

Ontario Nonprofit Network Submission

Regarding Unclaimed Intangible Property Program

October 19, 2012

About the ONN

The Ontario Nonprofit Network (ONN) is a non-partisan voice, communication broker and capacity builder for nonprofit organizations in Ontario. Ontario's 46,000+ organizations employ over one million people, comprise 15% of Ontario's total workforce, and have an economic impact of nearly \$50 billion. This represents more than 7.1% of Ontario's GDP, greater than the automobile and construction industries combined.

Our network connects the various groups and organizations which together work for the public benefit of Ontarians and make Ontario one of the best places in the world to live and raise a family. Arts and culture organizations, social service organizations, sport and recreation, environmental groups, social enterprises, and others, all have in common the well being of the people and communities of Ontario.

Intangible Unclaimed Properties Program and the Public Benefit

As described in the Ontario Government's consultation paper, "People lose track of their property for many reasons. They may simply have forgotten about their property. Some may have become incapable or die without family members or guardians being aware of the property. Others may struggle with literacy or numeracy or simply find that the complexity of modern financial products and services is such that they are unable to properly track and take the necessary action to deal with their property at certain times."¹

The Government intends to develop an Unclaimed Intangible Property Program that follows four guiding principles.

1. Unclaimed intangible property should not rest with holders of the property (who are not the owners of the property) indefinitely and owners of unclaimed property should have an effective mechanism to identify and recover it.
2. The government should be responsible for administering a program to enable Ontarians to be reunited with their intangible property once it has become unclaimed.
3. Until that property is claimed, the property would be used for the benefit of Ontarians.

¹ Ontario Government Consultation Paper, Unclaimed Intangible Property Program for Ontario. September 2012. Pg. 1

4. Any additional burden to holders of unclaimed intangible property associated with a new unclaimed intangible property program should be minimized to the extent possible. This may be achieved by legislation that is generally consistent with those of other jurisdictions.²

The Ontario Network supports these principles and objectives. We have particular expertise and interest in principle 3 regarding the use of unclaimed property for the benefit of Ontarians. We believe that Ontarians, if they do not have possession of properties which are rightfully theirs, and if asked, would support those assets being used to maximum advantage for their family, friends and communities. In other words, they would want their unclaimed property be effectively used for the public good.

In this submission, we advise that Ontario's Unclaimed Property Program include robust actions to reunite owners with their unclaimed assets while directing surplus assets to public benefit organizations working to enhance the quality of life for all Ontarians.

Choosing Innovation and Opportunity

A review of similar programs in other jurisdictions identified two very different approaches to unclaimed property programs.

In some jurisdictions, particularly older programs, governments have passed legislation that requires the holders of unclaimed property to transfer that property to government. The legislation typically provides for enforcement by the government to ensure holders transfer unclaimed property to the government or state. Once transferred, the state maintains a list of owners of unclaimed properties and undertakes efforts (sometimes very modestly) to make people aware of this list and how they can search for and claim their property. Unclaimed funds are eventually absorbed into general revenues in many jurisdictions. A few governments retain these assets in perpetuity in a separate fund.

More recently, some governments have taken a different approach to unclaimed properties. While retaining responsibility for the unclaimed intangible property program, these governments have established a separate fund and divested day-to-day management of this fund to a nonprofit organization. Moreover, assets surplus to the needs of the fund are reinvested in communities through a sector funder. This approach has received broad public support and produced some interesting results including significant increases in the number of owners being reunited with their unclaimed property, growing numbers of voluntary transfers from unclaimed property holders and a direct and visible link between surplus unclaimed assets and public benefit in communities.

There are two initiatives in other jurisdictions that we believe should inform the Ontario program: the province of British Columbia's delegated relationship with the Vancouver Foundation through the *Unclaimed Property Society* and the United Kingdom's support of the Big Lottery Fund through the *Reclaim Fund Ltd*.

Both of these programs have a specialized organization whose job it is to receive the funds from the holders, operate and manage the fund, maintain lists and records and undertake efforts to reunite the

² Ibid, pg 2

funds with their rightful owners. These organizations have independent directors whose job it is to decide when and how much money should be transferred to the distributors of funds for public benefit (in the UK, the funds distributor is the Big Lottery Fund which in turn distributes it to the Scotland, England and Northern Ireland programs, and in B.C., it is the Vancouver Foundation). In both cases the government has firm and ongoing direct oversight of the program.

We believe the success of the B.C. initiative is very informative and their legislation - **The Unclaimed Intangible Property Act** - could be a good model from which to work. The United Kingdom initiative is too recent to have good data on implementation but their arms length approach has already attracted additional funds from the major banking institutions for a social enterprise initiative in Britain.

Highlights from British Columbia

The B.C Unclaimed Property Society (BCUPS) has been operating since 2003. It has proved to be extremely successful in:

- *Reuniting owners with their unclaimed property.* Between April 1, 2003 to December 31, 2010 they returned \$5.2 million dollars through 2,908 successful claims.³
- *Voluntary, cost effective, compliance as an alternative to regulation and enforcement.* Businesses in B.C. are increasingly using the Unclaimed Property Society as a successful and cost effective way of meeting their obligations regarding their unclaimed holdings, getting them off their balance sheets and contributing to public benefit in B.C. communities.⁴ The BC Legislation relies on voluntary compliance from all but government holders. Handing over unclaimed property to BCUPS is a cost effective solution for businesses and the added bonus is the positive community investment program with surplus funds.
- *A Proactive Community Investment Program.* Between April 1, 2003 and December 31, 2010, \$13 million dollars was transferred to the Vancouver Foundation from BCUPS for the benefit of the people of British Columbia.⁵

Made in Ontario

We propose the following be considered for a bold and productive “made in Ontario” Unclaimed Intangible Properties Program.

1. **That the Government of Ontario delegate administrative authority for the management of an Ontario Unclaimed Intangible Properties Program to the (to be established) *Ontario Reclaim and Public Benefit Fund* (a new entity that would both reunite owners and distribute funds to the sector) – This delegated administrative authority could be modeled closely on the Unclaimed Property Act of British Columbia.**

The reason government should contract this work is that the sector has more flexibility and can react more quickly in publicizing, processing and paying claims to property owners. Moreover, in their relationships with unclaimed property holders, the Ontario Reclaim and Public Benefit Fund

³ <http://www.unclaimedpropertybc.ca/successes.php>

⁴ British Columbia Unclaimed Property Society Annual Report 2011

⁵ <http://www.unclaimedpropertybc.ca/successes.php>

(ORPBF) can appeal to these voluntary holders convincing them that transferring their unclaimed property obligations to the fund is not only good business but also good for communities. And finally, the ORPBF would be nimble, collaborative and cost effective. An Ontario Fund could work closely with the British Columbia Unclaimed Property Society who have a web presence, software and valuable claims expertise they can share with the Ontario equivalent to facilitate its development.

2. **That the *Ontario Reclaim and Public Benefit Fund* be established as an Ontario Not-for-Profit Corporation. The Ontario Nonprofit Network would work with the government to ensure sector leadership and financial expertise involvement in establishing and managing the fund.**

We have a number of foundations in Ontario so we could copy exactly the B.C. governments arrangement with the Vancouver Foundation but we believe that it is essential Ontario have the capacity to fund both charities and nonprofit organizations providing public benefit in Ontario communities. We have extensive and expert sector capacity including private foundations, United Ways and community leaders working across the different sectors and the sector has strong linkages to financial institutions among its members. We believe that we can bring this expertise together to establish an independent nonprofit organization that will have the most flexibility to fund gaps and emerging needs in the sector. An organization that can fund both charities and nonprofit organizations, fund for short and longer terms and can loan as well as grant. A public benefit fund for the sector, managed by the sector to address gaps and emerging needs.

3. **The *Ontario Reclaim and Public Benefit Fund* would receive the funds from unclaimed property holders (both mandatory and voluntary), maintain lists and records and undertake efforts to reunite the unclaimed funds with their rightful owners, as well as operate and manage the fund for maximum public benefit. The Directors of the fund will report on its activities in accordance with legislative and /or regulatory requirements.**

The BCUPS has been enormously creative and effective in publicizing and making accessible the lists of people with unclaimed assets while safeguarding privacy. They have also been very creative and successful in educating BC businesses about their obligations with regard to unclaimed properties and encouraging them to use the BCUPS for their unclaimed holdings. The BCUPS website is an example of good design and accessible information. The Ontario ORPBF could be modeled closely after the British Columbia experience.

4. **The *Ontario Reclaim and Public Benefit Fund* would have a public benefit mission. To this end it would invest in Ontario Government bonds, municipal and public utility bonds and other public benefit investments such as community bonds.**

The investment of funds while awaiting claims would be prudently made in government bonds and other public benefit opportunities. While most of the fund would be invested in very low risk government bonds, a small portion of the fund might be used for social purpose loans and loan guarantee insurance products for organizations that are also low risk, but often not easily recognized as such.

5. The *Ontario Reclaim and Public Benefit Fund* would use funds deemed surplus of what was needed for claimants by providing grants and/or loans to strengthen public benefit organizations in Ontario communities.

The world is changing rapidly and the government's capacity to support individuals and communities is constrained. The sector needs the tools and expertise to develop new ways of undertaking its public benefit activities in communities, new ways to build local community assets and keep Ontario a caring, compassionate and creative province. It is for this primary goal that ONN proposes a fund managed by the sector for the sector with flexibility to fill investment gaps in the system. If operating today, it might fund business-planning supports, provide critical bridge funding to successful programs while they develop ongoing revenues, or assist programs in transition such as toddler and infant daycare. Future priorities will change with the evolution of local communities and their particular needs. By serving all public benefit charities, nonprofits and cooperatives the fund will not be limited by charitable regulations and constraints that hinder innovation in communities while the focus on organizations providing public benefit will ensure the assets will benefit the community for the long term.

6. Technical Details

In this section, ONN provides brief answers to some of the technical questions asked in the consultation paper. These answers flow from our recommendations regarding program design.

We recommend the government of Ontario begin with the B.C. Unclaimed Property Act, July 15, 1999 and the government consider modifying it to suit Ontario. We strongly believe the B.C. approach is likely to find a very receptive audience with the property owners, the unclaimed property holders and the public at large.

The BC approach is flexible and compatible with the *Uniform Unclaimed Intangible Property Act*. The voluntary compliance approach taken by B.C. would facilitate unclaimed property holders operating in different provinces harmonize their procedures and approach.

Scope of the legislation – Types of property

- Restrict Ontario Reclaim and Public Benefit Fund (ORPBF) to intangible properties. Physical property holdings, if included, must be converted into cash
- Mandatory Holders - Unclaimed property holdings within government would be required to be deposited in the independent agency. (E.g. unclaimed holding from the courts, government programs, etc.)
- Voluntary Holders (non-government) must have obligations under legislation to reunite owners with property. By transferring unclaimed holdings to the Ontario Reclaim and Public Benefit Fund, they meet these obligations.
- Unclaimed Funds would include, but not be limited to, trust funds, securities, property insurance, closed pension plans, wages, real estate deposits, overpaid debt collections, interstate estates and credit union accounts.

Owners Rights

- Claimants would recover the principle less applicable fees; interest earned would go to paying the cost of the search program and to fund the public benefit mandate.
- Claimants right to their funds would have no expiry date.

- The ORPBF would secure access to Ontario Government databases such as OHIP (just addresses) to aid in finding owners. (Respecting existing and future privacy legislation and regulation)

Financial Model

- The government would contract with an organization to manage the claims, funds and public benefit activities (rights and obligations as per BC Unclaimed Property Act.)
- ORPBF costs would be paid from the interest on the fund and fees (as permitted in regulation) charged against the unclaimed property.

Consultation Questions

Are Implementation and unclaimed property time periods appropriate?

- While ONN is not a subject matter expert in this area, it seems fair and reasonable that there be no exclusion for older unclaimed holdings. If they are not transferred the owner does not have continued rights to claim them. Indeed, the B.C. experience is that BCUPS has had quite a lot of success in locating some owners of older holdings.

How government consults going forward?

- ONN will draw a cross-section of sector leaders to work with the province if the Government opts for a made in Ontario program of claims management and public benefit delivery modeled on the B.C. approach.
- ONN would be pleased to work closely with the province on this initiative. Thank you for allowing us this opportunity.

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