

Draft Regulation

Unclaimed Property Act
(chapter B-5.1)

Application of the Act

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the application of the Unclaimed Property Act, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation establishes various rules applicable to the administration of unclaimed property entrusted to the Minister. In particular, the Regulation specifies

—the information that the Minister may require for the purpose of determining the competence in relation to the administration of a property;

—the period during which certain property must be delivered and the related statement must be filed;

—the information that must be entered in the register of property under provisional administration;

—the form and content of the account to be rendered by the Minister at the end of the administration;

—the Minister's fees for administering property entrusted to the Minister.

Further information on the draft Regulation may be obtained by contacting Johanne Forget, Senior Director, Direction principale de la rédaction des lois, Agence du revenu du Québec, 3800, rue de Marly, Québec (Québec) G1X 4A5; telephone: 418 652-6838; fax: 418 652-5995; email: johanne.forget@revenuquebec.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Gilles Paquin, President and Chief Executive Officer, Agence du revenu du Québec, 3800, rue de Marly, Québec (Québec) G1X 4A5. The comments will be forwarded by the Agence du revenu du Québec to the Minister of Finance.

CARLOS LEITÃO,
Minister of Finance

Regulation respecting the application of the Unclaimed Property Act

Unclaimed Property Act
(chapter B-5.1, s. 2, 2nd par., s. 3, 1st and 3rd pars., s. 6, 3rd par., s. 18, 2nd par., s. 29, 3rd par. and s. 56, 1st par.)

**CHAPTER I
RULES RESPECTING PROPERTY TO BE
ADMINISTERED**

1. For the purposes of determining whether the Minister is to be provisional administrator under the first paragraph of section 2 of the Unclaimed Property Act (chapter B-5.1), the Minister may require the following information and documents:

(1) for property referred to in subparagraph 1 of that first paragraph, a sworn statement by a person who has personal knowledge of the disappearance of the absentee, indicating the date on which the absentee ceased to appear at his or her domicile or residence, the fact that the absentee has not been heard from since the date of the absentee's disappearance, and, if they are known, the circumstances of the disappearance;

(2) for property referred to in subparagraph 2 of that first paragraph, a statement by the coroner indicating that he or she has in his or her custody property found on the body of an unknown person or on an unclaimed body;

(3) for property referred to in subparagraph 3 of that first paragraph, a copy of the notice of dissolution of the legal person, a certificate from the competent authority attesting the dissolution of the legal person and, in the case of a legal person dissolved under the rules of the Civil Code, a statement from the liquidator or from another interested person justifying that the property devolves to the State or indicating that liquidation of the legal person has not been completed, together with the liquidator's rendering of account;

(4) for property referred to in subparagraph 4 of that first paragraph, a statement from a successor or other interested person indicating, in addition to the reasons requiring the involvement of the Minister, that the known successors have not exercised their option in respect of the succession or that the heirs, or a third person designated in accordance with the testamentary provisions of the deceased or by the court, are unable to discharge the office of liquidator of the succession;

(5) for property without an owner or lost or forgotten property referred to in subparagraph 5 of that first paragraph, a statement by a person who has personal knowledge of the facts related to such property, indicating the circumstances in which the property came to be without an owner or was lost or forgotten;

(6) for forfeited property referred to in subparagraph 5 of that first paragraph, a forfeiture order and any other document attesting to the permanent forfeiture of the property;

(7) for property referred to in subparagraph 7 of that first paragraph, a statement from the director of the detention centre or an administrator of the facility, indicating the circumstances of the deposit or abandonment of the property, the departure or death of the depositor and the attempts to locate the depositor or to notify the heirs, together with the death certificate, if applicable, and a copy of any document concerning the depositor's identity and domicile;

(8) for property referred to in subparagraph 8 of that first paragraph, a statement from an interested person that the administrator has died, has resigned, or is unable to exercise the functions of administrator indicating the nature of the inability, together with a document justifying the administrator's incapacity to carry out the administration of the property and, if applicable, a copy of the act constituting the administration and the administrator's rendering of account;

(9) for property of a partnership referred to in subparagraph 9 of that first paragraph, a statement from the liquidator or from another interested person justifying that the property devolves to the State or indicating that the liquidation of the partnership has not been completed, together with the liquidator's rendering of account and a copy of the notice of dissolution of the partnership;

(10) for property of an association referred to in subparagraph 9 of that first paragraph, a statement from an interested person indicating the termination of the contract of association and the reasons therefor, and justifying that the property devolves to the State, together with the liquidator's rendering of account, if applicable;

(11) for property referred to in subparagraph 10 of that first paragraph, a statement from a person who has personal knowledge of the facts related to such property indicating that, despite all attempts, it was impossible to identify or to find the owner or other right-holder.

2. To establish those cases in which the administration of property of a succession that falls to the State is entrusted to the Minister, the Minister may require the following information and documents from any interested person who has personal knowledge of the facts:

(1) a statement indicating that the deceased had no spouse or relatives within the degrees of succession, or that all known successors have renounced the succession or that no other successor is known or has laid claim to the succession;

(2) a certified true copy of the renunciations of the succession;

(3) a document attesting to the refusal or renunciation by the person appointed liquidator to discharge his or her office;

(4) the death certificate of the deceased, a copy of the deceased's will, or, failing that, a statement pertaining to legal devolution of the succession and, if applicable, the deceased's marriage contract.

3. Amounts payable under a pension or retirement contract or plan referred to in subparagraph 10 of the first paragraph of section 3 of the Act correspond,

(1) in the case of a retirement plan governed by the Supplemental Pension Plans Act (chapter R-15.1) or a retirement plan established by an Act in force in Québec,

(a) where the pension payments have begun, to the total of the payments owing but not paid, and the interest accrued at the rate of return of the retirement fund up to the date of the yearly delivery or, as the debtor or holder chooses, to that amount plus the residual value of the pension on the date of the delivery; the residual value must be assessed on the basis of the hypotheses used to calculate the liabilities of the retired participants on a solvency basis;

(b) in other cases, to the value of the benefits accrued under that plan which, on the date of delivery, could have been transferred into a locked-in retirement account within the meaning of section 29 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) without consideration of the restrictions and prohibitions in section 99 of the Supplemental Pension Plans Act;

(2) in the case of a life annuity,

(a) where the pension payments have begun, to the total of the payments owing but not paid and the interest accrued at the rate provided for in the contract up to the date of the yearly delivery or, as the debtor or holder chooses, to that amount plus the residual value of the pension on the date of the delivery;

(b) in other cases, to the value of the benefits accrued under the contract on the date of delivery;

(3) in the case of any other pension or retirement contract or plan,

(a) where the payments have begun, to the total of the payments owing but not paid, the interest accrued at the rate provided for in the contract up to the date of the delivery and the residual value of the benefits accrued under the contract on that date;

(b) in other cases, to the value of the benefits accrued under the contract on the date of delivery.

Despite the first paragraph and given the right to reinstatement provided for in section 147.0.6 of the Act respecting the Government and Public Employees Retirement Plan (chapter R-10), the sums payable under a retirement plan administered by the Commission administrative des régimes de retraite et d'assurances correspond to the total of the contributions made and, if applicable, the interest accrued on the date of delivery. Calculation of the contributions and, if applicable, of the interest is made in accordance with sections 58 and 59 of that Act, with the necessary modifications.

The values referred to in the first paragraph must be established even if the benefits or pension credits are unclaimed property.

In case of a claim made to the Minister for sums referred to in the first paragraph that were delivered and initially came from a pension plan governed by the Supplemental Pension Plans Act, the rules applicable to a locked-in pension account under section 29 of the Regulation respecting supplemental pension plans apply to the payment of the balance of the locked-in sum delivered, with the necessary modifications.

4. For the purposes of subparagraph 12 of the first paragraph of section 3 of the Act, funds, securities and other property part of a registered education savings plan referred to in section 146.1 and following of the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement) constitute unclaimed property where the property for which the right-holder has made no request in regards to their use within 3 years following the expiry date of the registered education savings plan.

5. The yearly period during which a debtor or holder of unclaimed property must, under section 6 of the Act, deliver the property and file the related statement is,

(1) if the debtor or holder operates a business or is a legal person, in the first quarter following the end of the fiscal year in which the property became unclaimed property;

(2) in other cases, the first quarter following the end of the calendar year in which the property became unclaimed property.

The property and the related statement are sent by registered mail or by email and the statement is filed in electronic form.

CHAPTER II REGISTER OF PROPERTY

6. The register of property under provisional administration provided for in section 18 of the Act contains, for each property or each succession administered, the following information:

(1) the file number assigned by the Minister;

(2) the date on which the administration began;

(3) the type of property, if applicable;

(4) except for the case provided for in section 7 of the Act, the identity of the deceased, the owner or other known right-holder, as the case may be, and his or her last address or, if unknown, the place where the property was recovered or any indication as to the location of the immovable property;

(5) a brief description of the property, if the owner or other right-holder is unknown;

(6) the name and address of the debtor or holder who has delivered the property to the Minister, if applicable;

(7) the net value of the property or succession, the Minister's fees, including taxes payable, and the balance.

Despite the first paragraph, no information concerning the property or the succession is entered in the register if the amount of the fees, including taxes applicable, is equal to or greater than the net value of the property or succession, or if the owner or right-holder has indicated a refusal to recover the property or succession or its value.

7. Subject to the second paragraph of section 6, the information entered in the register of property under provisional administration, relating to property or a succession the administration of which terminates as provided for in paragraph 4 of section 28 of the Act, must be kept in that register until the expiry of any of the following periods:

(1) 10 years from the date of death, where the sums delivered to the Minister of Finance come from a succession;

(2) in other cases,

(a) 10 years from the date of delivery, where the sums delivered to the Minister of Finance are less than \$500;

(b) 30 years from the date of delivery, where the sums delivered to the Minister of Finance are equal to or greater than \$500.

CHAPTER III FEES AND RENDERING OF ACCOUNT

8. The fees which the Minister may charge under the first paragraph of section 56 of the Act are established in Schedule I.

Except for the fees provided for in section 5 of Schedule I, the fees referred to in the first paragraph will become due and payable only on delivery of property to a right-holder.

9. The rendering of account that the Minister must make under section 29 of the Act includes the balance sheet established at the beginning and the end of the period of administration, a statement of revenues and expenditures and all the information required to establish the balance.

In the cases referred to in the second paragraph of section 29 of the Act, the rendering of account is made available to the Minister of Finance. The sums of money remaining upon termination of the administration are delivered to the Minister of Finance by their payment into the Minister's credit, to the financial institution the Minister designates, within 5 days of the rendering of account.

CHAPTER IV AMENDING AND FINAL PROVISIONS

10. The Regulation respecting the application of the Public Curator Act (chapter C-81, r. 1) is amended by striking out the second paragraph of section 6 and paragraph 3 of section 7 and by repealing sections 2, 3, 6.1 to 6.6 and 7.1, Schedule I.1 and Chapter II of Schedule II.

11. This Regulation comes into force on 1 September 2015, subject to the second and third paragraphs.

Where a claim is made by a right-holder before 1 September 2015, section 9 of the Regulation respecting the application of the Public Curator Act and Chapter II of Schedule II to that Regulation, as they read on 31 August 2015, apply to establish the fees exigible for the administration of property entrusted to the Minister, except fees exigible for the liquidation of a succession that falls to the State.

Furthermore, Chapter II of Schedule II to the Regulation respecting the application of the Public Curator Act, as it reads on 31 August 2015, applies to establish the fees exigible for the following activities, when they are completed before 1 September 2015:

- (1) for the liquidation of a succession,
 - (a) the opening of the file;
 - (b) the administration and liquidation of the succession;
- (2) for the administration of property referred to in the first paragraph of section 2 of the Unclaimed Property Act or property for which the administration is entrusted to the Minister under another Act, the liquidation of the property.

SCHEDULE I (section 8)

1. The fees that the Minister may charge for the liquidation of a succession that falls to the State are as follows:

- (1) for the opening of a file: \$1,350;
- (2) for the administration of the succession: \$4,500;

(3) for the liquidation of property: 15% of the net proceeds of the liquidation of movable property, up to \$5,000 and 15% of the net proceeds of the liquidation of each immovable property, up to \$5,000 per immovable property;

(4) for the rendering of account and the delivery of property: \$1,000.

2. The fees that the Minister may charge for the provisional administration of property referred to in the first paragraph of section 3 of the Act, except property referred to in subparagraph 7 of the first paragraph of section 3, are as follows:

(1) for the administration, rendering of account and delivery of the property: 10% of the property value, but not less than \$50 nor more than \$1,000;

(2) for the liquidation of the property: 15% of the net proceeds of the liquidation of the property, up to \$5,000.

3. The fees that the Minister may charge for the provisional administration of property referred to in subparagraph 7 of the first paragraph of section 3 of the Act are as follows:

(1) for the administration, rendering of account and delivery of the property: \$335;

(2) for the liquidation of the property: 15% of the net proceeds of the liquidation of the property, up to \$5,000.

4. The fees that the Minister may charge for the administration of a property not referred to in any of sections 1 to 3 of this Schedule are as follows:

(1) for the administration, rendering of account and delivery of the property: 10% of the property value, but not less than \$50 nor more than \$1,000;

(2) for the liquidation of the property: 15% of the net proceeds of the liquidation of the property, up to \$5,000.

5. The Minister may take quarterly, for the management of joint portfolios, fees corresponding to 1.5% per year of the average assets under administration, up to the rate of return of the portfolios.

For the purposes of the first paragraph, the average assets under administration are equal to the result obtained by dividing the amount equal to the sum of the assets at the end of each month in the quarter preceding that in which the fees are taken, by three.

6. The Minister may charge, for each copy of a document on which appears the information requested under section 21 of the Act, the tariff provided for in the Regulation respecting fees for the transcription, reproduction or transmission of documents or personal information (chapter A-2.1, r. 3).