⁴ New Brunswick Act, supra note 56, ss 24(1) & (2).

¹³⁵ Quebec Act, supra note 53, ss 3 & 4. Section 4 provides that "[a] right-holder is deemed to be domiciled in Québec if the right-holder's last known address is in Québec or, where the address is unknown, if the act establishing the right-holder's rights was made in Québec.

As explained by the commentary of the ULCC Act, determining the scope of the administrator's geographic jurisdiction over unclaimed property and setting it out in legislation is necessary for certainty. Unlike the United States, such jurisdiction has not been established in case law.

Recommendation 11: The Act should adopt sub-sections 1(2) & (3) of the ULCC Act establishing when a corporation is determined to be based in Manitoba for the purpose of applying the Act.

4. Dormancy Periods

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

Pursuant to the ULCC Act, property is presumed to be abandoned if it is unclaimed by the apparent owner within a prescribed time period. 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, seven years after issuance;¹³⁶
- for property distributable by a business organization in the course of a dissolution, one year after the property becomes distributable;¹³⁷
- for property received by a court as proceeds of a class action, and not distributed under the judgment, one year after the distribution date;¹³⁸ and
- for money in a registered retirement savings plan, pension plan or education plan, five years after the registration of the plan is revoked or the plan is deregistered.¹³⁹

Property not expressly provided in the ULCC Act is subject to a 5-year dormancy period, which starts 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.¹⁴⁰

For the purposes of the 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.¹⁴¹

¹³⁶ ULCC Act, *supra* note 1, s 2(1)(b).

¹³⁷ *Ibid.*, s 2(1)(i).

¹³⁸ *Ibid.*, s 2(1)(j).

¹³⁹ *Ibid.*, s 2(1)(l).

¹⁴⁰ *Ibid.*, s 2(1)(p).

¹⁴¹ *Ibid.*, s 2(3). "Apparent owner" is defined in the ULCC Act 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."

The *Unclaimed Personal and Vested Property Act* of Alberta 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.¹⁴² 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.¹⁴³

Alberta's 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.¹⁴⁴

Under British Columbia'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 the 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.¹⁴⁵ Pursuant to the regulations, the applicable time period is 5 years. In the case of non-government holders, a detailed table in the regulations sets out the circumstances under which property becomes unclaimed depending on matters such as the type of property, relevant dates, and dollar amount.¹⁴⁶

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.¹⁴⁷

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 in mind the guiding principles of efficiency, simplicity, and interjurisdictional harmonization.

¹⁴² Alberta Act, *supra* note 50, s 4(1); Alta Reg 104/2008.

¹⁴³ *Ibid.*, s 4(3).

¹⁴⁴ *Ibid.*, s 6(1)(q).

¹⁴⁵ BC Act, *supra* note 45, s 2(1).

¹⁴⁶ BC Reg 463/99, s 8.

¹⁴⁷ Quebec Act, *supra* note 53, ss 3(1)-(12).

5. Property Holders

5.1 Definition of Holders

The Commission has carefully considered who should be required or permitted to remit unclaimed property under the legislation. In each Canadian jurisdiction, the term “holder” refers to the individual or entity that possesses unclaimed property on behalf of its owner and is either under an obligation to remit the property, or has the discretion to remit the property, depending on the legislation.

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;¹⁴⁸

Under the ULCC Act, there is no distinction between mandatory remitting and voluntary remitting (as is the case in British Columbia, noted below.) Additionally, 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.¹⁴⁹

Notably, the only jurisdiction that has enacted unclaimed property legislation and has adopted the ULCC’s definition *verbatim* is New Brunswick.¹⁵⁰

Under British Columbia’s legislation, different parts of the legislation apply depending on whether the unclaimed property is held by government or not. 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;¹⁵¹

¹⁴⁸ ULCC Act, *supra* note 41, s 1.

¹⁴⁹ *Ibid*, s 3.

¹⁵⁰ New Brunswick Act, *supra* note 56, s 1.

¹⁵¹ *Unclaimed Property Act*, *supra* note 45, s 1.

While the definitions contained in the ULCC Act and British Columbia's Act are limited to the individual or entity with physical possession of the property, Alberta's Act includes both those with physical possession of the unclaimed property and those "indebted to another on an obligation."¹⁵²

In Alberta, 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. A similar exemption has been proposed in New Brunswick for holders where delivery of property is required by another Act of the New Brunswick Legislature, Act of another province or territory of Canada, Act of Parliament, or by an order or judgment of a New Brunswick Court.¹⁵³

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.

In evaluating how to define 'holder' for the purpose of the legislation, consideration should be given to the types of property to be included and the type of model chosen (remittance or public database).

The Commission received little feedback on the question of how the term "holder" should be defined in the legislation. While it is of the opinion that, like the definition of "unclaimed property", "holder" should be broadly defined, the appropriate definition is contingent on the type of administrative system established. Therefore, the Commission is not recommending a particular definition of the term "holder" be adopted.

5.2 Property Holder's Responsibilities

Property holders should be subject to certain responsibilities before remitting unclaimed property to the administrator.¹⁵⁴ Each jurisdiction has its own rules regarding the obligations of a property holder.

¹⁵² Alberta Act, *supra* note 50.

¹⁵³ Financial and Consumer Services Commission of New Brunswick, *Rule UP001 Unclaimed Property-General*, (draft rules), Sept 8, 2020, r 2.1(2).

¹⁵⁴ The obligations on holders recommended in this section presuppose that a remittance model of property administration is adopted. Should a public database model be established, many other statutory obligations on holders would be appropriate including: the creation and administration of a searchable public database, publicizing the database and administering a claims process. See, for example, ss 11(1)&(2) of British Columbia's *Unclaimed Property Act*, *supra* note 45.

5.2.1 Providing Notice to Apparent Owners

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.”¹⁵⁵ Presumably, this provision would also reduce the number of claims that the administrator would have to deal with.

Each of the enacting jurisdictions require that the holder provide notice to the potential owner of the existence of the unclaimed property.

According to British Columbia'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.¹⁵⁶ As mentioned earlier, most holders in British Columbia are not obligated to transfer the unclaimed property to the administrator.

Under Quebec's legislation, 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.¹⁵⁷ 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.¹⁵⁸

Discussion was held regarding the need to statutorily require holders to attempt to locate and notify potential owners of the existence of unclaimed property in their possession prior to the remittance of such property to the administrator after the expiry of the dormancy period. Unlike the

¹⁵⁵ ULCC Act, *supra* note 1, Comments below s 4.

¹⁵⁶ BC Act, *supra* note 45, ss 8-9.

¹⁵⁷ Quebec Act, *supra* note 53, s 13.

¹⁵⁸ *Ibid*, s 6.

administrator, who is tasked explicitly with locating potential owners and reuniting them with their property, such an obligation would be in addition to the general responsibilities of doing business for holders like credit unions, real estate brokerages, or landlords. The question is whether remitting unclaimed property to the administrator along with all related records is a sufficient obligation on the holder without the need for preceding steps.

In considering whether it was necessary to impose an obligation on holders to attempt to provide notice to an owner of property in their possession, the Commission determined that imposing such an obligation gives an owner one final opportunity to speak for the property before it is remitted and a formal claim is necessary. Holders are in the best position to provide the initial notice to potential owners of the existence of property.

Recommendation 12: The Act should state that, prior to remitting property to the third-party administrator, where the value of the property is \$500.00 or higher, the holder must make reasonable efforts to provide notice to the apparent owner of the existence of the unclaimed property and provide a deadline for claiming it after which the property would be remitted to the administrator.

5.2.2 Requirements for Reporting and Delivering Unclaimed Property

Canadian jurisdictions impose fairly consistent requirements on holders to report and deliver unclaimed property to the administrator.¹⁵⁹

The majority of Canadian jurisdictions require the holder to transfer or deliver unclaimed property to the administrator within a specific timeframe. Alberta follows the ULCC Act and requires the reporting and delivery within 120 days of the end of the calendar year. New Brunswick imposes a 90-day deadline from the end of the year. In Quebec, unclaimed property must be reported and delivered to the administrator by year's end.

Section 6(2) of the ULCC Act sets out the necessary information to be reported to the administrator:

- 6(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,

¹⁵⁹ The exception is British Columbia, which does not require all holders to remit unclaimed property.

- (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.

Some interested parties argue that the amount of information to be contained in the report provided by the administrator under the ULCC legislation is overly burdensome and unnecessary. Specifically, they take issue with the need to report the date that the property was abandoned and the date of the last transaction with the apparent owner with respect to the property as this information may not be normally recorded in a holder's electronic database.

The Commission does not believe that the necessary reporting information contained in s. 6(2) of the ULCC Act is unnecessary or overly burdensome. Holders would be required to internally monitor both the dates that property was deemed abandoned and when the last transaction with the apparent owner occurred to determine when it is obligated to remit the property. This information should be provided to the administrator to improve the chance the administrator will be able to locate a potential owner.

Recommendation 13: The Act should require that holders report and remit to the administrator all unclaimed property within a prescribed period of time. Section 6(2) of the ULCC Act, which prescribes what information must necessarily be reported to the administrator, should be adopted.

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.¹⁶⁰ The Commission agrees that this is appropriate given that the holder would not be under ongoing obligations following the remittance.

¹⁶⁰ ULCC Act, *supra* note 1, s 12.

Recommendation 14: The Act should expressly state that holders who report and remit unclaimed intangible property pursuant to the requirements under the Act are relieved of all liability respecting the property.

6. The Administrator of Unclaimed Property

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.

6.1 Administrator's Structure

The ULCC Act defines “administrator” as “*the Public Guardian and Trustee or equivalent office.*”¹⁶¹ 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 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.¹⁶²

Notably, none of the jurisdictions with unclaimed property systems have adopted the ULCC’s definition of “administrator” and the Commission does not agree that the obligations of an unclaimed property administrator should fall to the Office of the Public Guardian and Trustee of Manitoba.

The legislation of Alberta, Quebec and New Brunswick each designate a specific existing governmental department as administrator of the province’s unclaimed property system. In Alberta, the Minister of Treasury Board and Finance is responsible for the administration of the unclaimed property regime. Since Alberta’s unclaimed property legislation deals with both unclaimed property and vested property, two separate administration streams address these

¹⁶¹ ULCC Act, *supra* note 41, s 1(1) [emphasis in original].

¹⁶² *Ibid.*, s 13(1).

different types of property.¹⁶³ In Quebec, the Minister of Revenue must maintain a registry of all unclaimed property.¹⁶⁴ 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.¹⁶⁵ New Brunswick's legislation imparts the obligations and powers of the administrator of unclaimed property to the Financial and Consumer Services Commission.

In contrast, under British Columbia's legislation, the government is authorized to enter into an administration agreement with a non-profit entity to administer the unclaimed property regime.¹⁶⁶ Currently, the administrator of unclaimed property in that province is the British Columbia Unclaimed Property Society, a non-profit organization solely dedicated to managing unclaimed property and reuniting British Columbians with their unclaimed assets.

Determining whether the administration of unclaimed property ought to be the responsibility of an existing government department or agency or whether a third party ought to be contracted to fulfil the responsibilities is a policy question that will require consideration of existing and necessary resources. As such, the Commission defers to government on which form of administration is most appropriate.

6.2 Administrator's Powers and Obligations

The ULCC Act requires that the administrator establish and maintain an account of unclaimed property, which is separate from the jurisdiction's consolidated revenue fund.¹⁶⁷ The administrator must record the particulars of the unclaimed property received and how it is being invested or disposed.¹⁶⁸ 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.¹⁶⁹ To encourage public awareness of the program and use of the database, the administrator must publicize the existence and means of accessing the database on at least an annual basis.¹⁷⁰

Respecting the claims process, the ULCC Act establishes deadlines upon which a claim must be processed once received by the administrator and when a successful claimant should receive the

¹⁶³ *Unclaimed Personal Property and Vested Property Act*, *supra* note 50, ss 36 & 37.

¹⁶⁴ *Unclaimed Property Act*, *supra* note 53, s 18.

¹⁶⁵ *Ibid*, s 30. The Generations Fund is a fund dedicated exclusively to repaying Québec's debt.

¹⁶⁶ *Unclaimed Property Act*, *supra* note 45, s 2.1.

¹⁶⁷ Note that the ULCC Act proposes a governmental administrator – not a third-party administrator like that which exists in British Columbia.

¹⁶⁸ ULCC Act, *supra* note 1, s 15.

¹⁶⁹ *Ibid*, s 16.

¹⁷⁰ *Ibid*, s 16(3)

property.¹⁷¹ The Act requires the administrator to pay the claimant interest and can deduct reasonable costs and expenses incurred.¹⁷²

In addition to its obligations, the ULCC Act also grants the administrator certain rights. For the purpose of ensuring compliance with the Act and its regulations, the administrator may conduct inspections of holders and require the holder to produce records in their possession and control for inspection. The administrator also holds certain powers of enforcement where it determines that a reporting holder has not paid or delivered unclaimed property.¹⁷³

With very few exceptions, each of the jurisdictions with unclaimed property programs have adopted the powers and obligations of administrators contained in the ULCC Act.

The feedback received during the consultation process was universally in support of the adoption of the draft provisions contained in the ULCC Act imposing responsibilities and powers on the administrator of the unclaimed property system.

As aptly explained by a lawyer with practical expertise in this area, “an administrator should have two main responsibilities: primarily, the reunification of owners with their property and, secondarily, ensuring compliance with the unclaimed property law.” To achieve the primary responsibility of unification, the public must be aware of the existence of the program and the publicly accessible searchable database and an efficient and effective claims process must be implemented. The latter objective requires education of the holder industries regarding the mechanics and obligations under the legislative and regulatory system.

Considering the overall purpose of unclaimed property legislation, the reunification of owners with their property, the relevant provisions of the ULCC Act contain appropriate obligations on the administrator including: (i) establishing and administering a public database of potential owners and unclaimed property; (ii) educating the public of the existence of the database; (iii) enforcement of the Act and its regulations, and (iv) management of an administrative claims process.

Recommendation 15: The Act should appoint an administrator to receive unclaimed property from holders and manage the claims process. The Act should adopt the provisions contained in the ULCC Act regarding the powers and obligations of the administrator, specifically: (i) the establishment and administration of a searchable online database of potential owners and unclaimed property available to the public, (ii) mandating frequent publicizing of the program and the database, (iii) enforcement provisions; and (iv) establishing rules and timelines for the claims process.

¹⁷¹ *Ibid*, s 17.

¹⁷² *Ibid*, s 5(a).

¹⁷³ *Ibid*, Part 4.

7 The Claims Process

In order for an unclaimed property program to meet its objective of reuniting owners with their property, there must be a process for owners to make claims. Each enacting jurisdiction has created a claims process. The Commission has considered the advantages and disadvantages of each system.

7.1 Entitlement to Make a Claim

The legislation of each Canadian jurisdiction establishes who is entitled to make a valid claim to property.

Some jurisdictions allow claims broadly. For example, in addition to providing that an administrator *must* consider a claim where satisfied that the claimant is the owner of the property, the ULCC Act also provides for a claim to be made where the potential claimant “has a valid entitlement to the property but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming ownership rights.”¹⁷⁴ New Brunswick has adopted this same language.

In contrast, Alberta’s Act requires that a claim be allowed only where the administrator is satisfied that the claimant “is the owner” of the property.¹⁷⁵ While the administrator *may* pay out where the claimant has a valid entitlement but is prevented from asserting full ownership rights, allowing such a claim is not mandatory.¹⁷⁶ This is also the case in British Columbia¹⁷⁷ and Quebec.¹⁷⁸

The most obvious example of a potential claimant who may have a valid entitlement to unclaimed property but is prevented from asserting full ownership rights due to a procedural impediment is an entitlement arising from an estate where probate or letter of administration have not been granted. Where the ULCC Act and New Brunswick’s legislation enable a potential beneficiary to make a claim to property held in an estate without a probated will or letters of administration, such individuals are precluded from making claims in Alberta, Quebec or British Columbia.

In considering who should be entitled to make a claim to unclaimed property held by the administrator, it is the Commission’s position that an unclaimed property scheme is appropriate only for uncontested types of property. The intention is to allocate funds where there is no dispute

¹⁷⁴ ULCC Act, supra note 1, s 17(1)(a)(ii).

¹⁷⁵ Alberta Act, supra note 50, s 48(2).

¹⁷⁶ This was confirmed by a representative of the Unclaimed Property Division of Alberta’s Treasury Board who advised that their office will not accept claims from potential beneficiaries of property in an estate. Instead, such property must be claimed by the executor of the estate on the beneficiary’s behalf or where the beneficiary obtains a court order. Additionally, pursuant to s 49 of the Alberta Act, the administrator must allow a claim made by a person or organization claiming to be a creditor provided the creditor has obtained a judgment of an Alberta Court or other court pursuant to the *Reciprocal Judgements Act* against the owner or apparent owner of the unclaimed property.

¹⁷⁷ BC Act, supra note 45, s 4.2(3)(a).

¹⁷⁸ Quebec Act, supra note 53, s 28(2).

as to the rightful owner and the apparent owner must be able to establish a legal claim to the property. Therefore, only those who satisfy the administrator that they have a valid ownership entitlement to the property should be entitled to make a claim. Where the property falls within an estate, a claim to such property should only be accepted from the executor or administrator on behalf of the estate or by a beneficiary who has obtained an order from the Court of Queen's Bench legally entitling them to such property.

Recommendation 16: The Commission recommends that the Act provide that the administrator may only allow a claim where satisfied that the claimant is the owner of the claimed property.

7.2 Online Claims Process

Acknowledging 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.

Each Canadian jurisdiction with unclaimed property legislation has developed and implemented an online claims process whereby potential owners can submit their claims to the administrator entirely electronically. Enabling claims to be made electronically makes the process accessible for apparent owners. Therefore, an online claims application process is crucial and should be mandated in the legislation.

Recommendation 17: The Act should establish an electronic claims application process as well as a paper process.

7.3 Claim Deadlines

An important distinction between the ULCC Act and the legislation of most Canadian jurisdictions is that, while the ULCC does not impose a deadline after which a claim cannot be made, with the exception of British Columbia, each province requires a claim to be made in a certain amount of time, after which the claim is lost.

Alberta's legislation is the most severe, providing that a claim may not be brought more than 10 years after the property is transferred to the administrator.¹⁷⁹ After the passage of 10 years, any right of the claimant in relation to the property, including equitable rights, is extinguished. The legislation of both Quebec and New Brunswick also impose a deadline of 10 years for claims to

¹⁷⁹ Alberta Act, *supra* note 50, s 49(9).

be made but only for those under \$500.00, after-which, the property vests with the Crown.¹⁸⁰ Property over \$500.00 does not vest in the Crown and remains perpetually claimable.

In British Columbia, unclaimed property remitted to the third-party administrator never vests with the Crown but remains with the third-party administrator perpetually.¹⁸¹ A claim can be made at any time.

During its consultations, the Commission did hear from those who expressed the view that there should be an ultimate limitation period on the making of claims to provide certainty to the administrator. The Commission agrees that property that has been properly advertised to the public by the administrator for a ten-year period and remains unclaimed should vest in the Crown where it can be used to benefit all Manitobans.

Recommendation 18: The Act should provide that claims can be made to property in the possession of the administrator 10 years from the date the property was received by the administrator. After 10 years, no claim to property should be accepted and the property should vest in the Crown.

7.4 Appeal of Administrator's Decision and Dispute Processes

While not included in the ULCC Act¹⁸², in order to keep disagreements regarding claim determinations from overwhelming the judicial system, the Commission believes that a non-judicial dispute mechanism should be established and set out in the legislation.

In British Columbia, if a claim is disallowed, in whole or in part, the claimant may appeal the decision to the administrator.¹⁸³ Under Alberta's legislation, where a claim is disallowed, the claimant can file a Notice of Objection with the Minister who may either allow the claim or deny it in accordance with the Act.¹⁸⁴ In both jurisdictions, where the claimant is not satisfied with the second decision, they may appeal the decision to the British Columbia Supreme Court¹⁸⁵ or Alberta Court of Queen's Bench for a determination.¹⁸⁶

Feedback received by the Commission on whether a dispute must be managed through an administrative process prior to the commencement of a judicial process was overwhelming in favour of such a mechanism. Allowing for the review of a decision of the administrator to deny a claim through an administrative process reduces the costs of a claimant and should also reduce

¹⁸⁰ Quebec Act, s 29, NB Act, s 19(2).

¹⁸¹ BC Act, *supra* note 45.

¹⁸² ULCC Act, s 17(6). The Act provides that, where a dispute arises between a claimant and the administrator, the superior court of the enacting jurisdiction may determine a claimant's rights on application.

¹⁸³ *Ibid*, s 5.1.

¹⁸⁴ *Ibid*, s 59(1).

¹⁸⁵ *Ibid*, s 5.1(2). There are no reported cases on this point.

¹⁸⁶ *Ibid*, s 60(2). There are no reported cases on this point.

litigation. 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.

Recommendation 19: The Act should establish an administrative appeal process where a claim is disallowed that must be used prior to the commencement of litigation.

7.5 Regulation of Professional Locators

One matter that was not put forth for consideration in the Consultation Paper was the regulation of professional locators of unclaimed property. Professional locators or “third-party finders” are individuals who are in the business of finding the owners of publicized unclaimed property held by an unclaimed property administrator and making them aware of the property for a fee.

While there does not yet appear to be an industry of professional locators operating in Canada, it is prevalent in the United States.

Under American legislation,¹⁸⁷ the state administrator may sell a list of unclaimed property remitted to a third party to meet its objective of reuniting owners with their property. Regulation of the industry was found to be necessary because, in certain states, including Florida, third parties were obtaining the list and racing to locate the owner of property before they received the notification from the administrator in the mail. What would have been a free service provided by the administrator then becomes a private enterprise and the notified owner is required to pay a fee to the professional locator.

Even while professional locators do not appear to be operating in Canada, some Canadian jurisdictions have chosen to legislate in the area in preparation. Section 29 of the ULCC Act contains provisions regulating what is necessary to constitute a valid agreement between a professional locator and an owner.¹⁸⁸

¹⁸⁷ U.S. National Conference of Commissioners on Uniform State Laws, *Uniform Unclaimed Property Act* (1995), arts 7, 13, available online: <https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>; for a list of states who have adopted legislation consistent with the *Uniform Unclaimed Property Act* (1995), see: <https://www.uniformlaws.org/committees/community-home?CommunityKey=8f6e2424-b79e-48a9-a34a-8b6f57bfd330>.

¹⁸⁸ Section 29 of the ULCC Act provides for rules respecting agreements to locate or recover unclaimed property entered into between owners and property locator firms. Section 29(1) provides that the agreement must clearly set out its terms including the value of the unclaimed property and the total cost of the contract to the owner, and that the agreement must be in writing and signed by the owner. Section 29(2) provides that unreasonable compensation or expenses or both is deemed unconscionable. 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

The provisions of the ULCC Act were adopted by Alberta *verbatim* with the exception of the two-year wait requirement. Instead, in Alberta, a professional locator can enter into an agreement with a potential owner as soon as the property becomes unclaimed. Alberta's regulations set the maximum compensation that may be charged at ten percent of the value of the property.¹⁸⁹

New Brunswick's legislation also contains provisions similar to section 29 of the ULCC Act.¹⁹⁰ With no regulations yet in place, no maximum compensation has been set.

While there does not appear to be an industry of professional locators in Canada at this time, the Commission believes that, as more jurisdictions in this country establish unclaimed property systems with publicly accessible databases, it is only a matter of time before some start assisting owners for profit. As the goal is reuniting individuals with their property, this is not necessarily a bad thing. However, the Commission agrees with lawmakers in the United States, Alberta and New Brunswick who have legislated to avoid exploitation of the system and potential owners for the financial gain of a few.

Recommendation 20: Manitoba's Act should adopt section 29 of the ULCC Act to regulate professional locators, including the voiding of agreements entered into between third parties and owners made before two years from the date the property became unclaimed.

7.6 Unclaimed Property Legislation and Succession Laws

The Commission is cognizant that consideration must be given to the interplay between the claims process for unclaimed property and existing succession and intestacy laws. When crafting unclaimed property legislation, it is important that claimants cannot circumvent the current succession and intestacy laws or the probate and administration requirements by making claims to property through the proposed claims process.

For example, s. 48(2) of Alberta's Act provides that the administrator in that province may allow a claim "subject to the regulations, if the Minister is satisfied that the claimant is an individual of the 5th or greater degree of relationship to an individual who died intestate and is prevented by [...] the *Wills and Succession Act* from sharing in the intestate estate." Alberta's *Wills and Succession Act* states that individuals of a 5th degree or greater of relationship to the intestate are deemed to have predeceased him/her for the purpose of distributing the intestate's estate.¹⁹¹ The regulations do not provide any additional guidance on this matter. Although distant relations do not benefit

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.

¹⁸⁹ Alberta Act, ss 44 & 45, & Alta Reg. 104/2008, s 11.

¹⁹⁰ New Brunswick Act, *supra* note 56, s 52(1).

¹⁹¹ SA 2010, c W-12.2, s 67(2).

from an intestacy, they are not precluded from making a claim to the intestate's unclaimed property.

Similarly, Manitoba's intestate succession legislation provides that, where the intestate has no surviving issue¹⁹², parents, grandparents, great-grandparents, or issue of parents, grandparents or great-grandparents, the estate escheats to the Crown.¹⁹³

In considering this matter, the Commission believes that distant relatives who are barred from entitlement to an intestate's property pursuant to succession legislation should not be given a second chance to claim such property should it become unclaimed property. Generally, only those who have a valid claim to property under current laws should be entitled to recover unclaimed property through the claims process. The Commission, therefore, does not recommend the adoption of s. 48(2) of Alberta's legislation in Manitoba.

8. Other Considerations

During the consultation phase of this project, the following additional considerations were brought to the Commission's attention. While the Commission has chosen not to make specific recommendations on these matters, they necessitate consideration at the legislative drafting phase.

8.1 Retroactivity

One major area of concern of almost all those individuals and organizations that provided feedback on the Commission's Consultation Paper was whether the obligations imposed on holders, including the need to maintain comprehensive records of all unclaimed property in their possession, provide notice to the apparent owners, etc., would apply retroactively to property already in their possession or under their control and if so, how far back it would apply. Depending on the industry, holders may only maintain records for a specific amount of time and the time and expense of locating all of the intangible assets in its possession that would meet the definition of unclaimed property may be substantially burdensome. On the other hand, the Commission is aware that the value of unclaimed property currently in the possession of holders in this province is substantial¹⁹⁴ and that apparent owners would benefit from some retroactive responsibilities-whether it simply be the provision of notice or the need to report the existence of the property to

¹⁹² The term issue in this context refers to a person's offspring, and can include children, grandchildren, etc.

¹⁹³ *The Intestate Succession Act*, CCSM c I85, ss 4(1)-(6) & 7.

¹⁹⁴ Based on anecdotal information provided by industry representatives and individuals with knowledge of the matter.

the administrator. It will be necessary to consider whether and how the law would apply retroactively upon its enactment.

8.2 Fee Schedules

The ULCC Act, as well as each enacting jurisdiction in Canada, includes provisions regulating fees charged by the holder to an apparent owner for steps taken to attempt to locate and reunite them with their property. Section 5(1) of the ULCC Act states:

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.

The Commission was made aware that section 5(1) is not necessarily appropriate in the case of every holder. For example, the condition that a fee must be authorized by a written contract between the holder and apparent owner does not take into consideration scenarios where the holder's contractual relationship is not with the apparent owner but with another party.

Examples include:

- (i) there is seldom a contract between a security transfer agent and security holder. The contractual arrangement is between the transfer agent and the corporate issuer of securities; and
- (ii) there is no contractual arrangement between a trustee and the beneficiaries of a trust.

Additionally, concerns were raised that the condition imposed by section 5(1) does not consider that a significant amount of work may be required to ascertain the correct address for an apparent owner of property in order to attempt to provide notice.

Another available option would be following Alberta's lead and adopting a provision akin to section 6 of the *Unclaimed Property and Personal Property Act*. It provides:

Fees

6(1) A holder shall not impose a fee for providing a notice to an apparent owner under section 5(1) unless the holder regularly imposes the fee and does not regularly reverse or cancel the fee and

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

(b) the fee is reasonable and does not exceed any amount prescribed for the purposes of this subsection. [emphasis added]

(2) A holder shall not impose a charge against an apparent owner because the apparent owner has failed to communicate with the holder or because there have been no transactions with respect to the property unless the holder regularly imposes the charge and does not regularly reverse or cancel the charge and

(a) the imposition of a charge is authorized by a written contract between the holder and the apparent owner, or

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

(3) For the purposes of this section, ceasing to make payment of interest is deemed to be the imposition of a charge or fee and the amount of the unpaid interest is deemed to be the amount of the charge or fee.

(4) Unless the imposition of a charge is prohibited by a written contract between a holder and an apparent owner, the holder may, subject to the regulations, impose a charge against the apparent owner consisting of the actual costs incurred by the holder in paying, transferring or delivering property to the Minister in accordance with section 7(2), 9(2) or 10(1).

(5) A reference to a written contract in subsection (1)(a), (2)(a) or (4) includes a group insurance contract.

(6) For the purposes of sections 7, 8 and 39(12), a reference to a fee includes a charge that may be imposed pursuant to this section.¹⁹⁵

¹⁹⁵ Alberta Act, supra note 50, s 6(1).

CHAPTER 5: SUMMARY OF RECOMMENDATIONS

Recommendation 1: The Province of Manitoba should establish an unclaimed personal property regime enacted through stand-alone unclaimed property legislation. (p. 18)

Recommendation 2: Manitoba should adopt a remittance model of unclaimed property administration and the Act should establish that all holders, as defined in the legislation, should be required to remit property encompassed under the legislation to the administrator of unclaimed property after the prescribed dormancy period. (p. 19)

Recommendation 3: The unclaimed property legislation enacted in Manitoba should cover intangible personal property only. (p. 23)

Recommendation 4: *The Escheats Act* of Manitoba should continue to apply to real property that has 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 Act should be amended to grant the Crown powers to deal with the escheated property including the power of sale, rent, or the appointment of a person to take possession of and manage the property on behalf of the Crown. (p. 23)

Recommendation 5: The Escheats Act should be amended to enable the Attorney General or a representative of the Attorney General to waive or release the rights of the Crown to escheated or forfeited real property and, therefore, restore the land or any portion of or interest in it to a person with a legal or moral claim to the property. (p.23)

Recommendation 6: The Act should contain a provision akin to sections 2(3)(d) & (5) of the ULCC Act, which provides that, where an insurance plan contains a non-forfeiture clause, it does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary has otherwise become entitled to the proceeds before the cash surrender value of the policy is depleted. (p. 30)

Recommendation 7: Unclaimed proceeds held by the Court of Queen's Bench, Court of Appeal, or Provincial Court should be exempt from the application of the unclaimed property legislation. (p. 33)

Recommendation 8: Property held in a lawyer's trust account should be expressly excluded from the definition of "unclaimed property" contained in the Act. Additionally, the Act should provide that property may be excluded by regulation. (p. 34)

Recommendation 9: The definition of “property” contained in Manitoba’s Act, which establishes the types of intangible personal property covered under the legislation, should enable other categories of property to be added by regulation. (p.35)

Recommendation 10: The Act or its accompanying regulations should prescribe a minimum value for property covered under the Act of \$500.00. (p. 36)

Recommendation 11: The Act should adopt sub-sections 1(2) & (3) of the ULCC Act establishing when a corporation is determined to be based in Manitoba for the purpose of applying the Act. (p. 38)

Recommendation 12: The Act should state that, prior to remitting property to the third-party administrator, where the value of the property is \$500.00 or higher, the holder must make reasonable efforts to provide notice to the apparent owner of the existence of the unclaimed property and provide a deadline for claiming it after which the property would be remitted to the administrator. (p. 43)

Recommendation 13: The Act should require that holders report and remit to the administrator all unclaimed property within a prescribed period of time. Section 6(2) of the ULCC Act, which prescribes what information must necessarily be reported to the administrator, should be adopted. (p. 44)

Recommendation 14: The Act should expressly state that holders who report and remit unclaimed intangible property pursuant to the requirements under the Act are relieved of all liability respecting the property. (p. 45)

Recommendation 15: The Act should appoint an administrator to receive unclaimed property from holders and manage the claims process. The Act should adopt the provisions contained in the ULCC Act regarding the powers and obligations of the administrator, specifically: (i) the establishment and administration of a searchable online database of potential owners and unclaimed property available to the public, (ii) mandating frequent publicizing of the program and the database, (iii) enforcement provisions; and (iv) establishing rules and timelines for the claims process. (p. 47).

Recommendation 16: The Commission recommends that the Act provide that the administrator may only allow a claim where satisfied that the claimant is the owner of the claimed property. (p. 49)

Recommendation 17: The Act should establish an electronic claims application process as well as a paper process. (p. 49)

Recommendation 18: The Act should provide that claims can be made to property in the possession of the administrator 10 years from the date the property was received by the

administrator. After 10 years, no claim to property should be accepted and the property should vest in the Crown. (p. 50).

Recommendation 19: The Act should establish an administrative appeal process where a claim is disallowed that must be used prior to the commencement of litigation. (p. 51)

Recommendation 20: Manitoba's Act should adopt section 29 of the ULCC Act to regulate professional locators, including the voiding of agreements entered into between third parties and owners made before two years from the date the property became unclaimed. (p. 52)

This is a report pursuant to section 15 of the *Law Reform Commission Act*, C.C.S.M. c. L95, signed this 13th day of January, 2021.

“Original Signed by”

Cameron Harvey, President

“Original Signed by”

Jacqueline Collins, Commissioner

“Original Signed by”

Michelle Gallant, Commissioner

“Original Signed by”

Myrna Phillips, Commissioner

“Original Signed by”

Sacha Paul, Commissioner

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, as 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.