



Securities Transfer Association of Canada

William J. Speirs
President

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John Lee
Counsel
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 7th Floor
Toronto, ON M7A 2S9

Dear Mr. Lee:

The Securities Transfer Association of Canada ("STAC") is pleased to be able to offer our comments on the Ontario government's proposed Unclaimed Intangible Property Program, including the provisions of the Uniform Unclaimed Intangible Property Act. STAC is a non-profit association of Canadian transfer agents that among others has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

STAC members' clients consist primarily of public and private companies for which they act as transfer agent and registrar. In the vast majority of these cases, these clients trade their securities issues on listed stock exchanges or on over the counter bulletin boards. Further, as transfer agent and registrar, STAC members' primary function is to keep records of the shareholders of its various clients.

In advance of our detailed answers to the questions posed by the Province, we would like to offer the following general comments:

1. We would ask that the Province do whatever is possible to make the legislation consistent with the Alberta legislation, which is also based on the Uniform Unclaimed Intangible Property Act. As more provinces implement unclaimed property regimes, inconsistencies will increase the burden on holders and perhaps lead to conflict of laws issues.

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2. Some STAC members are trust companies and the legislation will have to be interpreted in light of applicable trust laws and trust company legislation, in particular, the federal *Trust and Loan Companies Act*.
3. The main business of our members is acting as transfer agent for public securities issuers and, as noted later, our role is often not clearly understood outside the industry. We would welcome the opportunity to meet with the Province's representatives to work towards drafting legislation that will be more easily applied to our business.

What features of the Uniform model should be kept, varied or excluded from the design of the Ontario Program? Why?

If such legislation is to be enacted, we generally support the terms of the Uniform Act, subject to the comments and items of concern set out in this submission.

1. The definition of "holder" should read "..., the individual or entity, ..." (as the Alberta Act does), given that a sole proprietorship is intended to be subject to the Act.
2. We suggest that section 2(1)(c)(ii) be changed from the second to the third returned mail item. This would make the proposed legislation consistent with the *Business Corporations Act* (Ontario), section 262(4), which provides for three returned items before a shareholder is considered lost.
3. Section 4 should be clarified. A holder should not be required to send a notice under subsection (2) if it has reasonable grounds to believe that such 'last known address' is incorrect. Also, if section 4 is intended to impose a positive search obligation on holders, we believe this should be made clearer, and should be based on 'reasonable efforts'. Further, given the burden that such a searching obligation would place on holders, the ability to impose a fee for such services needs to be clearly established; (see point 4 below).
4. We do not believe the fee section of the Uniform Act is fair or reasonable in the context of transfer agents and trustees. Section 5 of the Act imposes the condition that a fee must be authorized by a written contract between the holder and the apparent owner. However, this fails to recognize that a transfer agent's contract is with the corporate entity that issued the securities; the transfer agent does not contract with the many securityholders that have invested in the corporation. Similarly, a trustee does not contract with the beneficiaries of a trust. To the extent that beneficiaries could be 'apparent owners', recovery of a reasonable fee to the holder should be provided for. We submit that section 5 is unduly prejudicial to transfer agents and trustees, and that we should be entitled to charge a reasonable fee in connection with the duties we need to perform under the Act (not just for "sending a notice" but for the work involved in ascertaining or attempting to ascertain correct addresses). We suggest that the Ontario Act include a provision similar to Section 6 of the Alberta Act to clarify that holders may charge reasonable fees for notices – and for conducting searches (which searches may be done through a third party servicer, thus resulting in out-of-pocket expenses that clearly should be recoverable). The Ontario Act should also make clear that such fees may be deducted from the monies/property remitted to the Province. Finally, a significant portion of the property held by transfer agents that will be remitted to the Province will be securities that the transfer agent is not entitled to sell. As such, the transfer agent will

have no ability in such circumstances to deduct its reasonable fees. We submit that it would be fair and reasonable for holders who remit non-monetary unclaimed property to be reimbursed by the Province similar to the manner contemplated by subsection 8(3) of the Alberta Act – or to net off such unrecoverable fees from other unclaimed monies remitted to the Province.

5. With regard to sections 6(2) and 7, we have several comments:
 - (a) The additional information required by (b)(iii) is unduly burdensome compared to any foreseeable benefit to the Province or the apparent owner. The delivery by a holder of the unclaimed property along with the name, last known address, SIN and date of birth (if/as known) should be sufficient to allow the Province to deal with claims, administer the program, etc. The additional information required by (b)(iii) may not be part of a holder's electronic database.
 - (b) Similarly, the additional information required by (b)(iv) is unduly burdensome compared to any foreseeable benefit to the Province or the apparent owner. The current transfer agent/trust company population in Canada includes surviving companies of numerous acquisitions, consolidations, amalgamations, name changes, etc. In some instances, a holder could potentially have a dozen or more 'predecessor' holders over previous decades, and the information as to which of these is/are relevant to a given item of unclaimed property will likely not be part of any relevant database and may be extremely difficult to research (likely manually). Further, the requirement to report their "addresses" is vague. (What addresses? Head office? Branches? Current or former? Etc.)
 - (c) With regard to 6(2)(d), we agree with the provision in section 7(2)(e)(iii) of the Alberta Act, allowing a holder to file an objection, setting out the basis on which it objects to paying or delivering particular unclaimed property. We offer this same comment with regard to section 7 of the Uniform Act; i.e., that the alternative of filing an objection be included, as per section 9(2)(b) of the Alberta Act.
6. The Ontario Act (or Regulations made thereunder) should clarify how a holder would deliver unclaimed property that is shares, bonds or other securities that may not be represented by physical certificates. A mechanism for remitting unclaimed security positions needs to be considered by the Province.
7. With regard to the Province exercising the rights of an owner over unclaimed property delivered to it (section 13), please add a provision corresponding to subsection 38(7) of the Alberta Act. This would require the Province to include, with a potential endorsement (e.g., upon a sale and/or transfer) of a security certificate, a certificate stating that the endorsement is being made under the authority of the Ontario Act. This will help ensure that the transfer agent for the subject security is able to identify the authority behind the endorsement. (Otherwise, for example, a physical share certificate registered to John Q Public but endorsed by a representative of the Province might be rejected by a transfer agent or an issuer.)
8. The meaning and effects of section 31 (Limitation Periods) need to be reconsidered and clarified significantly. For example, a "period of limitation" should ideally be clarified to refer only to a statutory limitation. Also, this provision should not, in effect, retroactively

revive a right that has expired under an applicable Limitations statute. Our Association would also like to understand if the Province shares the view that Alberta has, that a contingent right that a third party has in a particular property (e.g., money or securities) prevents that property from being eligible to become 'unclaimed property' under the Act. For example, property that a transfer agent, acting as Depositary under a corporate action (e.g., a takeover), might hold for a shareholder could, under the express terms of a statutory Plan of Arrangement or otherwise, revert to the issuing company after a set number of years.

What property should be specifically included or excluded from the Ontario Program? Why?

1. Given the compliance burden, we strongly urge the Province to provide that the Act not apply to property that is less than a prescribed value. Alberta has chosen \$250. However, given the nature of the duties upon a holder and that the Uniform Act is more onerous than Alberta's we suggest that a threshold of \$500 may be more appropriate.
2. Property that is held in trust should be excluded from the Act. This has been done, subject to certain carve-outs, in the Alberta Act (section 3.4(e)). In a trust arrangement, the trust property is under the management and control of a trustee and subject to the terms of the trust. As such, on a legal basis, the trust property should not be considered unclaimed provided the trustee is still exercising control over the trust. Failure to exclude trust property could create problems for trusts of all natures as the trustees might need to be in regular contact with beneficiaries in order to ensure that the property does not improperly exit the trust (as unclaimed property remitted to the Province), thereby defeating the intention and purpose of the settlor of the trust, who may have had long-term objectives and long-term interests of the beneficiaries at heart.

Are the time periods set out in the Uniform Act appropriate?

We feel that generally the time periods set out in the Act are not inappropriate, provided:

1. that the Act follows the approach taken in Alberta, in that 'the clock not start running' for the purposes of property being presumed abandoned until the Act comes into force. Holders should be assured of reasonable 'lead-in time' to comply with the Act.
2. that section 10(3) of the Uniform Act be modified (a) to allow a period longer than 21 days; and (b) to permit the holder to request a period longer than that prescribed, (which request the Province should approve if reasonable, given the potential scope of such a demand for additional information and the potential difficulty of locating aged records). See section 12(3) of the Alberta Act.

If s. 33(2)(b) is not adopted, are there mechanisms to support long-term holders?

In addition to the requests set out earlier in this submission:

1. the challenge of identifying and reporting with respect to property that may have been unclaimed for many decades, especially the manual work this may entail, could be enormous - particularly so if certain of the requests made earlier in this submission are not accepted, such as deleting the required reporting of seemingly non-essential information and ensuring that holders can charge a reasonable fee, chargeable against the property, for the work entailed;

2. the lead-in time for long-aged property that s. 33(2)(b) otherwise would have exempted from the Act should be extended;
3. A higher dollar threshold should be considered, below which the Act would not apply to such long-aged property (perhaps \$750 or \$1,000). A higher threshold would be justified based on the likelihood that such records may be in poorer form, not computerized or on legacy systems, and expensive to research, and it will be more likely that there will be intervening holders and, thus potentially, a greater reporting burden.

Are there any additional issues or comments?

1. Generally, subject to the specific suggestions made earlier, we support making the timeframes and dollar thresholds consistent with the Alberta Act.
2. The word “request” in sections 9(2)(a) and (b) should be replaced with “demand” or “requirement” to be more consistent with the term “require” in section 9(1).

How should the government continue to consult further as the Program is developed?

STAC members hold assets and/or conduct transactions for the benefit of literally millions of Canadians. While most of us are trust companies, we are not traditional deposit-takers and lenders. Our services and procedures are often not well-understood outside the industry. Accordingly, we believe it is vital that we be involved in consultations with the government on an ongoing basis. For example, administrative questions could well arise for the Province with respect to unclaimed property that might be delivered to it in the form of physical securities registered in the name of an apparent owner. We can assist the Province in understanding the logistics that could be involved in the Province’s decision to transfer or sell such securities, how such logistics might vary as between public and private companies, when and what fees are payable, timing issues, etc. We will make ourselves available to the Province’s representatives to facilitate such consultations. Needless to say, we believe the Province should also ensure that sufficient time be provided for the required work to be done by groups such as ours.

We would be pleased to discuss these comments and provide additional feedback as the Ministry of the Attorney General continues its consultation process regarding a new Unclaimed Intangible Property Program for Ontario.

Yours truly,



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