

BY ELECTRONIC MAIL: john.a.lee@ontario.ca

October 23, 2012

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

Dear Mr. Lee:

Re: Unclaimed Intangible Property Program Consultation

I am writing on behalf of the Investment Funds Institute of Canada (IFIC) and its members in response to the Ministry's consultation paper on a proposed unclaimed intangible property program for Ontario. Our members have had experience with the Quebec and Alberta regimes, and are currently working closely with Alberta Treasury Board and Finance staff in the implementation and interpretation of their regulations.

We note that Ontario has indicated its consultation paper that one of the main intents of implementing an unclaimed intangible property regime is to have use of these unclaimed funds for the benefit of Ontario citizens. We have looked to the Alberta and Quebec regimes, in particular, in providing our response to this consultation as their objectives may be more closely aligned with those of Ontario; however, we would also draw your attention to British Columbia's approach to unclaimed property.

B.C. provides for a reporting program for holders of unclaimed property, but does not require the holder to remit any of this unclaimed property to the B.C. government. Some of our members would support this approach to unclaimed property, which is a reporting requirement only, over and above the approaches taken by Quebec and Alberta. The only change our members might suggest to the B.C. approach is that there be opportunity for holders of unclaimed property to voluntarily remit those amounts in accounts which are nominal, e.g. below one hundred dollars, as this would remove some administrative burden and cost for holders with respect to managing these nominal accounts.

With respect to the remaining jurisdictions, our members have stated that, while both the Alberta and Quebec regimes would benefit from further refinement, they prefer the Quebec model for reasons that will be noted in our responses to your specific questions. To the extent we believe improvements need to be made to the Quebec regime, we have also noted those points in our responses.

In response to the specific questions set out in your consultation paper, we respond as follows:

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

IFIC is generally supportive of the Uniform model but, given that modified versions have already been implemented in some provinces, we believe that Ontario should endeavour to harmonize its regime with those of Alberta and Quebec, and further improve on areas where those regimes have proven to be challenging. This submission sets out some of the aspects of the Quebec and Alberta unclaimed property schemes which our members have found very effective and which may be the result of departures from the Uniform model that the Quebec and Alberta governments have made. In particular, we support consistency in trigger periods from when a property holder notices an owner has lost touch with their assets to the point when the property becomes subject to legislation among registered and unregistered

financial products (a uniform three years across the board) which Quebec has adopted, and which is not reflected in the Uniform legislation.

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

First of all, to reduce duplication in legal requirements and to avoid situations where holders are faced with conflicting obligations for the same property, we support a specific exemption for unclaimed property that is subject to another legislative enactment.

Second, IFIC's members manage and sell investment funds which are held by investors both within and outside of registered plans such as registered retirement savings plans. Registered plans created under the Income Tax Act (ITA) have a complex structure that needs to be reflected in detail in the proposed legislation in a way that is compliant with the applicable provincial and federal laws. Although certain registered plans can be created as insurance or depositary products, for the purposes of our comments, we are concerned with those plans which are created as trusts. For instance, under Alberta law, the Act does not apply to unclaimed personal property or vested property that is held in trust. This exemption applies to registered plans held by corporate trustees. The holder is the agent of the trustee and in a fiduciary role in relation to the owner. The trustee is the legal owner and does not lose track of the property in the registered plan. Registered plans are created as long term investment vehicles on a tax deferred basis. A wide variety of investments may be held within a registered plan as permitted under the ITA, some subject to provincial regulation and others being bank products under federal regulation. Any provision in the Ontario Program with respect to property held in trust, registered plans themselves or payments out of them should reflect existing law and be integrated with any applicable federal legislation. Given the complexities involved, we would appreciate the opportunity for further comment on this issue.

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

As noted in our response to Question 1, IFIC and its members suggest that there should be a harmonized time period of 3 years set out for both unclaimed registered and non-registered products. There have been difficulties of administration and implementation in Alberta because it sets out 3 years respecting payments from registered plans versus 5 years for investments held in non-registered accounts. The Quebec scheme provides for a 3 year time period for both and this has decreased administrative and other cost burdens for our members. In fact, we would refer the Ontario government to the included Appendix which provides the Quebec Unclaimed Property Guidelines specific to Securities Registrants and Mutual Funds (the "Quebec Guidelines") as they stood prior to their removal from the Quebec government website for revisions. As mentioned above, IFIC's members generally approve the approach to unclaimed property for securities registrants and mutual funds as provided for in the Quebec Guidelines. It is IFIC's understanding that the Quebec Guidelines are only being amended to reflect recent amendments to Quebec's unclaimed property legislation. These amendments provided for a shift in the administration of Quebec's unclaimed property regime from the Public Curator to Revenue Quebec.

IFIC's members would also like some clarity regarding payments from registered plans in the form of Registered Retirement Income Funds (RRIFs). Would the Ontario government take the position that the plan itself is unclaimed or only payments from the plan? How would the Ontario government seek to administer these funds? We would also request similar clarity on the proposed treatment of RESPs and TFSAs.

4. What challenges do holders envisage in transitioning to the Program?

Our members request that ample time be provided for them to set up the administrative structure (such as relevant computer software) necessary to comply with the requirement of Ontario's program. As such, we recommend a minimum 12-month transition period after Royal Assent. As well, we seek clear direction on whether our members are expected to do an "as at date" review or look-back at their accounts, or only apply the rules to accounts that meet a trigger after the legislation comes into force.

5. If s. 33(2)(b) is not adopted, are there mechanisms to support long-term holders of unclaimed property with the transition process while ensuring that the property is transferred to the government for the benefit of the owners and Ontarians generally?

Many of the challenges we have mentioned above will be magnified, if Ontario chooses to make the legislation retroactive particularly as the number of client accounts in Ontario is likely significantly higher than in other provinces with unclaimed property legislation. One risk is that our members will not be able to properly identify unclaimed assets from longer periods into the past. There would also be additional significant costs to holders related to the historical tracking. We would request a significant time period for a transition process so that our members are able to put into place the necessary systems and operational procedures. As well, we would not be adverse to the opportunity for our members to voluntarily remit unclaimed property from before the applicable time periods.

6. Are there any types of intangible personal property that pose unique challenges for migrating into this proposed scheme?

- An issue of concern to our members is intangible property that was a part of an owner's estate of which our members are holders. There are many possible scenarios which pose potential difficulties. If the holder is not informed of the exact date of death, when does the time begin to run to determine when the property becomes unclaimed? If an estate representative has come forward, but a holder receives inadequate estate documentation to release the property to the estate, does it become unclaimed and, if so, from what point? If the estate is subject to litigation and it is not clear who has the authority as the estate representative, the same issue arises. This is a difficult area and we welcome the opportunity for further discussion.
- Some holders offer accounts and plans that may hold bank products such as guaranteed investment certificates in nominee form. Although the need to ensure that the same property is not subject to conflicting requirements was raised previously, this type of investment highlights the need to harmonize provincial and federal legislation.

7. Are there any additional issues or comments related to an unclaimed intangible property program that the government should be aware of?

- With respect to the investment fund industry, the holder of the intangible property is generally not in a client facing role. Investment funds are distributed through registered investment dealers and mutual fund dealers ("Dealers") who are required through National Instrument 31-103, part 13 to know their clients and assess investment suitability. It is the investment fund industry's view that the Dealer is in a better position to know the client. The Quebec Guidelines recognize this difference between investment fund managers and dealers by providing for the concepts of "initial intervenant" "intermediary intervenant" and "holder". (See Appendix, p. 3 of 20). Specifically, the Quebec Guidelines state that it is the responsibility of the initial intervenant to initiate unclaimed property processes on an investor's account, and to alert both the Public Curator and the holder of the property. These concepts were not contemplated in the Alberta program; however, IFIC and its members are engaged in a dialogue with Alberta Finance to encourage the production of a similar guidelines tailored for the investment fund industry. We encourage the Ontario government to acknowledge this distinct industry issue. As stated in the consultation paper, the Ontario government would like to reunite Ontarians with their property. IFIC believes that placing the initial client search requirements on the Dealer rather than the investment fund company will result in more Ontarians being reunited with their intangible property.
- Our members also note that the best time for reporting by the industry would likely be in the early fall of a calendar year. However, it is our understanding that in Quebec, holders can enter into arrangements with Revenue Quebec to change the reporting period and this may be a helpful option.

- With respect to registered plans (RRSPs and RRIFs) please see our discussions above. However, our members recommend that, upon determining a registered plan investor is missing, that managers would add the Ontario government as an additional addressee, which would result in all correspondence and payments from the plan (if applicable) be forwarded on to the Ontario government in accordance with the legislation.
- Many of our members also would encourage the Ontario regime not to have minimum amounts which do not need to be remitted under the unclaimed property regime. Allowing for the remittance of smaller accounts, such as those under \$100, on a voluntary basis, would alleviate the administrative burden on managers/dealers of managing and maintaining these small unclaimed balances for indefinite periods.

8. For those readers with experience with the programs of other jurisdictions, what worked well and what did not?

As noted in response to the various questions above, members of IFIC generally prefer the approach taken in the Quebec Guidelines. The Quebec Guidelines have been temporarily withdrawn and amendments are being made as the administration of the program is moving from the Public Curator to Revenue Quebec. However, it is the Quebec Guidelines as they stood before their withdrawal that the industry prefers.

The industry's main concern with the Quebec approach to its unclaimed property regime is the requirement to use an electronic "flat" file, developed by the Public Curator's "Direction des technologies de l'information", when submitting unclaimed property reports if the number of remittances exceeds 50. This approach is modelled after an international reporting standard. This document cannot be provided electronically to the Quebec government; only in paper form and our members find it costly to use and administer this reporting system. We recommend that holders be permitted to submit Reports using a simple Excel or Word file as this would improve the efficiency and acceptability of the reporting regime.

As well, IFIC and its members would like to encourage the Ontario government to create legislation that is as consistent as possible with that in Quebec as this will reduce costs and conflict resolution issues our members will face in complying with the various unclaimed property programs.

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

IFIC and its members would be pleased to assist and provide their experienced input into this development process. We welcome future invitations to consult as the Ontario government takes the next steps in developing its unclaimed intangible property program, including the review of proposed legislation, regulations under the legislation, and any guidelines or policies. As this is a complex area, we would appreciate sufficient time to review any draft legislation or regulations with our members in order to formulate detailed comments.

Thank you again for this opportunity to provide comment. We look forward to ongoing consultations with Ontario as it develops its proposed unclaimed intangible property program.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President and CEO