

Where in the World Do You Report?



Presented by:

**Alena Levitz: British Columbia
Unclaimed Property Society**

Darren Jack: Impact 360 Asset Recovery

UPPO Presentation Disclaimer

Use of the Unclaimed Property Professionals Organization, Inc., (UPPO) name of copyrighted materials in this presentation does not constitute an endorsement by UPPO of a member, vendor, product or service. The content represents the opinions of the author and not necessarily those of UPPO. This information is not intended as legal advice and should not be used to replace the advice of legal counsel.

UPPO Antitrust Statement

UPPO has a policy of strict compliance with U.S. federal antitrust laws.

UPPO members and/or meeting attendees cannot come to understandings, make agreements, or otherwise concur on positions or understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower or stabilize prices or fees. Members and/or attendees can discuss pricing models, methods, systems, and applications, as well as certain cost matters that do not lead to an agreement or consensus on prices or fees to be charged. However, there can be no discussion as to what constitutes a reasonable, fair or appropriate price or fee to charge for any service or product.

Information may be presented with regard to historical pricing activities so long as such information is general in nature and does not include data on current prices or fees being charged in any trade area. Any discussion of current or future prices, fees, discounting, and other terms and conditions of sale, which may lead to an agreement or consensus on prices or fees to be charged, is strictly prohibited.

Canada – Unclaimed Property Laws Three Provincial and One Federal



Unclaimed Property Laws in Canada Provinces & Territories

Provinces that have Unclaimed Property laws 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.

Unclaimed Property Laws in Canada Provinces & Territories

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

	US	AB	BC	QC
<u>Property Types</u>				
Safe Deposit Boxes	X			X
Wages, Payroll	X	X	X	
Customer Refunds	X	X		
Stocks/Bonds	X	X	X	X
Dividends/Interest	X	X		X
Utility Deposits	X	X		
Insurance	X	X	X	X
Savings Accounts	X	X		X
Royalties/Mineral Proceeds	X	X		
Gift Cards	X			
Checking Accounts	X			
Retirement Plans	X			X

AB = Alberta
 BC = British
 Columbia
 QC = Quebec
 NB = New
 Brunswick

Relative UP Statutes

Limited UP requirements

More extensive requirement imposed on holders

Robust reporting and enforcement by authorities

Minimum

- ▣ Limited property types subject to escheat
- ▣ Compliance is optional
- ▣ Limited enforcement

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

BC UNCLAIMED PROPERTY SOCIETY

- We work with individuals and companies to unite property with its rightful owners.
- BC is the only jurisdiction in North America where a percentage of recovered funds are donated to charity.
- BC was the first province in Canada to enact unclaimed property legislation.



BC UNCLAIMED PROPERTY SOCIETY

BACKGROUND

- Started by the Province of BC in 2000
- Governed by the *Unclaimed Property Act*
- Transferred to Vancouver Foundation for administration in 2003



WHAT IS UNCLAIMED PROPERTY?

Unclaimed property typically includes:

- credit union accounts
- wages
- insurance payments
- court payments
- intestate estates (death without a will)
- overpaid debt collections
- real estate deposits

Unclaimed property does not include:

- real estate property
- physical property such as vehicles,
- jewelry, electronics, etc.

WE WORK WITH...

- Individuals searching for unclaimed property
- Companies sitting on unclaimed property



- [illegible]

HOW WE FIND YOU

- 

COMPANIES HOLDING UNCLAIMED PROPERTY



WHO ARE HOLDERS?

Profit and non-profit organizations, including:

- Corporations
- Partnerships
- Credit Unions
- Sole proprietorships
- Associations
- Societies
- Fraternal or mutual benefit organizations or entities



In 2013, BCUPS received \$ \$6.2 million from holders and Reunited \$1.88 million in unclaimed funds with their lawful owners

TYPES OF HOLDERS

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

TYPES OF HOLDERS

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

UNCLAIMED PROPERTY LAWS IN BC

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 is the Administrator per the Act
- Compliance with the Act is compulsory only for certain types of businesses/agencies
- 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

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.

OUR SERVICES FOR HOLDERS

1. We actively search for owners of unclaimed property
2. We have access to advanced search tools
3. By submitting unclaimed property, you fulfill requirements under the *BC Unclaimed Property Act*
4. Our services are free

HOW TO REMIT FUNDS TO BCUPS

Two steps:

1. Fill out two forms:
 - a. Holder Remittance Summary
 - b. Detailed Owner Information
2. Submit forms with your cheque for the total amount of all unclaimed balances being remitted



HOW TO REMIT FUNDS TO BCUPS

PRIVACY

“We are committed to protecting the personal information of individuals.”



- Governed by Canada's Privacy Laws (*Personal Information Protection Act*)
- Privacy Policy on the BCUPS website

COMMUNITY SUPPORT

Each year, a percentage of funds that are unclaimed are donated to Vancouver Foundation for charitable purposes.

To date over \$24M has been donated.



Alberta – Overview

- 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

Alberta – Overview

- 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

Who Has to Report in Alberta?

- 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

Unclaimed Property in Québec

- Overview of Québec Administration
- Properties Reported and Remitted to Revenu Québec
- Québec Reporting Requirements

Overview of Québec Administration

- **1945** : The *Public Curator Act* is passed. It included Unclaimed Estates and Properties Without an Owner
- **1999** : The *Public Curator Act*, amended in 1997, came into effect. Financial Assets are now added to the Unclaimed Property Administration

Overview of Québec Administration

- **2006** : Transfer of the UP Program from the Public Curator to Revenu Québec
- **2011** : The *Unclaimed Property Act* came into force and incorporates essentially previous sections regarding UP found in the *Public Curator Act*

Overview of Québec Administration

- Record Retention : 10 years
- Prescriptions (Statute of Limitations)
 - 10 years for Unclaimed Financial Assets valued < \$500
 - Unlimited for Unclaimed Financial Assets valued > \$500
 - 10 years for Estates of any value

Properties Reported and Remitted to Revenu Québec

- Credit Union Accounts
- Securities : Stocks, Dividends, Bond Principals and Coupons, etc.
- Funds or Securities Held in Trust
- Life Insurance Products
- Pension Plans
- Safety Deposit Boxes

Québec Reporting Requirements

- Last known address of the owner is in Québec
- Dormancy Period : 3 years
- Due Diligence : a 3-month written notice must be sent within 6 months before the date of remitting for all properties valued at more than 100\$
- Reporting and Remitting Date:
 - 3 months following holder's fiscal year-end for all other property types

Québec Reporting Requirements

➤ 2 ways to report :

- Paper Report using the [BD-81.5-V Form](#) available on Revenu Québec's website
- Electronically via the Québec-modified version of the NAUPA Format available on Revenu Québec's website

- The properties can be remitted in U.S. Dollars or Canadian Dollars
- Interest is charged on properties remitted past their due date

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

Ontario

- **2013** – Ontario government holds stakeholders' meetings and requests comments on proposed unclaimed property law draft. Property types included insurance policies, wages, and securities property
- **2015** - The recently re-elected Liberal Party in Ontario has not yet indicated their plans with respect to the introduction of a new UP law. An announcement may be possible in the March budget.

Recent Developments: Ontario

- If Ontario proceeds with a new UP law, it is possible that the legislation could be in place in late 2015 or early 2016.
- The 2015 Ontario government budget is expected to be tabled in March which may provide some guidance on plans for new Unclaimed Property legislation.

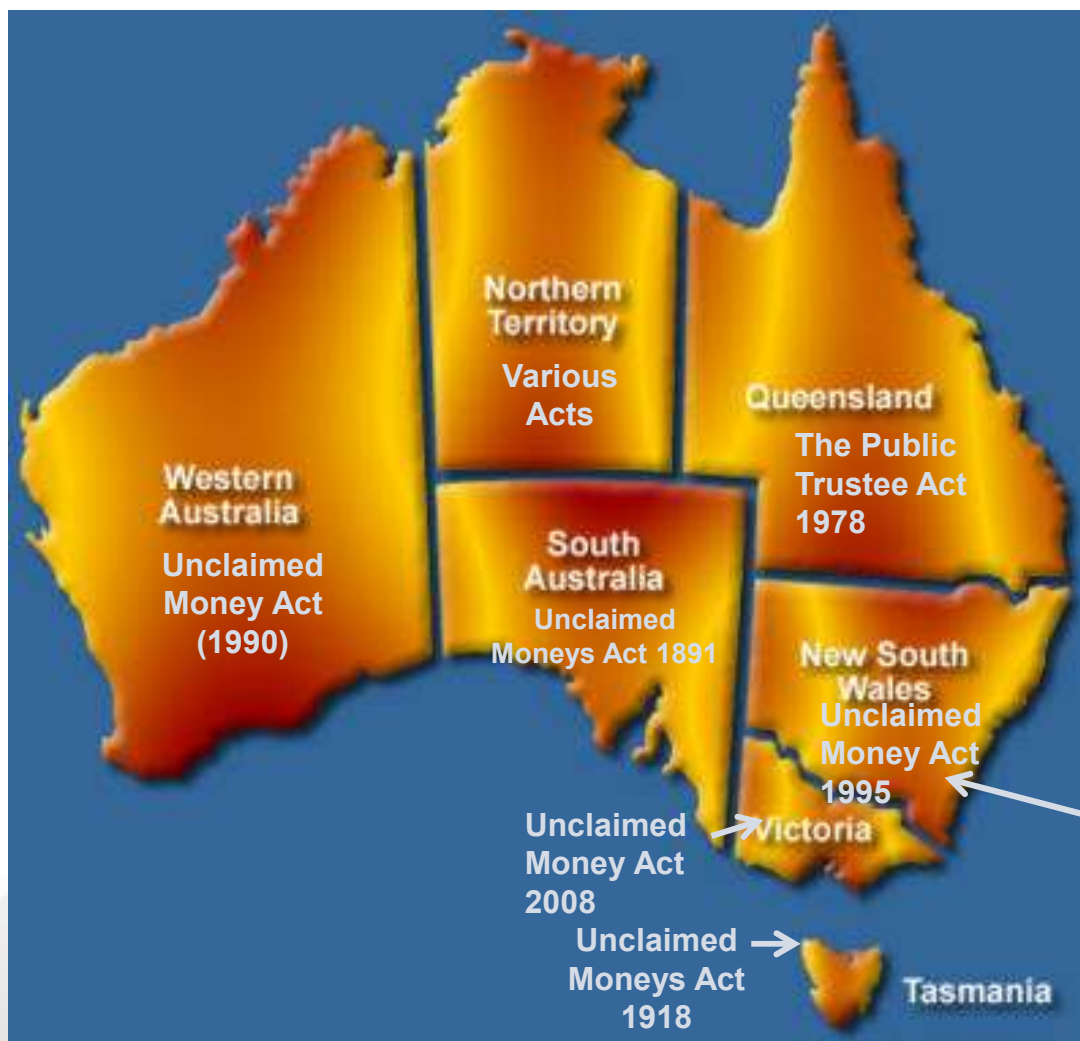
Recent Developments: Ontario

- 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.



Australia

State Unclaimed property laws vary widely



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



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, and company deregistration proceeds
 - Unclaimed Superannuation (pensions) administered by AUSFund



Australia

Unclaimed property laws exist at both Federal and State/Territory level

- 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) 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.



Anguilla

(*Banking Act 2005 §§ 60-64*)

- 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..



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.



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.)

- 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.



Bahamas

- 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 in 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.



Bahamas

- 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.



Barbados

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

- 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.



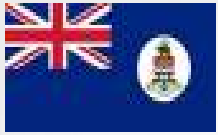
British Virgin Islands

- 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



Cayman Islands

- 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



Cayman Islands

- 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 31st 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*



New Zealand

- 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



St. Lucia

Several sources indicate that St Lucia has adopted wholesale the ECCB's generic Act. The provisions therein are also materially identical to those in St Lucia's International Banks Act.

- 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.



St. Lucia

- 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.



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



Trinidad & Tobago

(Financial Institutions Act §76)

- 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



United Kingdom

- 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

Questions?

Alena Levitz

Executive Director – BC Unclaimed Property Society

alena.levitz@unclaimedpropertybc.ca

Phone: 604.662.3518 or www.unclaimedpropertybc.ca

Darren Jack

Managing Director - Impact 360

www.impact360.ca

(416) 367-4929 or djack@impact360.ca

Questions?

Alexandre LeBlanc

Alexandre-L.LebLANC@revenuquebec.ca

Chargé de projets: DGR: Direction principale des biens non réclamés Revenu Québec

(514) 287-6461 or (514) 285-5469

www.revenuquebec.ca

Phyllis Phan

Phyllis.Phan@gov.ab.ca

Manager Unclaimed Property, Alberta Treasury Board and Finance