Unclaimed Property

Presented by:
Alexandre LeBlanc: Revenu Québec
Megan Devlin: Citi
Darren Jack: Impact 360
Today’s Agenda

- Unclaimed Property 101— The Basics
  - History & Background of Escheat laws
  - What is Unclaimed Property?
  - How it works in US and Canada
  - Regulatory evolution around UP in the US compared to Canada

- Global Perspective
  - Recent developments to enact an escheat law in other Countries

- Canada
  - Provincial legislation and operational issues
  - Quebec
  - Alberta
  - British Columbia
  - Ontario
Unclaimed Property = Escheatment

**Escheat**: An English term from the 1600s. Escheat operated as a doctrine of land law. Generally means “The power of a state to acquire title to property for which there is no owner”

**Modern application**: Escheat is a Common Law doctrine which transfers the property of a person who dies without heirs to the crown or state. It serves to ensure that property is not left in limbo without recognised ownership

*Applicable in US and most English Commonwealth Member Countries*

*UP Definition: Intangible personal property that has gone unclaimed by the rightful owner after a specified period of time*
Escheat: Example - Unclaimed Bank Accounts

In some jurisdictions, escheat also occurs when a bank or other financial institution, holds money or property which appears to be unclaimed, due to a lack of activity on the account for a period of time. In many jurisdictions, if the owner cannot be located, such property can be revocably escheated to the state.

This is a typical “Dormant Accounts” law as applied by the Bank of Canada
Escheat: USA – All Financial Assets

In addition to bank transactions, it is also the process of re-assigning legal title in unclaimed or abandoned payroll checks, stocks and shares, insurance policies and other financial assets whose owners cannot be traced, to a state authority.

A company is required to file unclaimed property reports with its state annually and, in some jurisdictions, to make a good-faith effort to find the owners of their dormant accounts. The escheating criteria are set by individual state regulations.

All US states have implemented very successful Unclaimed Property laws covering many assets types, minimal dormancy periods and strict compliance.
Bank accounts, bank drafts, money orders, stocks and dividends, trust accounts, pension funds, mutual funds, life and property insurance refunds, corporate and government / war bonds, income tax refunds, gift cards, stored value cards, vendor cheques, bankruptcy dividends......
What is Unclaimed Property?

- A liability that is issued, held and owing in the ordinary course of a company’s business
- The liability must be fixed and certain
- Must be both Abandoned and Unclaimed
- Burden of Proof is on the Company:
  - Accounting and reconciliation errors are **not** unclaimed property, but will be demanded by a state if the Company cannot prove otherwise
  - Use of third party administrators will not absolve a company from its unclaimed property obligations to the applicable state(s).
What is Unclaimed Property?

- For property to be considered UNCLAIMED by law it must be:
  - Held or issued in the ordinary course of business;
  - A debt or obligation to a creditor (owner); and
  - Unclaimed for more than the statutory dormancy period
  - Dormancy periods vary by property type and by jurisdiction
The Basics: Property Types

- Uncashed checks, all forms
- Deposits
- Customer credits / Refunds
- Securities
- Unapplied payments
- Dormant accounts
- Benefit payments
- Retirement assets
- Traveler’s checks
- Matured bonds
- Un-exchanged shares
- Unpaid dividends & interest
- Underlying stock
- Tangible property
- Rebates
- Mineral proceeds
Unclaimed Property Laws: The Basics (USA)

- Abandonment periods vary for types of property, and by State, but usually three to five years.
- The owner can reclaim the property from the State. Most States maintain databases online for the purpose.
- Which State gets the property?
  - The first priority State is the State of residence of the owner, as shown on the holder’s records.
  - If there is no such record, or if the address is in a State which does not provide for the escheat of such property, the second priority State is the State of incorporation of the holder.
Unclaimed Property Laws: The Basics (USA)

- Every U.S. state, District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam have enacted unclaimed property laws.

- No two state laws are alike, despite the fact that states’ unclaimed property laws have been modeled after one of the four Uniform Unclaimed Property Acts.

- Property is held by the state in perpetuity and is always available for claiming by rightful owner.
Why Comply?

It's the Law!

➢ U.S. Unclaimed property laws have been in existence since the early 1950s.
  • Initially enforcement focused solely on equity-related property

➢ States’ focus expanded to general ledger and securities property and enforcement has been aggressively increased over past 10-15 years across all industries.

➢ To increase compliance several states offer voluntary disclosure/amnesty programs.

➢ Delaware, the state of incorporation for majority of US formed entities has offered favorable Voluntary Disclosure Program if entered into by September 30, 2014.*

* Legislation extending sunset date of June 30th pending
Importance of Compliance – Why you should care

- Potential for significant penalties and interest
  - A holder can be assessed penalties and/or interest for:
    - Failure to report/remit the property
    - Failure to comply with the statute
  - Interest generally applied at 10%–25% of property value
  - Penalties can be substantial-up to $25,000
    - Some states – Class B misdemeanor
  - Other fines and penalties related to insurance regulations may also apply

- Sarbanes-Oxley Section 302 & 404
  - Section 302 requires that CEOs and CFOs include, with any periodic financial report filed at the SEC, a written statement certifying disclosure controls and procedures
  - Section 404 review includes an assessment of the design and operating effectiveness of internal controls for significant accounts
Non Compliance: Fines, Penalties and Interest

- A holder can be assessed penalties and/or interest for:
  - Failure to report/remit the property
  - Failure to comply with the statute
- Interest generally applied at 10%-25% of property value
- Civil/Criminal penalties for failure to report/remit/deliver
- OR filing a fraudulent report may include:
  - $100-$200 per day ($10,000 maximum)
  - Varies from $1,000-$25,000 fine plus some states access an additional 25% of the value of the property
  - Some states – Class B misdemeanor

*Other fines and penalties related to insurance regulations may also apply*
Holder Responsibilities

- Duty to file a report timely
- Duty to perform due diligence timely
- Duty to remit the property timely
- Duty to maintain copies of the reports and supporting documentation
- Duty to protect the funds until reported and transferred to the state
Canada – Unclaimed Property Laws
Three Provincial and One Federal
Unclaimed Property Laws in Canada
Provinces & Territories

Provinces that have Unclaimed Property laws in force are:
  - Quebec, Alberta and British Columbia

The other 7 provinces and the 3 territories have no specific Unclaimed Property laws in force at this time:
  - Manitoba
  - New Brunswick
  - Newfoundland and Labrador
  - Nova Scotia
  - Ontario
  - Prince Edward Island
  - Saskatchewan
  - Northwest Territories, Yukon and Nunavut
Unclaimed Property Laws in Canada
Provinces and Territories

➢ In provinces and territories with No Unclaimed Intangible Property laws in force, there are no legal requirements to report or remit most categories of unclaimed property.

➢ The exception is for the proceeds of intestates. These are governed by the Public Guardian / Trustee in all provinces and territories except Alberta.
Unclaimed Property Laws in Canada - Federal

The Bank of Canada is the ultimate legal custodian of:

- Dormant / unclaimed bank accounts
- Dormant financial instruments (e.g. bank drafts, certified checks) issued, processed and handled by banks

The dormancy period is 10 years for all property types, after which the funds are remitted to the Bank.

The law governing these types of unclaimed property is applicable exclusively to Chartered Banks.

It does not apply to Credit Unions.
Although there is no specific Unclaimed Property Law in many jurisdictions in Canada, there are various requirements for some categories of property under various Acts.

The specifics for each such jurisdiction are as follows:

- **Manitoba** – The Escheats Act and The Vacant Property Act. No formal reporting/remitting mechanism in the Acts. Vacant Property Act
  - Applies to any personal property, including money or securities for money deposited or held in trust by any person in the province.
  - Property vests and becomes payable to the province if it is unclaimed for 12 years from the time that the property, money or securities were first payable.
Unclaimed Property Laws in Canada
Provinces & Territories

The specifics for each jurisdiction are as follows:

- New Brunswick – No specific legislation
- Newfoundland and Labrador – No specific legislation
- Nova Scotia – The Public Trustee Act for estates only
- P.E.I.– Per Part IV of the Public Trustee Act. (Repealed in May of 2013)
- Saskatchewan – The Public Guardian and Trustee Act governs the handling of property of intestate and incompetent persons
- NWT, Yukon & Nunavut – No specific legislation
## Canadian/US Unclaimed Property Comparative Reporting

<table>
<thead>
<tr>
<th>Property Types</th>
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<th>AB</th>
<th>BC</th>
<th>QC</th>
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</tbody>
</table>

**AB = Alberta**  
**BC = British Columbia**  
**QC = Quebec**  
**NB = New Brunswick**
Relative UP Statutes

- **Limited UP requirements**
  - Limited property types subject to escheat
  - Compliance is optional
  - Limited enforcement

- **More extensive requirements imposed on holders**
  - Broader property types subject to escheat
  - Mandatory reporting
  - Holders subject to reporting limited
  - Relatively new emerging guidelines

- **Robust, extensive, reporting and enforcement by authorities**
  - Comprehensive listing of property subject to escheat
  - Strict enforcement, penalties, interest for non compliance
  - Expansive definition of holders subject to reporting

British Columbia
- Moderate
  - Broader property types subject to escheat
  - Mandatory reporting
  - Holders subject to reporting limited
  - Relatively new emerging guidelines

Alberta, Quebec
- Extensive
  - Comprehensive listing of property subject to escheat
  - Strict enforcement, penalties, interest for non compliance
  - Expansive definition of holders subject to reporting

US Jurisdictions
- Relative UP Statutes
US State and Federal Rules

- 54 US jurisdictions have unclaimed property laws
  - Some states have adopted versions of the Uniform Unclaimed Property Acts while others have not; laws are constantly changing
- Uniform Unclaimed Property Acts
  - 1954 Uniform Act
  - 1966 Uniform Act
  - 1981 Uniform Act
  - 1995 Uniform Act
- Supreme Court Case Law – priority rules for reporting
  - Texas v. New Jersey (1965)
  - Pennsylvania v. New York (1972)
Unclaimed Property Across the World

Unclaimed property continues to be a global trend.

Holder impacts vary depending on jurisdiction, industry and property types.

What does Texas v. New Jersey mean in a world of global compliance?
Trends in the Global Unclaimed Property Industry

- **New UP Laws in New Jurisdictions** *(Ontario?, Cayman Islands, BVI, Kenya)*
- **New Escheatable Asset Types** *(Insurance Policies, Gift Cards, Brokerage Accts)*
- **Reduced Asset Dormancy Periods** *(Vendor Chqs, Employee Wages, Bank Accts)*
- **Increased Enforcement / Compliance** *(3rd Party Commission Based Auditors)*

Estimated Value of Escheated Unclaimed Assets Globally

- **Canada** C$3+ Billion
- **USA** US$100+ Billion
- **UK** £50+ Billion
- **Australia** A$5+ Billion
- **New Zealand** NZ$1+ Billion

$100 Billion - $200 Billion
Australia

State Unclaimed property laws vary widely

Australian Capital Territory (city of Canberra) Unclaimed Money Act, 1950

Unclaimed Money Act 2008

Unclaimed Money Act 1995

Unclaimed Money Act 1990

Unclaimed Money Act 1891

The Public Trustee Act 1978

Various Acts

Unclaimed Money Act 1918
Australia
Unclaimed property laws exist at both Federal and State/Territory level

- Federal: unclaimed property governed under the *Banking Act (1959)* as amended
  - Australian Securities & Investment Commission (ASIC) is primary federal custodian of dormant bank accounts, credit union and building society accounts, insurance policies, company shares, lottery prizes, phone betting accounts and company deregistration proceeds
  - Unclaimed Superannuation (pensions) administered by AUSFund
- Most recent legislation is the “*Banking Amendment (Unclaimed Money) Act 2013*”. Changes include:
  - Dormancy periods - shortened for most property types from 7 years to 3 years
  - Interest now paid on claims retroactive to July 1, 2013
  - Controversy over escheat of bank balances after 3 years of intentional dormancy (rainy day savings, bank accounts for grandchildren etc) provided revenue to the government of estimated $360M
Anguilla
*(Banking Act 2005 §§ 60-64)*

- Any deposits, funds paid towards shares, sums payable on cheques and safe deposit box contents are considered abandoned when, within the past 15 years the owner has not: increased or decreased the amount held; presented the passbook for crediting of dividends; corresponded in writing with the bank concerning the items; or otherwise indicated an interest in the items.

- Within 30 days of the end of its financial year (and before reporting to the Central Bank as below) the institution must publish in the *Gazette* the name of the owner and particulars of the property. Banks apparently take this to mean the type of property—bank account, uncollected dividends etc.

- Within 90 days of the end of its financial year, the bank must report all abandoned accounts to the Central Bank and then transfer the assets, including interest for the inactive period.

- Any person claiming an interest in transferred property must make a claim to the Central Bank, which will, after an appropriate hearing, deliver its decision.

- If a person is aggrieved by a decision of the Central Bank, it must commence any action in the Court within 30 days.
Antigua

(The IBC Act regulates banks that do not accept deposits from Antiguan residents; the Banking Act 2005 §§ 60-63 are likely far more relevant.)

- Any deposits, funds paid towards shares, sums payable on cheques and safe deposit box contents are considered abandoned when, within the past 15 years the owner has not: increased or decreased the amount held; presented the passbook for crediting of dividends; corresponded in writing with the bank concerning the items; or otherwise indicated an interest in the items.

- Within 30 days of the end of its financial year (and before reporting to the Central bank as below) the institution must publish in the Gazette the name of the owner and particulars of the property. Again, it seems that banks take this to mean the type of property held—account, personal property etc.

- Within 90 days of the end of its financial year, the bank must report all abandoned property to the Central Bank and then transfer the assets, including interest for the inactive period.

- Any person claiming an interest in transferred property must make a claim to the Central Bank, which will, after an appropriate hearing, deliver its decision.
Dormant accounts are governed by two Acts:

- The Banks and Trust Companies Regulation Act, 2000, section 20
- The Central Bank of The Bahamas Act, 2000, section 24

Changes proposed for late 2014 are:

- Inclusion of additional types of financial instruments such as bank drafts, manager’s cheques, money orders, travellers cheques, credit card balances
- Owners of multiple accounts will only need to enact one transaction on one account, to prevent any of their accounts from becoming dormant. Previously, each account was treated individually.

Some types of dormant accounts will be classified as exempt from transfer, for example:

- Automatically renewable fixed term deposit accounts, deposit accounts of gold and silver bullion, non-cash collateral, custody accounts or safety deposit boxes, share accounts, savings bonds, undelivered stock certificates, matured bonds, unredeemed bond coupons

For dormant property not transferred, the Banks will be expected to maintain records and continue reporting.
Barbados

(Financial Institutions Act Cap. 324A §§ 87-92)

- Property of any kind held or owing in the course of its business by a financial institution in respect of which, **within 10 years**:  
  - of making a deposit the owner has not increased or decreased the balance or presented a passbook for the crediting of interest;  
  - of paying funds towards shares, increased or decreased the amount of funds or presented a passbook;  
  - of making the last deposit, inquiring or communicating with the bank concerning any item, or otherwise indicated an interest.

- Within 60 days of the end of each financial year, the financial institution must report to the Central Bank all abandoned property, publish the names of owners and particulars of the property in the *Gazette*, and mail a copy to the last known address of the owner.

- A person who claims a beneficial interest in any property so transferred **may make a claim for the value of that property within six years of the notice publication**. The Central Bank pays claims made in this way out of the Consolidated Fund.
British Virgin Islands

- Unclaimed property governed by Act 6999 (Uniform Unclaimed Property Act) enacted in 2008
- Administered by the Office of the Lieutenant Governor, through the Division of Banking and Insurance
- Dormancy periods vary widely with property type
- Reporting period is July 1 each year; reports to be filed by November 1 except for life insurance, which has an annual report deadline of May 1 for the prior 12 months
- Amounts under $50 to be aggregated
The Dormant Accounts Law (2010) was introduced in July of 2010 and amended after private sector consultation.

- Dormancy period is 7 years.
- Retroactive to include ALL accounts, even if dormancy commenced prior to enactment of law.
- Holders must notify account owners of dormancy by July 31 each year and owners have until December 31 to reverse the dormancy.
- Holders must also publish Notices in the Gazette where no correspondence has occurred with the account owner.
- Funds must be transferred to the government by March 31 of each year.
- Holders relieved of all liability upon transfer of funds to the government.
Kenya

- The rules and regulations to operationalize the Unclaimed Financial Assets Act 40 of 2011 were finalized in April 2014 and presented to the Unclaimed Financial Assets Authority’s Board in mid-May after revisions were completed.

- An independent advisory and consulting firm has been working with the Kenya Bankers Association to provide suggestions with respect the changes to the regulations which were adopted as they were. There appears to be good progress on this initiative.
New Zealand

- A host of Acts governs unclaimed property in New Zealand:
  - Unclaimed Money Act 1971
  - Public Finance Act 1989
  - Companies Act 1993
  - Public Trust Act 2001
  - Government Superannuation Fund Act 1956
  - Superannuation Schemes Act 1976

- Specific trust monies governed by:
  - Trustee Act 1956
  - Māori Trustee Act 1953
  - Lawyers and Conveyancers Act 2006

- Each Act covers different segments of unclaimed money types
Any deposits, funds paid towards shares, sums payable on cheques and contents of safe
deposit box are considered abandoned when, within the past 15 years the owner has not:
increased or decreased the amount held; presented the passbook for crediting of dividends;
corresponded in writing with the bank concerning the items; or otherwise indicated an
interest in the items.

Within 30 days of the end of its financial year, a bank shall publish in the Gazette the name
of the owner and the particulars of abandoned property, and must mail this notice to the last
known address of the holder.

After publication, but within 90 days of the end of its financial year, the bank must report to
the Minister all abandoned property held and “thereafter” transfer it to the Minister.

This transfer relieves the bank of its obligation to pay or return the property.

A person claiming an interest in abandoned property must file a claim with the Accountant
General and, after an appropriate hearing, will be given a decision.

A person aggrieved by the decision of the Accountant General may commence an action in
the court within 30 days of the decision of the AG.
Trinidad & Tobago
(Financial Institutions Act §76)

- Every Financial institution must publish in the Gazette, within 60 days of the end of its financial year, a statement showing all accounts payable in respect of which there has been no transaction and no request for or acknowledgment of a statement of account for seven years.

- Following publication, the person to whom the account is payable, or his legal representative, must contact the bank within 3 months.

- After 3 months, the funds are transferred to the Central Bank.

- This transfer DOES NOT relieve the bank of its liability to pay the account holder. However, the government of T&T indemnifies all banks that incur a loss as a result of making a payment as above.
United Kingdom

- No single comprehensive federal law governing unclaimed property
- Differing laws for Scotland, Guernsey, Jersey, Ireland
- For England and Wales, the Bona Vacantia Division of the Treasury Solicitor's Department of the UK Government is responsible for dealing with bona vacantia (ownerless property) with some local jurisdictional exceptions
- Unclaimed financial instruments in England governed by the *Dormant Bank and Building Society Accounts Act 2008*
- English common law traditionally transfers actual title to bona vacantia property to the Crown, where elsewhere the property is held in trust for the owner
- Bona vacantia assets include those of dissolved companies
1945: The *Public Curator Act* is passed. It included Unclaimed Estates and Properties without an owner.

1999: The act is amended with the addition of Unclaimed Financial Assets.

2006: Transfer of the UP program from the Public Curator to Revenu Québec.

2011: The *Unclaimed Property Act* comes into force and incorporates previous sections regarding UP found in the *Public Curator Act*. 
ASSETS FIGURING IN THE ACT

— Credit Union Accounts
— Securities such as stocks, dividends, bond principals, coupons and mutual funds securities
— Life insurance products
— Pension plans
— Safety deposit boxes content
— Other types of UP: unclaimed successions, properties abandoned by a dissolved corporation, properties found on an unidentified body
UNCLAIMED PROPERTY ACT

GUIDANCE FOR REMITTING PROPERTIES

— 3 years after the last activity by the owner
— A 3-month written notice must be sent to the owner within six months preceding the date by which the property shall be remitted to Revenu Québec for properties valued at more than 100$
— A holder must remit properties 3 months after its fiscal year-end
— If you are a holder, you must remit every fiscal year that you have unclaimed properties in your books
的可能性

— 财产未被认领，按每日资本化计算利息。利息率为11月10日的6%。

— 在某些情况下，最高可达15,000美元的罚款可以被征收。
  • Unclaimed Property Act, section 43.
—**Client**: Investor who is a client of the securities registrant

—**Untraceable Client**: Client is untraceable and cannot be found

—**Holder**: A person who has possession of property in any capacity whatsoever

—**Initial Intervenant**: Intervenant responsible for opening the Client account and doing business directly with the Client

—**Intermediary Intervenant**: Intervenant who represents the Initial Intervenant with the mutual fund
Intervenants with unclaimed mutual funds securities:

— Group savings firms
— Dealer with an unrestricted practice
— Discount broker
— Adviser with an unrestricted practice

Types of unclaimed mutual fund securities:

— Securities held in an unregistered account
— Securities held in a registered account
— The investment income generated by the securities held in registered or unregistered accounts
— The cash balance related to registered and/or unregistered account
THE 3-YEAR PERIOD BY PROPERTY TYPE

— Unregistered account:
  • It begins on the later of the following dates:
    • The date of the last instruction received from the client
    • The date on which it is determined that the client is untraceable

— Registered retirement savings account:
  • It begins no later than December 31st following the date of the 71st birthday of the client determined untraceable

— Registered retirement income fund:
  • It begins on the later of the following dates:
    • The date of the last instruction received from the client
    • The date on which it is established that the client is untraceable

— Registered education savings account
  • It begins to run on the date the registered education savings plan of the client determined to be untraceable expires
Two possible situations for holding the unclaimed securities:

1. The Initial Intervenant is also the Holder or Debtor of unclaimed mutual fund securities

   —When the account is registered with the mutual fund, for the Client, on behalf of Initial Intervenant in trust: a Nominee Account
2. The Initial Intervenant is not the Holder or Debtor of the unclaimed mutual fund securities

— When the Initial Intervenant has an account in the name of each client at the mutual fund: an account in the Client’s name. → The Holder is the mutual fund

— When there is an Intermediary Intervenant with whom the Initial Intervenant does business: 3 cases are possible for the Intermediary to be the Holder

  — The group savings firm does business with an Intermediary (another group savings firm, a dealer with unrestricted practice, a discount broker or a trust company)
  — The introducing broker who, due to the very nature of its activities, must go through a carrying broker
  — An adviser with an unrestricted practice who, because he cannot trade in securities, must use a dealer with an unrestricted practice or a discount broker
Five steps for escheating securities to Revenu Québec

—Step 1: Determine that a mutual fund security has become unclaimed property
—Step 2: Inform the Holder or Debtor of the mutual fund security that the security has become unclaimed
—Step 3: Inform Revenu Québec that the mutual fund security has become unclaimed
—Step 4: Sending the notice of unclaimed mutual fund security to the owner
—Step 5: Transfer of an unclaimed mutual fund security to Revenu Québec
THANK YOU
Alberta - Fun Facts

- Went into effect on 9/1/2008 – Comprehensive
- Specific exclusions for gift certificates, retail business credits
- Most dormancy periods are 5 years (Payroll – 1)
- Reports due on 4/30 (120 days after calendar year end)
- Jurisdiction and Indications of Abandonment
- Reporting Quirks:
  - Aggregate value of all intangible items for one owner must be $250 or more, include due diligence
  - Aggregate value of tangible items must be $1000 or more
- Property types (NAUPA codes):
  - Bank accounts and safe deposit box (Delayed implementation)
  - Checks
  - Payroll
  - Insurance
  - Securities (Delayed implementation)
Alberta’s Definition of Property

- The Unclaimed Personal Property and *Vested Property Act* applies to unclaimed *tangible* and *intangible* personal property other than to land.

- “*Tangible*” means any property that is not intangible or excluded by regulations.
Alberta - Who Has to Report?

- If a holder is a resident of Alberta
- The holder is a business operating in Alberta and the owner’s last known address is in Alberta
Alberta Reporting Requirements

Dormancy periods

- Traveler's cheque - 15 years
- Money order - 7 years
- Savings or deposit account - 5 years
- Demand deposit/GICs – 5 years
- Financial instruments – 5 years
- Accounts payable - 5 years
- Personal property – 5 years
- Life insurance policies – 3 years
- Wages – 1 year
- Utility refunds – 1 year
Alberta - Excluded Property

- Types of property excluded by regulations include:
  - gift certificates – including a gift card, stored value card or prepaid card that can be used to purchase goods or services at a particular store or group of stores
  - retail business credits – a credit owed by a business to a consumer as a result of a return of merchandise or cancellation of a transaction that cannot be redeemed for cash
  - Supplementary Retirement Plan for Public Service Managers
  - abandoned vehicles and various trust exclusion
Alberta- Required Notice

- Determine unclaimed property for current report year
- Send a notice to the owner three to eight months before the property is to be transferred to Tax and Revenue Administration
- Not required if you know the address is invalid
Alberta- Criteria for Investment accounts

- personal property in a **RRSP or a RESP account** under the Income Tax Act (Canada) or other plan or account that is qualified for tax deferral under the income tax laws of the jurisdiction in which the plan or account is registered or held, **3 years** after the earliest of
  - the date of distribution or attempted distribution of the personal property,
  - the date of the required distribution as stated in the plan or the trust agreement governing the plan, and
  - the date, if determinable by the holder, specified in the income tax laws of the jurisdiction in which the plan or account is registered or held, by which the distribution of the personal property must begin;
- for money paid out of a **RIFF account** under the *Income Tax Act* (Canada), **3 years** after the date of payment although the money within the registered retirement income fund is not, while it remains within that fund, presumed to be abandoned;
- for all **other personal property**, **5 years** after the earlier of;
  - the date on which the apparent owner’s right to demand the personal property arises, and
  - the date on which the obligation to pay or distribute the personal property arises.
Statute:

Revised Statutes of British Columbia, Unclaimed Property Act:
Unclaimed Property Act (SBC 1999) Chapter 48

Regulation:
Unclaimed Property Regulation

- The BC Unclaimed Property Society as Administrator per The Act
- Compliance with The Act is compulsory only for certain types of businesses/agencies
- The UP Administrator distributes surveys to be completed and returned for assessment as to reporting requirements
- Holders with gross revenues < $250K are exempt from reporting
- Properties valued at < $50 are exempt from reporting
- No provision in The Act or Regulation re: prosecution of offences
Unclaimed Property Laws in BC
Who Are Holders?

Profit and non-profit organizations, including:
- Corporations
- Partnerships
- Credit Unions
- Sole proprietorships
- Associations
- Societies
Unclaimed Property Laws in BC

- Due diligence requirement when item deemed “unclaimed” as determined by “circumstances” described in BC UP regulations.
  - Dollar thresholds by “circumstance”/property type but generally $200 or more

- Property Types:
  - Accounts
  - Payroll
  - Life Insurance property
  - Securities property

- Reporting and remittance mandatory only for certain industries
  - Database requirement if not mandatory
Unclaimed Property Laws In BC

Reporting period:  Period ending December 31st of any year
Due Date: 20 days after December 31st of any year
Due Diligence: Within 6 months of abandonment

Thresholds: $200 - Deposits, Securities, insurance (not life)
$500 - Money Orders
$1,000 - Life Ins., annuities and trust funds

- Holders must establish and maintain database for public access
- Holders may request to transfer unclaimed property to the administrator
Unclaimed Property Laws In BC

Record Retention: Property valued at < $1,000 – 6 years
Property valued at < $25,000 – 10 years
Property valued at > $25,000 – 30 years

Period after which Unclaimed Property may be treated as income of the holder:
Property valued at < $1,000 – 6 years
Property valued at < $25,000 – 10 years
Property valued at > $25,000 – 30 years
BC UPS - Holder Obligations

**BC’s Unclaimed Property Act:**

“Holders“ must make reasonable efforts to locate and notify owners of their property. If the holder is unable to locate the owner, the property becomes unclaimed and must be listed on a publicly available database.
BC UPS - Mandatory Holders

- Regulated by law to transfer unclaimed property to the BC Unclaimed Property Society

- These include:
  - Municipal and provincial courts
  - Credit Unions
  - Real Estate Agents
  - Debt Collectors
  - Funds held by Provincial Government – Public Guardian and Trustee of BC
BC UPS - Voluntary Holders

- Not regulated by law, but should transfer unclaimed property to the BC Unclaimed Property Society.

- The property includes:
  - Trust Funds
  - Property Insurance
  - Closed Pension plans
  - Life insurance Policies
  - Brokerage Accounts
  - Money Orders
BC UPS – Mutual Funds

- Mutual Funds fall under the broad definition of “securities” and the table in S.8 of the Regulations (http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_463_99/#section11) has a convenient chart which describes the circumstances when a “security” becomes unclaimed, the threshold amount, etc...

- Mutual Fund administrators are a voluntary holder under the BC Unclaimed Property Act, however even voluntary holders have obligations under the Act.

- S.9 and S.11 of the Act discuss duties of holders of unclaimed property (including voluntary holders) and specifically that all holders have to make efforts to locate the rightful owner and maintain a database that is easily accessible to the public.
BC UPS – Mutual Funds

- S.12 of the Act allows voluntary holders to transfer funds to BC UPS if those funds meet the criteria of unclaimed property. This is the mechanism that allows BCUPS to accept mutual funds.

- A common challenge faced by BC UPS when dealing with holders of securities who want to transfer funds to our office is around the issue of liquidating securities.

- Often holders will ask BC UPS to instruct them or provide consent to liquidating securities accounts. BC UPS has no authority to provide such instructions and indeed would never instruct or consent to a holder liquidating securities before they transfer those funds to the BC UPS office.
Best practices for holders of securities would be to include a provision in their client agreements which allow the administrator to liquidate client accounts/investments after a certain amount of time or triggering event. This would indemnify the administrator and make remitting funds to our office more simple.

By voluntarily transferring unclaimed funds to BC UPS office, the holder (i.e. mutual fund administrator) is relieved of any obligations under the Act, and BC UPS office actively searches for owners. BC UPS has access to provincial databases which allow us to search for holders, and they post all unclaimed accounts valued over $50 onto our searchable database.
BC UPS – Mutual Funds

- There are no fees for remitting funds to BC UPS office, and they do not charge fees when the rightful owner claims their funds.
- Funds are always available to the rightful owner, there is no statute of limitations for claiming funds.
BC UPS Contact

Alena Levitz, B.A., LL.B, LL.M
Executive Director

PO Box 18519
West Georgia RPO
Vancouver, BC V6Z 0B3
Telephone: 604.662.3518
Toll Free: 1.888.662.2877
Fax: 604.669.2079
E-mail: info@unclaimedpropertybc.ca
Website: http://www.unclaimedpropertybc.ca/
Unclaimed Property Laws in Canada

Ontario

- **1989 – 2011** - Ontario had previously passed the *Unclaimed Intangible Property Act* in 1989; it was never proclaimed in force and was repealed in December 2011.

- **2012** - the Ontario government announced its intention to establish a new unclaimed intangible property program and initiated public consultations. Budget message includes unclaimed property initiative both as a method of returning property to rightful owner and as a revenue source.

- **2013** – Ontario government holds stakeholders’ meetings and requests comments on proposed unclaimed property law draft. Property types included insurance policies, wages, and securities property.

- **2014** - The recently re-elected Liberal Party in Ontario has not yet indicated their plans with respect to the introduction of a new UP law.
Recent Developments: Ontario

- If Ontario proceeds with a new UP law, it is possible that the legislation could be in place in 2015 or early 2016.

- No draft legislation in place; the consultation paper, however, highlights some key considerations:

  - **Property exclusions**: The exclusion of gift certificates, retail business credits, property in trusts (as under the Alberta Act).

  - **Abandonment periods**: Appropriate timing for deeming property to be abandoned.

  - **Retrospectivity**: Whether or not to adopt s.33(2)(b) of the Uniform Act which exempts property that would have become unclaimed more than five years before the coming into force of the Act.
    - Notably, Alberta and Quebec did not adopt this provision.
The Unclaimed Property Professionals Organization ("UPPO") is the only international nonprofit membership group dedicated to holders of unclaimed property and the service providers who help make holders’ jobs easier.

The UPPO Website URL is www.uppo.org

The next UPPO Annual Conference is March 8-11, 2015 in Orlando, FL. More information can be found at: http://www.uppo.org/?page=UPPOAnnualConference
Questions?

Alexandre LeBlanc
Alexandre-L.Leblanc@revenuquebec.ca
Project Manager, Direction des produits financiers non réclamés, Revenu Québec
500, boul. René-Lévesque Ouest, suite 10.00, Montréal, Québec H2Z 1W7
(514) 287-6461

Megan Devlin
Megan.Devlin@Citi.com
Vice President, Transfer Agency Services, Global Transaction Services, Citi
100-5900 Hurontario Street, Toronto, Ontario L5R 0E8
(905) 214-8297

Darren Jack
djack@impact360.ca
Managing Director - Impact 360
100 King Street West: Suite 5700, Toronto, Ontario M5X 1C7
(416) 367-4929 or C: (705) 716-4949  www.impact360.ca