

UNIFORM LAW CONFERENCE OF CANADA

*DRAFT UNIFORM BILL and COMMENTARY*

**The Unclaimed Intangible Property Act**

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

*PART I – INTERPRETATION AND APPLICATION*

*Definitions*

**1 (1) In this Act:**

**“administrator” means the Public Guardian and Trustee [in BC];**

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

**“based” means based within the meaning of subsection (3);**

**“business organization” means a corporation, partnership, organization or other entity, whether operated for profit or not and, without limitation, includes a loan corporation, a trust corporation, a mutual fund, a credit union, an insurer and a public utility;**

**“carry on business” means carry on business within the meaning of subsection (4);**

**[“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]**

**“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 intangible property;**

**“governmental organization” means**

- (a) a ministry of the government or a government agency, board or commission,**
- (b) a municipality, including a district metropolitan or regional municipality, or**
- (c) a government corporation as defined in the *Financial Administration Act*;**

**“holder” means a person, including a business organization and a governmental organization, obligated to hold intangible property for the account of, or to deliver or pay intangible property to, the owner of that intangible property and includes any such person who, under this Act, delivers the intangible property, or an amount in compensation for it, to the administrator;**

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**“inspector” means a person carrying out an inspection under the authority of section 19 (1);**

**“intangible property” means any personal property that is not a chattel or a mortgage or leasehold of real property and, without limitation, includes**

- (a) the right to receive payment of the amount of a debt or obligation,**
- (b) the right to receive payment of unpaid wages, income, interest or other money, or the amount of a cheque, deposit, bank draft, money order, traveller’s cheque, credit balance, customer overpayment or the repayable balance of a refund or security deposit,**
- (c) the amount of an issued but unused gift certificate or credit memo,**
- (d) the right to receive a refund of an amount paid in respect of an unused airline or other transportation ticket,**
- (e) a share, including the right to a share certificate, or any other ownership interest in a business organization, or the right to receive payment of a dividend,**
- (f) the right to receive an intangible property distributable under a trust or fiduciary arrangement of any kind,**
- (g) the right to receive money deposited, to make a distribution or to redeem a share, a bond, a coupon or other security,**
- (h) the right to receive payment of an amount due and payable by an insurer under the terms of an insurance policy or contract including an annuity,**
- (i) the right to receive an amount distributable from a trust or custodial fund established under**
  - (i) a plan to provide education, health, welfare, vacation, severance, retirement or death benefits,**
  - (ii) a share purchase, profit sharing, employee savings or supplemental unemployment insurance plan, or**
  - (iii) a similar benefit plan, and**
- (j) any other personal property prescribed by regulation, that is not a chattel or a mortgage or leasehold of real property,**

**but does not include an unliquidated claim [?]; [this is drawn from the Ontario draft- however it does not exactly track what is provided for in the US Act - we are still endeavouring to determine if there is another way to describe this concept that is both more accessible and closer to the US model - what is in issue is how accurately to express what is required to transfer the appropriate property, right or interest to the administrator]**

**[“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*]

“reciprocating jurisdiction” means a jurisdiction that is prescribed by the Lieutenant Governor in Council under subsection (2) to be a reciprocating jurisdiction;

“reporting holder” means a person who, under section 5 (1), is obligated to comply with section 5 (2);

“unclaimed intangible property” means intangible property in respect of which no communication is received by the holder from the apparent owner within 5 years, or within such other time period as may be prescribed, after the date on which the intangible property becomes payable or distributable by the holder, and includes all interest and income earned on, and all other accretions to, the property. [what is in issue is whether there ought to be different time periods for different types of property (e.g. traveller’s cheques, money orders, shares, debts, etc) and if so ought they be in the Act or prescribed by regulation]

(2) If the Lieutenant Governor in Council is satisfied that a jurisdiction has enacted unclaimed intangible 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.

(3) 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.

(4) 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.

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**Comment:** “Apparent owner” is defined as the person whose name appears on the holder’s records as the person entitled to the intangible 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 “intangible property” is inclusive. The intention of the definition is to capture the notion that intangible property is the underlying right or interest which is evidenced by a given instrument. In issue is how best to express what is required to transfer the appropriate property right or interest to the administrator.

The definition of “unclaimed intangible property” provides that intangible property becomes “unclaimed” if the holder of that property receives no communication from the owner for a specified period of time after the property has become payable or distributable by the holder to the owner. The general period of time in the Act is five years, unless otherwise prescribed. It may be appropriate, however, that the Act expressly set out the different periods of time applicable to the different categories of intangible property. In the United States Uniform Unclaimed Property Act of 1995, longer periods of time are provided, for example, with respect to travelers cheques and money orders, and a shorter period of time for unpaid wages. It may also be appropriate to have particular rules to define when a given type of property becomes payable or distributable by the holder to the owner. If so, the further question is whether these particular rules should be prescribed in regulation or provided for in the Act.

Section 1(2) 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 inter-jurisdictional elements. Reciprocal jurisdictions are expressly referred to in section 5 of the Act, which provides the basis upon which the enacting jurisdiction may properly claim and receive unclaimed intangible property; and in Section 13, which provides the basis upon which the enacting jurisdiction and reciprocating jurisdictions may claim and receive unclaimed intangible property from one another.

Section 1(3) and (4) 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 founded on legislative enactments in a given province or territory. Both the definitions in subsection (3) and (4) parallel similar definitions in the Uniform Court Jurisdiction and Proceedings Transfer Act.

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*Application*

**2 This Act does not apply in respect of any loan or other extension of credit to a person that is primarily for that person's personal, family or household purposes.**

**Comment:** The Act does not apply to funds held for primarily private purposes.

*PART 2 – RIGHTS AND DUTIES OF HOLDERS AND ADMINISTRATORS*

*Notice to apparent owner*

**3 (1) A holder of unclaimed intangible property must provide a written notice that complies with subsection (2) to the apparent owner of that property at least 3 months, but not more than 6 months, before complying with section 5 in relation to that property.**

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

- (a) identify the intangible property,**
- (b) state that the property is subject to this Act,**
- (c) identify the holder and state that the holder is holding the 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 intangible property is less than \$100.**

**Comment:** Before reporting and delivering unclaimed intangible 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 3(2). The purpose for 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*

**4 (1) A holder must not charge a fee for sending a notice to an apparent owner under section 3 (1) unless**

- (a) the fee is authorized by a written contract between the holder and the apparent owner,**
- (b) the fee does not exceed the prescribed amount, and**
- (c) the holder regularly imposes the fee, which fee is not regularly reversed or**

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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 intangible property unless

- (a) the charge is authorized by a written contract between the holder and the owner or apparent owner,
- (b) the charge does not exceed the prescribed amount, 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 4(1) limits the circumstances in which notice fees may be charged by a holder to an apparent owner. Section 4(2) limits the circumstances for dormancy service charges. Section 4(3) provides that ceasing to pay interest is deemed to be a charge.

*Holder must report and deliver unclaimed intangible property*

**5 (1)** A person who, in a calendar year, is or becomes a holder of unclaimed intangible property must, within 4 months after the end of that calendar year or within a longer period that the Lieutenant Governor in Council may prescribe, comply with subsection (2) if the person remains a holder of that unclaimed intangible 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 intangible property,
  - (b) identify, in the report,
    - (i) the unclaimed intangible property,
    - (ii) the name, if known, and the last known address, if any, of the apparent owner of the unclaimed intangible property,
    - (iii) the date on which the intangible property became payable or distributable by the holder, and
    - (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,
  - (c) deliver the report to the administrator, and
  - (d) deliver, with that report, the unclaimed intangible 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 administrator may order the holder to

- (a) deliver to the administrator a report that complies with subsection (2) (a) and
- (b) to the extent possible, and
- (b) deliver the unclaimed intangible property to the administrator or, if the holder is not able to effect that delivery, pay to the administrator, in compensation for that unclaimed intangible property, the 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 intangible property that ought to have been delivered by the holder under subsection (2) (d).

(4) If the administrator orders a reporting holder to comply with subsection (3), the holder must comply with that order within 60 days after the date of that order.

**Comment:** Section 5 sets out the obligations of a holder to report and deliver unclaimed intangible property to the administrator, and correspondingly establishes the entitlement of the enacting jurisdiction to receive unclaimed intangible property and reports thereof.

Section 5(1)(a) provides that if the holder is an individual, he or she should report and deliver unclaimed intangible property to the enacting jurisdiction in which he or she is

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ordinarily resident.

Section 5(1)(b) sets out the three situations in which a holder that is not an individual should report and deliver unclaimed intangible property to the enacting jurisdiction.

Section 5(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 intangible property to the administrator of the enacting jurisdiction.

Section 5(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 intangible property to the enacting jurisdiction.

Section 5(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 intangible 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 intangible property. In section 5(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 5(1)(b)(ii) and (iii), it is to the jurisdiction in which the holder's central management is exercised.

Section 5 does not require a holder to report and deliver unclaimed intangible 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 13 is the companion section to section 5. It provides for the circumstances in which unclaimed intangible property may be transferred from the enacting jurisdiction to a reciprocating jurisdiction.

*Additional requirement to provide unclaimed intangible property*

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

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

**(a) the unclaimed intangible property is not within the holder's power or**

control, in which case the holder must pay to the administrator 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 intangible property that ought to have been delivered by the holder under this subsection, or

(b) the holder, in a report, in the form included with the claim, disputes the holder's obligation to deliver that property and satisfies the administrator that the holder need not, or must not, deliver the unclaimed intangible property to the administrator.

**Comment:** This section permits the administrator to claim unclaimed intangible property in exceptional circumstances prior to the property becoming transferable and reportable. Section 6(2) requires the holder to deliver the unclaimed intangible 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 intangible property that ought to have been delivered under this subsection.

*Voluntary delivery of intangible property*

**7 (1) A holder may, with the written consent of the administrator and on any terms and conditions the administrator may impose, deliver intangible property to the administrator**

- (a) before that intangible property becomes unclaimed intangible property, or
- (b) in the case of unclaimed intangible property to which section 5 does not apply, at any time.

**(2) Until intangible property delivered to the administrator under subsection (1) becomes unclaimed intangible property,**

- (a) the administrator must hold the intangible property, and
- (b) the intangible property must not be treated as unclaimed intangible property.

**(3) A holder who delivers intangible property to the administrator under this section must provide with that property a report that complies with section 5 (2).**

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

*Transfer of records*

**8 (1) If, under section 5, 6 or 7, a holder delivers intangible property, or pays an amount in compensation for intangible property, to the administrator, the**

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**administrator may require the holder to transfer to the administrator the records related to that intangible property.**

**(2) A holder who, under section 5, 6 or 7, delivered intangible property, or paid an amount in compensation for intangible 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), transfer to the administrator any record in respect of that property that the administrator is willing to accept.**

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

*Administrator may demand additional information*

**9 (1) Whether or not intangible property is delivered to the administrator under this Act, the administrator may, for the purpose of ensuring compliance with this Act and the regulations, make one or both of the following demands to a holder:**

**(a) a demand that the holder file with the administrator a report or a supplementary report, in the prescribed form, in respect of the intangible property;**

**(b) a demand that the holder deliver to the administrator any information or records specified by the administrator in the demand.**

**(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.**

**Comment:** Section 9 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*

**10 A holder who, under section 5, 6 or 7, delivers a report to the administrator respecting intangible property must maintain in that person's possession or control,**

**for [10 years after complying with section 5 or 6 or after delivering intangible property under section 7 (1), as the case may be,] all of the records relating to the intangible property that are not transferred to the administrator under section 8.**

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

*Delivery relieves holder from liability*

**11 A holder who, in accordance with section 5, 6 or 7, delivers intangible property, or pays an amount in compensation for unclaimed intangible property, to the administrator is relieved of all liability in respect of the property delivered or amount paid.**

**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. At issue here is whether an indemnity to such holders should also be provided.

*Administrator has rights of owner*

**12 (1) Subject to this Act, the administrator may, in respect of the unclaimed intangible property or amounts received by the administrator under section 5, 6, 7, 13 (2) or 14 (4), exercise all the rights and powers of an owner of that property or those amounts and, without limitation and despite any other enactment, the administrator**

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

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

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

**(d) if the intangible property is a security, and the holder is the issuer of that security, may obtain, without charge or indemnity bond, a certificate for that security as if the administrator were the owner and holder of the security.**

**(2) Unless, in the case of unclaimed intangible property delivered to the administrator in the form of a security, the administrator considers that it is prudent to retain the security in the form in which it was delivered to the**

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**administrator, the administrator must invest**

- (a) the unclaimed intangible property he or she receives under section 5, 6, 7 or 13 (2),**
- (b) any amounts he or she receives from the disposition of that unclaimed intangible property,**
- (c) the amounts he or she receives in compensation for unclaimed intangible property under section 5 (3) (b) or 6 (2) (a), and**
- (d) any other amounts the administrator receives under this Act.**

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

**Comment:** Section 12 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 intangible property received, he or she may exercise the rights and powers of an owner. The administrator may dispose of unclaimed intangible property as he or she considers reasonable. When investing, the administrator must do so as would a prudent investor.

Section 12(1)(c) and (d) provide for the ability of the administrator, should it be necessary or appropriate under applicable law, 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. Appropriate wording is required which is sufficiently precise to provide the requisite powers while being sufficiently general to accommodate different provincial legislative schemes.

Section 12(2) requires the administrator to invest unclaimed intangible property received unless the property is in the form of a security and the administrator considers it prudent to retain the property in that form.

Section 12(3) relieves those who comply with an endorsement or other direction of the administrator respecting securities from liability to the owner or apparent owner.

*Administrators' rights and obligations relative to foreign administrators*

**13 (1) If the administrator receives unclaimed intangible property under section 5, 6 or 7 or under subsection (2) of this section, or receives an amount in compensation for unclaimed intangible property under section 5 (3) (b) or 6 (2) (a) and a foreign administrator claims that unclaimed intangible property or amount from the administrator, the administrator must deliver to the foreign administrator the unclaimed intangible 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.

**(2) If a foreign administrator receives unclaimed intangible property, the administrator may claim and receive from the foreign administrator the unclaimed intangible 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 13 is the companion section to section 5. It provides for the circumstances in which unclaimed intangible property received by the enacting jurisdiction may be claimed by a reciprocating jurisdiction; and in which case, the enacting jurisdiction must deliver that property to the reciprocating jurisdiction. The circumstances are as follows:

- if the last known address of the owner, or if owner is unknown, of the apparent owner, is in the reciprocating jurisdiction. This circumstance might arise where the holder of the unclaimed intangible property does not carry on business in that reciprocating jurisdiction, and is therefore not subject to its jurisdiction. In this situation, the reciprocating 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 reciprocating jurisdiction.

Section 13(2) provides for the corresponding right of the enacting jurisdiction to claim and receive unclaimed intangible property from a reciprocating jurisdiction in parallel circumstances.

*Unclaimed intangible property account*

**14 (1) The administrator must prepare and maintain as a separate account in the accounts of the [Public Guardian and Trustee] [in BC] an unclaimed intangible property account consisting of all unclaimed intangible property delivered, and all amounts paid, to the administrator under this Act.**

**(2) The administrator must, in relation to the unclaimed intangible property account, prepare and maintain records respecting particulars of that unclaimed**

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intangible property, those amounts and their investment and disposal.

(3) At the end of each fiscal year of the administrator, the administrator must transfer to the *[Enacting Jurisdiction]* Minister for deposit into the consolidated revenue fund the balance remaining in the unclaimed intangible 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 intangible 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 intangible property account, without any appropriation other than this section, an amount sufficient to meet those claims.

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

**Comment:** The administrator must establish and maintain a separate account of unclaimed intangible property, and must record the particulars of the unclaimed intangible property received and how it was invested or otherwise disposed.

Section 14(3) and (4) provide for the transfer to the enacting jurisdiction's consolidated revenue fund of the balance of the unclaimed intangible 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 intangible property account. The Minister responsible is required, should it be necessary, to pay to the unclaimed intangible property account amounts sufficient to meet the obligations of the program.

*Public notice by administrator*

**15 (1) In addition to preparing and maintaining the records referred to in section 14 (2), the administrator must**

- (a) maintain an electronic or other database of all intangible property delivered, and all amounts in compensation for intangible property paid, to the administrator under section 5, 6, 7 or 13 (2),**
- (b) include in the database the prescribed particulars for that property and those amounts, and**
- (c) make the database available to the public, subject to any restrictions imposed by regulation for the purpose of protecting the privacy of owners.**



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

**Comment:** After receiving unclaimed intangible property under the Act, the administrator has the obligation of endeavoring to draw the existence of the property to the attention of the owner. The administrator must record in a publicly available database the prescribed particulars of the property received, and at least annually, publicize the existence of the database.

*Filing of claims, response and return of property*

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

**(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 applicant**

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

**(ii) has a valid entitlement to the intangible property or amount but is prevented from asserting full rights as owner to that intangible property or amount because of a procedural impediment to the person assuming those ownership rights including, without limitation,**

**(A) in the case of an entitlement arising under an estate, the fact that the estate has not yet been probated, or**

**(B) in the case of an entitlement arising in relation to a company, the fact that the company has been dissolved, or**

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

**(3) Subject to subsection (4), 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) deliver to the claimant the intangible property or amount;**

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

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that sale, and

(b) do whichever of the following apply:

(i) if and to the extent that the intangible property was delivered to the administrator as money, pay to the claimant interest earned by the administrator on the intangible property from the time the intangible property was delivered to the administrator;

(ii) if and to the extent that the claim relates to an amount received by the administrator under section 5 (3) (b) or 6 (2) (a) in compensation for unclaimed intangible property, pay to the claimant interest earned by the administrator on the amount from the time the amount was paid to the administrator;

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

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

(B) pay to the claimant the interest earned by the administrator on the intangible property from the time of its conversion into money;

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

(4) The administrator may deduct from the money that the administrator is required to pay under subsection (3) the prescribed expenses and fees of administration in respect of the intangible property, or the amounts paid in compensation for unclaimed intangible property, received and administered under this Act.

(5) On application by a claimant or the administrator, the [superior court] may determine the rights of a claimant under this section.

(6) An application to court by a claimant under subsection (5) 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 intangible 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, as well as any interest, dividend or increment earned, realized or accrued on the property from the time the property was received by the administrator.

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*

**17 (1) Without limiting section 12 (1), for the purpose of locating owners of unclaimed intangible property that has been delivered or is required to be delivered to the administrator or in compensation for which an amount has been paid to the administrator under section 5 (3) (b) or 6 (2) (a), the administrator 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 to enable one or both of [Enacting Jurisdiction] and the other government**

**(a) to audit or otherwise ascertain unclaimed intangible property or amounts to which a contracting party is entitled, or**

**(b) to exchange information and transfer property or amounts to facilitate the return of unclaimed intangible property or its value to its rightful owner.**

**(2) The administrator may, with the approval of the Lieutenant Governor in Council, 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 intangible property program to be administered by any party to the agreement.**

**Comment:** Given the inter-jurisdictional scope of unclaimed intangible property, and the importance of cooperation amongst jurisdictions, section 17 enables administrators to enter inter-jurisdictional agreements. Section 17(1) enables the administrator to enter into agreements with other jurisdictions to enable audits of unclaimed intangible property, and to exchange information and to transfer property to facilitate the return of property to its rightful owner. Section 17(2) allows the administrator, with the approval of the Lieutenant Governor in Council, to enter into agreements with one or more Canadian jurisdictions to establish joint or multi-jurisdictional unclaimed intangible property programs.

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## *PART 3 – INSPECTIONS AND ENFORCEMENT*

### *Definition*

**18 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 and enforcement under the Act.

### *Inspection*

**19 (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**

- (a) require a holder of intangible property to produce any records, applicable to the intangible property, that are in the possession or control of the holder, and**
- (b) inspect and remove any of the records produced under paragraph (a) that are relevant to the inspection for the purpose of making copies or extracts.**

**(2) An inspector**

- (a) may, during business hours, attend at any business premises of the holder for the purpose of requesting the production of or inspecting any records of the holder relevant to the inspection,**
- (b) may 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) 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 intangible property being held for an owner.**

**(4) If an inspector removes any records under subsection (1) (b), he or she must give a receipt for them to the person from whom they are taken.**

**(5) An inspector may request 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.**

**(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 respect of 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 5 or 6, 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 powers in section 19 establish the essential means of enforcement under the Act. The inspection provisions allow the administrator, where necessary in a given instance, to obtain information required to ensure compliance with the Act. Section 19(1) provides that the administrator may require a holder to produce applicable records, and may inspect and make copies of such records. Section 19(2) sets out the specific means by which an inspector may obtain the required information. These include attending and inspecting a holder's premises and questioning relevant persons. Section 19(3) and (6) requires a holder and its employees to cooperate with an inspector, and section 19(5) allows for the production of business records.

#### *Warrants*

**20 (1) A justice may, in respect of an inspection under section 19, 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**

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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 26 has been committed, and

(ii) there is, on or in the premises, the record or the 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*

**21 (1) An inspector who removes any records or things 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 or things removed under section 19 or 20 are admissible in evidence to the same extent, and have the same evidentiary value, as the original records or things 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 21(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 21(2) provides for the evidentiary status of certified copies or extracts of records.

*Confidentiality*

**22 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 17, 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.

*Determination and review*

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

- (a) the unclaimed intangible property that is deliverable,**
- (b) the value of that property as of April 30 of the year in which the holder was required to deliver the property, and**
- (c) the amount of interest that, under section 27, has accrued and will continue to accrue until**
  - (i) the property is delivered, or**

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- (ii) an amount in compensation for that property is paid under section 5 (3) (b) or 6 (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) deliver the unclaimed intangible 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 holder objects to that determination.

(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 intangible property, if any, that is deliverable,
- (b) determine the value of the property as of April 30 of the year in which the holder was required to deliver the property,
- (c) determine the amount of interest that, under section 27, has accrued and will continue to accrue until
  - (i) the property is delivered, or
  - (ii) an amount in compensation for that property is paid under section 5 (3) (b) or 6 (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 intangible property that the holder has 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 24,

- (a) deliver the unclaimed intangible property in accordance with the final deter-



mination, and

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

**Comment:** The purpose of section 23 is to provide a process by which the administrator and a holder may endeavor 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 intangible property as required under the Act, the administrator may make an initial determination respecting the property that is transferable, 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*

**24 (1) A holder who disputes a reconsideration of the administrator made under section 23 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*

**25 On application by the administrator, the [superior court] may order a holder of unclaimed intangible 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*

**26 (1) A person commits an offence who**

**(a) knowingly obstructs or hinders an inspector carrying out or attempting to**

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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 as required by this Act or the regulations, or

(e) without reasonable excuse, fails to comply with a demand of the administrator under section 9.

(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) Section 5 of the *Offence Act* does not apply to this Act or the regulations. [in B.C.]

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

### *Interest*

27 (1) Unless exempted from doing so by the administrator, a reporting holder who has not delivered unclaimed intangible property or who has not paid an amount to the administrator in compensation for that property in the manner and time required under section 5 (3) (b) or 6 (2) (a), must pay interest on the value of the property.

(2) Interest payable under subsection (1) of this section must be paid

(a) at the prescribed rate, or at a rate calculated in the prescribed manner, and

**(b) from April 30 of the year in which the holder was required to deliver the property to the administrator up to and including the date on which the property is 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 4 – GENERAL*

*Agreements to locate property*

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

**(a) must clearly set out the terms of the agreement, including the value of the unclaimed intangible 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 may, for the purposes of subsection (2), prescribe a maximum amount of compensation or expenses or both and may prescribe different maximum amounts based on different values of the unclaimed intangible property involved, and in that event, 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 deliver any unclaimed intangible property or pay any amount directly to a claimant who satisfies the administrator under section 16 (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 intangible property becomes unclaimed intangible property under this Act and ending on the date that is 24 months after the date on which the administrator obtains the property under this Act.**

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

**Comment:** This section provides for rules respecting agreements to locate or recover unclaimed intangible property entered into between owners and property locator firms. Section 28(3) permits the Lieutenant Governor in Council to prescribe maximum amounts of compensation or expenses. Section 28(4) provides that the administrator may deliver unclaimed intangible property directly to a claimant who satisfies the administrator that he or she is entitled to the property. Section 28(5) limits agreements to locate unclaimed intangible 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 solicitor acting in his or her professional capacity as a lawyer on behalf of the owner.

*No contracting out*

**29 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*

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

- (a) affect the person's rights to receive or recover the intangible property, 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 intangible 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) deliver or transfer 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*

**31 (1) The Lieutenant Governor in Council may make regulations [referred to in section 41 of the *Interpretation Act*]. [B.C. language]**

**(2) Without limiting subsection (1) and section 28 (3), the Lieutenant Governor in Council may make regulations as follows:**

- (a) prescribing personal property as intangible property;**
- (b) prescribing a period for the purposes of the definition of “unclaimed intangible property”;**
- (c) prescribing, for the purposes of the definition of “unclaimed intangible property”, the date on which intangible property becomes payable or distributable by the holder with the power to prescribe different dates for different intangible properties or different classes of intangible property;**
- (d) designating one or more jurisdictions as reciprocating jurisdictions;**
- (e) prescribing the form of any records, and the information to be contained in any records, that are to be provided to or by the administrator;**
- (f) prescribing a time period within which a holder must comply with section 5 (2) if compliance with the time period referred to in section 5 (1) would result in a penalty or forfeiture in the payment of interest;**
- (g) respecting the records that must be maintained by a holder in relation to intangible property;**
- (h) prescribing the maximum amount of any fees that a holder may charge an owner or an apparent owner under section 4;**
- (i) prescribing the period following a holder’s compliance with section 5 or 6, or following the delivery by the holder of intangible property under section 7, during which the holder must retain records respecting the intangible property;**
- (j) respecting any fee or expense that may be charged or deducted by the administrator under this Act;**
- (k) respecting the time within which an application may be brought under section 16 (5);**
- (l) respecting the form of identification to be carried by an inspector under this Act;**
- (m) respecting the inspection costs that may be assessed under section 9 (7);**
- (n) prescribing the rate of interest, or the manner of calculating the rate of interest, that is payable under section 27;**

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**(o) 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. These include definitions, amounts, time periods, and administrative rules which may require periodic alteration due to changing circumstances.

### *Transition*

**32 (1) Subject to subsection (2), the periods of time set out in this Act and the regulations for calculating when intangible property becomes unclaimed intangible 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 intangible property that is or that, under subsection (1), becomes unclaimed intangible property unless**

**(a) the owner's interest in that intangible property was 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 intangible property would have become unclaimed intangible 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 in respect of which the holder has received no communication from the owner in the ten-year period immediately preceding the coming into force of the Act.

### *Commencement*

**33 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.