

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

**UNIFORM LEGISLATION RESPECTING
UNCLAIMED INTANGIBLE PROPERTY**

REPORT OF THE WORKING GROUP

British Columbia

**Yellowknife, NWT
August 18-22, 2002**

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UNCLAIMED INTANGIBLE PROPERTY

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[1] In August, 2001, the Civil Section approved the draft Uniform Unclaimed Intangible Property Act, subject to three issues identified by the working group as requiring further work.

[2] First, with respect to the concept of intangible property, the intention is to define that term so that the notion of the underlying property right or interest is clearly distinguished from the instrument which evidences it and to make it clear what is to be transferred to and dealt with by the administrator under the act.

[3] The second issue concerns the manner in which property becomes unclaimed under the act. In issue is whether there should be different periods of time for different types of intangible property, and if so, should there also be particular rules as to when certain types of property become payable and distributable by the holder to the owner.

[4] The third issue is how best to provide to the administrator the ability to deal effectively with investment securities. The U.S. Uniform Unclaimed Property Act of 1995 refers to Article 8 of the Uniform Commercial Code in providing the administrator with the ability to make endorsements or give directions on behalf of an apparent owner. This approach is not presently available in all Canadian jurisdictions; and therefore, appropriate language must be found that is sufficiently precise to provide the requisite powers, while being sufficiently general to accommodate different provincial schemes.

[5] 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 inter-jurisdictional aspects which arise in unclaimed intangible property legislation.

[6] The approach in the draft act is therefore to address the issues from the perspective of endeavouring to achieve uniformity, and in so doing, it draws upon recent, thoroughly developed legislative schemes in Canada and the United States. After consideration of the several alternatives, the policy of the United States Uniform Unclaimed Property Act with respect to these three issues has been adopted. Its provisions respecting these issues are the most developed and comprehensive of the alternatives. The US uniform act has the benefit of being the predominant legislative

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scheme in North America, and is accordingly the legislation with which Canadian holders have had the most experience.

[7] Mr. Luis Curras of the Office of the Public Curator of Quebec kindly offered a number of suggestions with respect to the draft act, several of which have been gratefully adopted, and in particular, suggestions to enhance the accuracy and security of the administrator's database.

[8] The focus of the project at present is the process of obtaining expert advice with respect to ensuring that the concepts, principles, and language in the US uniform act are appropriately adapted to the Canadian context. Following completion of this task, the draft act shall be circulated to provincial and territorial governments, public trustees, and groups representing industry and consumers for comments respecting the application of the provisions in the uniform act.