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Consultation Paper on Modernizing the Escheat Act

Prepared by the Escheat Act Modernization Project Committee

April 2026

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The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its purposes are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and
- promote and carry out scholarly legal research.

This project was made possible with the sustaining financial support of the Law Foundation of British Columbia and the Ministry of Attorney General for British Columbia. The Institute gratefully acknowledges the support of the Law Foundation and the Ministry for its work.

Escheat Act Modernization Project Committee

The Escheat Act Modernization Project Committee contains experts in First Nations governance, Indigenous law, Aboriginal law, advising small businesses, estate planning and administration, and academia. The committee's mandate is to assist BCLI in developing recommendations to modernize the BC *Escheat Act* and recommend reforms for aligning the Act with the *United Nations Declaration on the Rights of Indigenous Peoples* as mandated by the BC *Declaration on the Rights of Indigenous Peoples Act*. These recommendations will be set out in the project's final report, scheduled for publication in 2026.

The members of the committee are:

Lydia Hwitsum (Xtli'li'ye)—chair (until Dec 2025)

Stephen Mussell
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Megan Vis-Dunbar (staff lawyer, British Columbia Law Institute) is the project manager.

For more information, visit us at:

https://www.bcli.org/escheat-act-modernization/

Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addresses the draft recommendations for reform set out in this consultation paper, but it is not necessary. General comments on bringing the *Escheat Act* into alignment with the *United Nations Declaration on the Rights of Indigenous Peoples* and on updating the legislative framework for managing property for which an ownership interest has lapsed are also welcome.

Responses may be sent to us in any of the following ways:

by email:	consultations@bcli.org
by online survey:	https://www.surveymonkey.com/r/EAMP

If you want your response to be considered by us as we prepare our final report on the Escheat Act Modernization Project, then we must receive it by **18 September 2026**.

Privacy

Your response will be used in connection with the Escheat Act Modernization Project. It may also be used as part of future law-reform work by the British Columbia Law Institute or its internal divisions. All responses will be treated as public documents, unless you expressly state in the body of your response that it is confidential. Respondents may be identified by name, title, and organization in the final report for the project, unless they expressly advise us to keep this information confidential. Any personal information that you send to us as part of your response will be dealt with in accordance with our privacy policy. For more information on our privacy policy visit: https://www.bcli.org/sites/default/files/2008-11-12_BCLI_Personal_Information_Protection_Policy.pdf.

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EXECUTIVE SUMMARY

About the Escheat Act Modernization Project

The law of escheat means that land reverts to the Crown when it appears to have no owner. It is based on a presumption that all land ultimately belongs to the Crown. In 2024, the BCLI initiated the Escheat Act Modernization Project to review this area of law in BC and develop recommendations for reform.

The project's goals are two-fold. It seeks to recommend reforms to BC's *Escheat Act* to address the modern realities and challenges related to lapses in property ownership. It also seeks to affirm inherent Indigenous rights and inform efforts to bring the legislation into alignment with the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).

BC's framework for managing lapses in property ownership interests is grounded in principles of feudal property law. Updates to succession law, implementation of land title registries based on a Torrens system, and the ownership of property by corporations with legal personhood all contribute to an environment in which modern applications of escheat law often look quite different from the situations the law was developed to address.

In addition, BC's *Declaration on the Rights of Indigenous Peoples Act* (*Declaration Act*) requires the government of BC to take all measures necessary to ensure that BC's laws are consistent with the *UN Declaration*, in consultation and cooperation with Indigenous peoples in BC. This consultation paper explores pathways to greater alignment with the *UN Declaration*, subject to the consultation and cooperation process with Indigenous Peoples, which the provincial government must undertake to meet the requirements of section 3 of the *Declaration Act*.

As part of the project, BCLI has formed the Escheat Act Modernization Project Committee. The committee's primary task is to assist BCLI in developing recommendations for reform of the law. Collectively, the committee brings expertise in the areas of First Nations governance, Indigenous law, Aboriginal law, advising small businesses, and estate planning and administration.

About this consultation paper

This consultation paper explores whether escheat law is the most effective tool for managing lapses in property ownership in a modern context and for affirming inherent Indigenous rights. It proposes a reformed framework to address issues arising

from lapses in ownership interests in a manner that affirms rights recognized in the *UN Declaration* and section 35 of the *Constitution Act, 1982* and addresses some of the challenges in modern applications of escheat law. It does this by presenting draft recommendations to reform BC's legislation for managing lapses in property ownership. The recommendations would support a new legislative framework.

The draft recommendations have been developed by the committee after considering research and deliberating on various issues. This paper presents the issues and research along with draft recommendations to invite public input.

To ensure your input is considered before final recommendations for reform are developed, BCLI must receive it by **18 September 2026**.

Content of the consultation paper

The organization of the consultation paper

This paper is organized in two parts. Part one, which includes chapters 1 to 3, provides information on the current state of BC law and how it has developed. It sets out foundational principles regarding escheat law and provincial obligations to align BC legislation with inherent Indigenous rights. It is intended to provide readers with a good understanding of the legal principles and issues discussed in part two. Part two, which includes chapters 4 to 10, begins by outlining the committee's draft recommendations to provide readers with a holistic view of the proposed reformed framework. It then examines the various issues and factors the committee considered in developing draft recommendations.

Introduction and overview of escheat law

The consultation paper begins with two chapters that discuss the development of escheat law and the BCLI's rationale for undertaking this project. It looks at how, under the common law, when an ownership interest in land ends, the property passes to the Crown in the right of the Province based on underlying Crown title. It also explores how the *Escheat Act* provides for other forms of property to pass to the province as *bona vacantia*, or vacant property, based on Crown sovereignty.

After explaining the basic legal principles, the paper looks at how the statutory framework has expanded over time to incorporate more types of property and increased Crown powers to manage property that escheats or otherwise passes to the Crown under the legislation.

Considerations for the alignment of BC laws with the UN Declaration

The third chapter provides an overview of BC's *Declaration Act* and its implications for aligning BC laws with the *UN Declaration*. It then explores inherent rights of Indigenous Peoples, which the committee considered significant in the context of escheat and legislation for the management of property after an ownership interest lapses. It looks at the right to self-determination and how it informs states' obligations to obtain Indigenous Peoples' free, prior, and informed consent, as well as the jurisdictional rights of Indigenous Peoples. It looks at the rights that Indigenous Peoples have in relation to lands they have traditionally owned, used and occupied as well as rights for redress for lands taken without consent, rights in relation to culturally significant property, and state obligations to ensure decision-making processes adjudicating Indigenous Peoples' rights in lands and resources are fair, open, and transparent.

A proposal for a new framework

Part two of the paper begins with chapter 4, which sets out the draft recommendations that, taken together, propose a new legislative framework. The proposed framework would see reformed legislation serving the tri-fold purpose of setting out the province's responsibilities in relation to property with lapsed ownership interests, establishing statutory rights for revived corporations and individuals with a moral or legal claim in property with a lapsed ownership interest, and creating a framework for guiding relationships between the province and First Nations for the exercise of jurisdiction in this area of law.

The chapters that follow discuss the committee's considerations in developing the draft recommendations. These chapters also include broad questions to help guide feedback.

While the draft recommendations are presented as a framework for reformed legislation, readers may agree with some recommendations, disagree with others, or have alternative suggestions to share. Similarly, while the guiding questions for feedback are framed broadly, readers are invited to share input on any of the narrower issues discussed in the paper and should not feel restricted to responding to the broad guiding questions.

Principles underlying the legislation

Chapter 5 explores whether reformed legislation should continue to be based on the common law of escheat or in alternative foundational principles. In considering alternative principles, the committee also considered what terminology best describes proposed procedures. This chapter also looks at how legislation might be organized

differently to clarify how different types of property can be managed under a uniform approach.

Ministerial responsibilities

Chapter 6 focuses on how reformed legislation could guide the exercise of ministerial discretion. It presents a set of ministerial responsibilities and clarifies common law and legislated principles informing the interpretation of the proposed framework.

First Nations jurisdictional rights

Chapter 7 considers ways legislation can empower the responsible minister to enter into agreements with First Nations and create space for the application of First Nations jurisdiction even in the absence of an agreement. It presents a wide range of agreements and arrangements to support the exercise of inherent Indigenous rights and to allow First Nations to assume jurisdiction in accordance with their priorities.

Provincial authority

Chapters 8 through 10 discuss provincial administrative powers and responsibilities that would apply under reformed legislation and would guide the exercise of statutory powers in the absence of an agreement or arrangement with a First Nation. The first area of provincial authority discussed concerns supporting the recovery of property by revived corporations and by moral and legal claimants. The second area concerns provincial responsibilities for addressing liabilities and powers to recover associated costs. The third area involves provincial responsibilities to make reasonable efforts to locate property with a lapsed ownership interest and to provide notice to the general public and First Nations whose rights or interests may be impacted.

Conclusion

The consultation paper ends with a brief concluding chapter summarizing the discussion of issues and proposals for reform.

Terminology Used in this Paper

First Nations & Indigenous

The term Indigenous is often used in the international context to refer to the distinct social, economic and political groups that constituted pre-existing societies in areas colonized or otherwise dominated by settlers. In the Canadian context, Indigenous peoples collectively refers to the First Nations, Inuit and Métis peoples, aligning with the use of "Aboriginal" in the Canadian Constitution, which recognizes three distinct categories of Aboriginal peoples: First Nations (legal term is "Indians"), Métis and Inuit. Within BC, First Nations are the distinct and sovereign societies that preceded the arrival of Europeans.

This paper discusses internationally and nationally recognized rights of Indigenous Peoples as they apply to First Nations in BC. First Nations hold jurisdictional authority grounded in the inherent rights, including title they hold in BC.

BC's *Declaration Act* has a broader scope than this paper, and it uses the terms Indigenous Peoples and Indigenous Governing Bodies. In this paper, we use those terms and "Indigenous" when referencing internationally recognized rights and BC's approach to affirming rights generally. Consistent with BC's distinctions-based approach, we refer to First Nations when referencing the distinct and sovereign societies that hold title and rights arising from that title in BC.

Distinctions-based approach

In implementing the *UN Declaration* through the *Declaration Act*, the province is guided by a distinctions-based approach, which recognizes the diversity of Indigenous peoples in BC. This approach acknowledges that "the scope of rights enjoyed by an Indigenous People is contextual and that the province's relations and dealings with First Nations, Métis, and Inuit will be conducted in a manner that is appropriate for the specific context".[1]

Of relevance to this project, this approach recognizes that First Nations in BC are rights and title and holders with their own laws, legal orders, and governance systems that apply to their traditionally held lands, resources, and territories. Those

1. British Columbia, *Distinctions-Based Approach Primer* (December 2023) at 4 [*Distinctions-Based Approach*].

laws, legal orders, and governance systems cannot be unilaterally displaced or overridden by provincial law.[2]

Potentially impacted First Nations

Several of the draft recommendations relate to potentially impacted First Nations or First Nations whose rights or interests may be affected. This terminology is used to refer to First Nations that have or may have inherent Indigenous rights and constitutionally protected Aboriginal rights in relation to the property in issue. This includes, but is not restricted to, First Nations with Aboriginal title.

Legal pluralism

Legal pluralism refers to the coexistence of multiple legal systems, sources of law, or legal authorities within the same geographic, political, or social space. It recognizes that state law is not the only law governing people's lives. Indigenous laws may also operate alongside or in interaction with state legal systems.

Escheat

Escheat is what happens under BC law when an ownership interest in land ends, and the property goes back to the Crown for management. It can happen when someone dies without legally recognized heirs to inherit property or when a corporation dissolves.

Bona vacantia

Bona vacantia is Latin for "vacant property". It is a legal term used for personal property without a clear owner. In these situations, the property reverts to the government to decide what to do with it.

Fee simple interest

Fee simple refers to an interest in land that is essentially absolute. It means the person holding the interest is entitled to the entire property and can dispose of it without limitations. A person can dispose of a fee simple interest during their lifetime or transfer it to an heir upon death. Individuals and corporations, which are recognized under Canadian law as persons, can hold a fee simple interest in land. Modern treaty agreements may recognize fee simple lands that are owned and managed by treaty First Nations, which they can choose to register in the provincial land title system. Changes brought about to BC's *Land Act* in 2024 now mean that First Nations can

2. *Ibid*.

hold and register fee simple interests in land absent a modern treaty or self-government agreement.

Foreign corporations & foreign entities

This paper discusses situations where ownership interests end. In some situations, the former owner of property in BC is a corporation or other legal entity governed by laws outside BC. The laws governing that entity may be those of another Canadian jurisdiction (federal, provincial or territorial) or another country. Examples of foreign entities include a non-profit organization registered in another province and a corporation registered in another country.

Draft recommendations

The recommendations made in this consultation paper are described as draft recommendations. They are draft in the sense that they represent the current position of the project committee and are not necessarily final positions. They are subject to reconsideration, modification, or even abandonment after review of the feedback on the consultation paper. With the benefit of the comments received on the contents of this document, the project committee and BCLI will form final recommendations on reforming escheat law in BC and issue a law reform report containing them.

PART ONE – FOUNDATIONAL PRINCIPLES

Chapter 1. Introduction

Crown title underlies private ownership interests in land. For example, a fee simple interest in land is a private ownership interest that entitles the owner to the entire property and to dispose of or transfer it as they wish. However, Canadian law recognizes Crown title as a senior interest underlying a fee simple interest. Canadian laws manage relationships between Crown and private interests in land.

When an ownership interest in property lapses, and the property is not liquidated, it passes to the Crown in the right of the Province to be managed in accordance with the *Escheat Act*.[3] Real property and water systems that may be attached to real property pass to the Crown by way of escheat. Personal property passes to the Crown as *bona vacantia*.

Aboriginal title is a co-existing and enduring interest in land in many parts of BC.[4] As with Crown title, Aboriginal title is a senior and prior interest to private ownership interests, such as fee simple.[5] The relationships between private ownership interests and Aboriginal title and the exercise of rights flowing from those interests require reconciliation. The Crown, meaning federal and provincial governments, has an obligation to reconcile Aboriginal rights with the interests of all Canadians.[6]

The law of escheat has been a feature of BC common law since the 1800s when English law as it existed in 1858 was applied throughout the colony of BC. Historically, the law of escheat applied primarily to situations in which a deceased property owner had no heir recognized by law as entitled to the property. The property would instead fall to the Crown, and the Crown could create a new grant to someone with a moral right to inherit (i.e., a spouse under customary law or an illegitimate child).

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3. RSBC 1996, c 120 [*Escheat Act*].

4. Aboriginal title is a *sui generis* interest in land recognized under Canadian common law. It forms part of the Candian body of law that has been imposed on Indigenous peoples. Indigenous peoples have their own laws and legal orders, including laws around land tenure. Indigenous Peoples hold inherent rights to land, which are affirmed in the *UN Declaration on the Rights of Indigenous Peoples*. These rights are not limited to what is recognized under the common law test for Aboriginal title and can be recognized under Canadian law in a number of ways, including treaties and other constructive agreements.

5. *Cowichan Tribes v Canada (Attorney General)*, 2025 BCSC 1490 at para 2195 (*Cowichan Tribes*).

6. *Ibid* at para 2194.

As succession law has evolved to recognize more heirs, escheat following an individual's death has become increasingly rare. However, it continues to apply in the modern context, primarily in situations where the law recognizes legal persons in other forms who can also die. When a corporation (a legal person) dissolves without distributing its assets, unliquidated property may escheat. This is the most common modern context where escheat law continues to apply.

Escheat occurs as an incident of the assertion of Crown sovereignty in BC. It continues to occur largely by the same means as in the 1800s. However, the province has amended the *Escheat Act* several times to expand the scope of provincial powers over escheated property and the scope of property to which those powers apply.

Overview of this paper's subject matter

Property is generally defined as something tangible or intangible that belongs to someone. However, from time to time, property may lack an owner. This is sometimes referred to as ownerless or unclaimed property. In this paper, we refer to it as property with a lapsed ownership interest.[7]

Unclaimed funds are one type of property with a lapsed ownership interest that some people may be familiar with. Funds left in dormant accounts, unpaid wages, and unclaimed court payments are just some of the types of funds managed by the BC Unclaimed Property Society under the *Unclaimed Property Act*.[8] Unclaimed funds are not the subject matter of this paper.

This paper examines types of property subject to the *Escheat Act*, such as land, buildings, vehicles, jewelry, electronics and other physical possessions.[9]

The paper analyzes how such property is currently treated under BC's *Escheat Act*, outlines proposals to reform the law in this area, and invites public comment on

7. The draft recommendations aim to provide opportunities for property to be reunited with an owner or moral or legal claimant while affirming First Nations ownership interests where applicable. The adoption of the language of "lapsed ownership interest" is intended to recognize that while one owner cannot be located, there may be others with a continuing interest in the same property.

8. SBC 1999, c 48. This legislation generally applies to all funds which are unclaimed or dormant. Regulations can extend the application of this legislation to other types of property, for example all types of property within a deceased person's estate.

9. For examples of the types of property that fall under these two different pieces of legislation, see BC Unclaimed Property Society, "The unclaimed property process" (last visited 7 October 2025), online *BC Unclaimed* https://www.bcunclaimed.ca/about/unclaimed-property-process.

those proposed reforms. In developing these proposals, the Project Committee (the "committee") considered the legal obligation resting on the provincial government to ensure the laws of BC are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.[10] The committee also considered the commitment within Canada's Constitution to respect Aboriginal rights, including title.[11]

One challenge in reforming a discrete area of law is that BC law is shaped by interactions among various statutes and underlying common law principles. This paper, therefore, discusses certain overarching legal principles and related legislation to provide context for the issues examined and to highlight broader reforms that could help align BC laws more fully with the *UN Declaration* and rights affirmed within the *Constitution Act, 1982*.

What is the Escheat Act?

The *Escheat Act* is BC's legislation for managing property when an ownership interest has lapsed. It operates alongside, and is informed by, the common law doctrines of escheat and *bona vacantia*.

Escheat refers to the reversion of real property - such as land and any buildings or fixtures on it - to the Crown when a private ownership interest ends. *Bona vacantia*, meaning "vacant property", applies to personal property that is forfeited to the Crown when there is no existing owner. Both doctrines are based on the principle that property cannot be ownerless. When an ownership interest ends, the property falls back to the "landlord" who holds the underlying interest – in this case, the Crown. Both principles arise as incidents of asserted Crown sovereignty.

When property reverts to the Crown through escheat or *bona vacantia*, the *Escheat Act* provides the framework for how it is managed. Under the Act, the authority to administer such property is delegated to the BC Attorney General.

10. UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295 [*UN Declaration*]. The legal requirement to ensure BC laws are consistent with the *UN Declaration* is found in the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, s 3 [*Declaration Act*]. The common law and s 8.1(3) of the BC *Interpretation Act* also require that BC laws be interpreted consistently with the *UN Declaration*: *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at paras 78 & 92 [*Gitxaala* BCCA].

11. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11, s 35 [*Constitution Act, 1982*]. See also, *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 25 [*Haida Nation*].

Understanding how escheat functions

The law of escheat has its roots in feudal land tenure and rests on the idea that the Crown is the ultimate owner of all land over which it asserts sovereignty. The concept, inherited from English property law, means that land granted by the Crown to a tenant ultimately remains Crown property. When the tenant's ownership interest ends, the land reverts to the Crown.[12]

In modern BC law, this means that when there is a lapse in title – when property becomes 'ownerless' – it falls back to the Crown. Escheat ends the former owner's interest in the property. For instance, if land held in fee simple escheats, the freehold interest terminates. Escheat also operates as an exception to the principle of indefeasible title and is not recorded in the land registry system.[13]

Once property has escheated, the Crown has authority to deal with it. For example, the Crown can create a new freehold interest or issue a new title.[14] Some common law authorities suggest that subordinate interests, such as mortgages or easements, are unaffected by escheat.[15] However, it is unclear to what extent the *Escheat Act* modifies this common law rule. Section 13 of the Act appears to allow for the extinguishment of subordinate interests and makes compensation for those interests discretionary under section 13(2).

Understanding how bona vacantia functions

Bona vacantia is another doctrine of English common law, based on the principle that all property must have an owner. When the owner cannot be found, the property passes to the Crown as an incident of sovereignty.[16] Unlike escheat, *bona vacantia* does not depend on a reversionary interest. Historically, it only referred to personal property, but in some jurisdictions, its scope has expanded to include real property.

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12. *Pennistone Holdings Ltd v. Rock Ferry Waterfront Trust* [2021] EWCA Civ 1029 at para 18 [*Pennistone Holdings*].

13. *Land Title Act*, RSBC 1996, c 250, s 23(2)(f) [*Land Title Act*].

14. *Pennistone Holdings*, *supra* note 12 at paras 20-21.

15. For example, in the BCSC decision in *Mowatt v. British Columbia (Attorney General)*, 2023 BCSC 1583 [*Mowatt* BCSC], the Court noted at para 41 that a termination of the fee simple interest would not affect a mortgage. Upon further review of the underlying decision, this decision of the BCSC was set aside when the BCCA reached a different conclusion on the reasonableness of the decision under review. *Mowatt v. British Columbia (Attorney General)*, 2024 BCCA 157 [*Mowatt* BCCA].

16. H.C. Black, *Black's Law Dictionary*, 6 ed (West Publishing Co., 1990) "bona vacantia".

How the Escheat Act and the common law function together

The BC *Escheat Act* does not codify the common law of escheat; rather, it operates alongside it.[17] This section summarizes both the common law and the legislation to provide an overview of how the law functions in BC.

The law of escheat has existed in BC since 1858, when English laws in force at the time were adopted across the colony.[18] Many of those English laws, including those governing escheat, have since been modified by legislation.[19]

This reception of English law introduced not only the common law of escheat but also the broader land tenure system that underpins Canadian property law. Under this model, land is not owned outright; rather, it is held of the Crown, either in right of the Dominion (Canada) or of a province.[20] The Crown therefore retains the underlying title to land, even when a person or corporation holds a recognized ownership interest. When that private interest ends, ownership reverts to the Crown much like a landlord regaining possession when a tenancy ends.[21]

BC's first legislation clarifying and supplementing the common law of escheat was enacted in 1898. The *Escheat Act* has since been amended to broaden the scope of property to which it applies and to expand the Crown's authority to manage property that reverts to the province under escheat or *bona vacantia*.

Currently, the *Escheat Act* applies to:

- **Real property**, including:
    - land and any buildings or structures on it,
    - incorporeal hereditaments such as easements, rights of way, leases, and mortgages attached to real estate, and
    - Crown land grants, including mineral titles and conveyances of Crown land;

17. *Mowatt* BCCA, *supra* note 15 at para 23.

18. The exact date of application of English laws in BC is 19 November 1858. This was done by way of the *English Law Act*, SBC 1867, No. 266. The application of English law in BC as of that date continues to be affirmed within the *Law and Equity Act*, RSBC 1996, c 253, s 2 [*Law and Equity Act*].

19. *Law and Equity Act*, *supra* note 18, s 2.

20. Anne Warner La Forest, *Anger & Honsberger Law of Real Property*, 3rd ed, vol 1 (Toronto: Thomson Reuters, 2019) (looseleaf updated October 2020, release 24) at §3:30.10(f) & §3:30.20(a). Specifically, the reception in BC of the feudal law doctrines of socage tenure and leasehold tenure informed how real property is owned in BC.

21. *Ibid* at §3:30.20(b).

- **Water system properties**;[22] and
- **Personal property**.

When the previous owner dies without a lawful heir or a corporation is dissolved, the Crown's authority to take possession of such property is delegated to the Attorney General. The legislation sets out specific powers for different types of property that pass to the government through escheat, *bona vacantia*, or related provisions.

Reviewing the Escheat Act

Objectives of this review

This review of the *Escheat Act* is guided by two overarching objectives. First, it considers the suitability of the *Escheat Act* in meeting the needs of British Columbians in a modern context. It does this by examining escheat as a framework for managing lapses in property ownership and considers whether the current approach effectively addresses modern-day legal and practical challenges. Second, it identifies areas of inconsistency between the BC *Escheat Act* and rights and obligations recognized in the *UN Declaration* and the *Constitution Act, 1982* and recommends measures for addressing those inconsistencies.

Why undertake this review now?

In 2019, BC passed the *Declaration on the Rights of Indigenous Peoples Act*, which requires all provincial laws to be brought into alignment with the *UN Declaration*.[23] The *Declaration Act* contemplates the existence of inconsistencies between BC laws and rights affirmed in the *UN Declaration*. When an inconsistency exists, a Crown duty is triggered to take measures to resolve the inconsistency, in consultation and cooperation with the Indigenous Peoples in BC, and to implement those measures.[24]

In February 2024, the Supreme Court of Canada (SCC) affirmed that the *UN Declaration* "has been incorporated into" Canada's positive law by virtue of the federal *UN*

22. The *Escheat Act*, *supra* note 3 defines "water system property" in s 4.1 as:

    (a) works that are used or were developed for obtaining, diverting, treating, storing, pumping, conveying, distributing or furnishing water, and
    (b) a parcel of land to which any works referred to in paragraph (a) are affixed or on which they are located.

23. *Declaration Act*, *supra* note 10, s 3.

24. *Gitxaala* BCCA, *supra* note 10 at paras 149 – 155. See also *Declaration Act*, *supra* note 10, s 3.

Declaration on the Rights of Indigenous Peoples Act.[25] In the majority decision of the BC Court of Appeal in *Gitxaala*, this was interpreted as Parliament giving "domestic legal effect to Canada's obligations and commitments in relation to *UNDRIP* by providing a foundational structure for putting them into action".[26] A step signaling that the *UN Declaration* applies "as a weighty source for the interpretation of Canadian law in accordance with the presumption of conformity".[27] Section 8.1(3) of the BC *Interpretation Act* also imposes a presumption of consistency between BC statutes and the *UN Declaration*.[28]

Identifying inconsistencies involves a process of statutory interpretation and analysis of BC laws and the rights, obligations, and principles articulated in the *UN Declaration*. BCLI's Reconciling Crown Legal Frameworks Program aims to support the legal research and analysis stages of identifying inconsistencies and exploring potential measures the province could take, in consultation and cooperation with Indigenous Peoples, to resolve those inconsistencies.

The *Escheat Act* was originally developed without input from First Nations, and it did not consider First Nations laws, legal orders, or governance systems.[29] While there have been some recent efforts to recognize Indigenous title – such as agreements for the return of escheated land to treaty First Nations and the Council of the Haida Nation – these initiatives are limited in scope and mostly predate the *Declaration Act*. Overall, the *Escheat Act* continues to rest on the same common law principles that shaped it in 1898.

Given this context, BCLI has undertaken this project to identify areas of inconsistency between the *Escheat Act* and the *UN Declaration* and to suggest ways to bring it into alignment. Achieving consistency will ultimately require the province to engage in consultation and cooperation with Indigenous Peoples in BC.[30]

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25. *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 4 [*Reference re FNIMCYF*].

26. *Gitxaala* BCCA, *supra* note 10 at para 78.

27. *Ibid*.

28. *Ibid* at para 92.

29. One recent amendment to the *Escheat Act* stands as an exception to this historical fact. In 2024, section 4.2 was added to the *Escheat Act* following the Council of the Haida Nation and the province entering into the *Gaayhllxid • Gíihlagalgang "Rising Tide" Haida Title Lands Agreement* ("Rising Tide Agreement"). The Rising Tide Agreement together with s 4.2 the Act provide that the Attorney General must declare land on Haida Gwaii, which escheats or forfeits to the province, vested in the Council of the Haida Nation.

30. *Declaration Act*, *supra* note 10, s 3. *UN Declaration*, *supra* note 10, art 19.

Reform in other jurisdictions

Other provinces in Canada, as well as other countries that inherited English property law, have modernized their laws on lapses in property ownership. These reforms often replace or move beyond traditional escheat principles to better reflect contemporary legal and social realities. While most of these updates were not undertaken with the *UN Declaration* in mind, they offer useful examples of how property law frameworks can evolve.

As part of this project, BCLI has reviewed several of these legislative models to better understand how other common law jurisdictions are modernizing their approaches to property ownership and reversion.

Processes involved in this review

The project committee

As part of this project, BCLI formed a project committee. Collectively, committee members bring expertise in the areas of First Nations governance, Indigenous laws, Aboriginal law, advising small businesses, and estate planning and administration.[31]

The committee's primary role is to assist BCLI in developing recommendations for legal reform. It does so by reviewing research and deliberating on issues that arise in this area of law.

Project stages

BCLI initiated this project in April 2024 by convening the committee to consider the current approach, frameworks in other jurisdictions, and the relationships between the common law, legislation, and the *UN Declaration*.

With the publication of this consultation paper, BCLI formally invites public input on draft recommendations developed by the committee. At the close of the consultation period, the committee will review the input received before developing final recommendations. Final recommendations for reforming the law will be shared in a subsequent report.

31. For a list of committee members and their biographies see, Appendix B.

Purpose of this public consultation

Public consultation is an important means of informing law reform. Responding to this consultation paper is an opportunity to influence the development of the project's final recommendations. All members of the public are invited to submit responses to this consultation paper.[32]

A significant part of what the *Declaration Act* calls for involves government-to-government consultation and cooperation. BCLI, which is not part of the provincial government, cannot fulfill that obligation and this public consultation does not stand in place of that obligation.

32. See above at unnumbered page headed "Call for Responses" for more information on how to make a response.

Chapter 2. Overview & History of Escheat in BC

This chapter explores why laws that address lapses in property ownership matter, how the *Escheat Act* currently operates in BC, the principles that underlie it, and how it has developed over time.

Lapses in property ownership as a legal issue

When a property owner abandons or disappears from their property, a range of problems can arise. Abandoned property might be as minor as litter or as serious as a neglected home or an industrial site that continues to release pollutants into the environment. These situations can create both social and legal challenges.

From a legal standpoint, key questions often follow: Who is responsible for any environmental damage or financial liabilities associated with the property? Who, if anyone, is entitled to take over ownership or control?

Laws governing property ownership and abandonment aim to address some of these issues. For example, succession laws set out how a deceased person's debts and property are managed when they die without a will, and corporate laws establish how assets are distributed when a company dissolves. However, even with these measures, there are still situations where property is left without a recognized owner or responsible party.

A person may die without any heirs recognized under succession law, or a corporation may dissolve without its directors or shareholders realizing it has done so. These are the kinds of situations the *Escheat Act* addresses. Over time, as succession law has expanded to recognize more heirs, escheat and *bona vacantia* have become most relevant in corporate dissolution cases.

The role of the Crown

When a property owner can no longer be identified, the law recognizes that there is an underlying ownership interest. BC law recognizes that underlying interest as Crown title.

Under provincial law, the Crown acts as the ultimate titleholder and is empowered to manage property that lacks a recognized owner. Through the *Escheat Act*, the Crown, acting through the Attorney General, can transfer, sell, rent, or create new interests in the property, or grant it to someone with a moral or legal claim.

As a common law doctrine, escheat ensures that property is not left without an owner. It also reflects the broader legal principle that all land in BC ultimately falls under Crown authority. The *Escheat Act* formalizes this principle and delegates Crown powers to the Attorney General.

Challenges with the current Crown framework

Having laws to manage ownership when property interests lapse helps ensure there are no gaps in responsibility for land or other assets. However, current applications of escheat law in BC do not always achieve this goal. In some cases, property remains unmanaged or lacks clear accountability.

The current Crown legal framework also does not recognize First Nations rights, including title. This omission highlights a key area requiring reform to align BC's property laws with the *UN Declaration* and section 35 of the *Constitution Act, 1982* to ensure they reflect the province's diversity of legal orders.

Escheat in the modern context

The *Escheat Act* applies to a wide range of property types, including real property (such as land and buildings), personal property, and incorporeal hereditaments (such as easements, rights of way, and mortgages). It also covers property owned by dissolved corporations, Crown-granted land like mineral title, and water system properties.

Under the Act, the Attorney General has discretionary authority to decide how escheated property is handled. This includes the power to return property to a revived corporation, grant it to a claimant based on legal or moral grounds, or to rent, sell, or auction the property. Any proceeds from these actions are not subject to further claims and are paid into the province's consolidated revenue fund.[33]

To understand how escheat operates in a modern context, this project examined cases in which the *Escheat Act* was recently applied by the Attorney General.[34] These examples are shared below.

These examples provide minimal details about the circumstances and the Attorney General's exercise of discretion. What they show is the ongoing significance of escheat in the context of corporate dissolutions, the wide range of property interests

33. *Escheat Act*, *supra* note 3, ss 5, 8, 11, 12 & 13.

34. These examples are drawn from Orders in Council transferring escheated property to a claimant.

covered by the *Escheat Act*, and the often significant time lapse between the end of an ownership interest and the creation of a new one.

Examples involving real property

- Three neighbouring vacant lots zoned as industrial land and located near Gold River, escheated upon the corporate owner's voluntary dissolution. The corporation was subsequently restored for a limited period, and the property remained unliquidated. Seven years after the initial dissolution, the Attorney General granted the property to a claimant.[35]
- A lot and attached building in the Village of Valemount escheated when the corporate owner involuntarily dissolved. The Attorney General granted the property to a claimant 13 years after the dissolution.[36]
- A portion of land, previously surveyed as a ditch that bisected a privately owned parcel of farmland in the Kelowna area, escheated upon the dissolution of the previous corporate owner. The Attorney General granted the land to a claimant 73 years after the corporate dissolution.[37]
- A vacant lot near the Village of Riondel escheated upon the dissolution of its foreign corporate owner. The Attorney General granted the land to 3 claimants 13 years after the corporate dissolution.[38]
- A lot and attached recreational home in the area of Crawford Bay escheated when a foreign corporate owner dissolved. The Attorney General granted the land to a claimant 18 years after the corporate dissolution.[39]
- A community hall in Roberts Creek escheated upon the corporate owner's dissolution. The Attorney General transferred the property to a community association for the benefit of the community 62 years after the dissolution.[40]
- Four parking spaces in a strata building in North Vancouver escheated upon the corporate owner's dissolution. The Attorney General transferred the parking spaces to a new corporate owner approximately 4 years later.[41]

35. OIC 378/2024 (BC).
36. OIC 377/2024 (BC).
37. OIC 85/2024 (BC).
38. OIC 4/2025 (BC).
39. OIC 62/2024 (BC).
40. OIC 116/2024 (BC).
41. OIC 13/2025 (BC).

- A lot and attached residence located in Kelowna escheated upon the dissolution of the foreign corporate owner. The Attorney General granted the property to 4 claimants 17 years after the dissolution.[42]
- A vacant lot zoned for residential use escheated upon the corporate owner's dissolution. The Attorney General transferred the land to the City of Penticton 34 years after the dissolution.[43]
- Three strata units, located in a commercial use building in Vancouver, escheated when the corporate owner dissolved. The Attorney General granted the properties to a new corporate owner 13 years after the dissolution.[44]

Examples involving personal property

Recent examples involving the application of the *Escheat Act* to personal property predominantly concern motor vehicles and trailers previously owned by dissolved corporations. This is not to suggest that other types of personal property do not pass to the Crown as *bona vacantia*. Rather, it reflects the type of personal property that applicants have successfully claimed under the *Escheat Act*.

Escheat of estates

In a very small number of cases involving recent applications of the *Escheat Act*, the Act has been applied to transfer the remainder of a deceased individual's estate to a claimant. In many contexts involving a deceased's estate and an absence of heirs, assets are liquidated and administered under other legislation.

Summary of modern applications of the Act

The examples noted above pertain only to cases in which the Attorney General issued a new ownership interest to a moral or legal claimant. For reasons discussed later in this paper, there are challenges with identifying the extent of property that escheats when a claimant does not come forward of their own accord.[45]

Nonetheless, some generalizations can be drawn from cases where a claimant applies for property under the Act. From those examples, we learn the following:

42. OIC 211/2025 (BC).

43. OIC 55/2025 (BC).

44. OIC 29/2024 (BC).

45. See chapter 10 for a detailed discussion of issues related to searches for property that escheats.

a) Most escheats arise from corporate dissolution.[46]

b) In a modern context, the types of real property administered under the *Escheat Act* include industrial, commercial, residential, and agricultural property. Some of the properties form part of a strata. Additionally, some escheats involve very small sections of land due to surveying errors.

c) It is not unusual for more than 10 years to elapse between a corporate dissolution and the creation of a new ownership grant.

d) New ownership grants occur in locations where First Nations have asserted Aboriginal title.[47]

The law of escheat has existed in BC for over a hundred years. Historical applications of the law are quite distinct from its current operation. The next section examines the principles underlying this area of law and its evolution, with a view to shedding light on current challenges.

Principles underlying escheat and bona vacantia

Escheat

Escheat is a principle of English common law that rests on two ideas:

1. No land can be without an owner; and
2. The sovereign (the Crown) holds the ultimate or underlying title to all land.

The concept dates back to the Norman Conquest, when all land in England was claimed by the monarch and granted to landholders, or "tenants-in-chief".[48]

Grants in land include fee simple interests, which allow the holder to own the land indefinitely, sell it, or pass it on through a will. If the landholder dies without a valid

46. Of the transfers involving real property in the last 2 years, it appears that only one escheat flowed from an estate without a legal heir. Furthermore, of the corporate dissolutions considered by the committee, only one appears to have been voluntary.

47. Assertions of title may be made in treaty negotiations, through filing of a Notice of Civil Claim, or otherwise communicated to the Crown. At least one of the examples above involving a transfer of land occurred in an area where a claim has been asserted both in the treaty context and in court pleadings. The Mowachaht/Muchalaht First Nation is in stage 4 of the treaty process and in 2024 they filed a Notice of Civil Claim claiming Aboriginal title over their traditional territories. The First Nation has further claimed that the Crown breached duties owed to the First Nation and adversely impacted their Aboriginal title by granting interests in land, including fee simple interests. The claim area appears to encompass the lands subject to a Crown transfer in OIC 378/2024 (BC).

48. See *Pennistone Holdings, supra* note 12 at para 18. See also Andrew MacKay, Ingrid Tsui and Amanda Winters, "The Law of Escheat in Canada", 34 Est. Tr. & Pensions J. 40 (2014) at 41-42.

will or legal heir, their ownership interest ends, and the land reverts to the Crown. This process of reversion is known as escheat.

When English common law was adopted in BC law in the 19th century, the principle of escheat came with it.[49] This contributed to Canada's current system of land ownership, under which landholders do not own land outright but instead hold it "of the Crown".[50] When ownership lapses, title reverts to the Crown.[51]

Historically, land could also escheat if its owner was convicted of certain crimes.[52] However, BC's *Escheat Act*, which was first enacted in 1898, does not include criminal forfeiture; that is governed under other laws.

In the late 1800s and early 1900s, there was disagreement over whether escheated property belonged to the federal or provincial Crown. The Privy Council ultimately clarified that, under section 109 of the *Constitution Act, 1867*, property located in a province escheats to the Crown in right of the province as royalties belonging to the provinces.[53] Property under federal jurisdiction, however, escheats to the federal government.[54]

This project focuses on escheat within BC's jurisdiction. It does not address lands reserved for Indians under the *Indian Act*, which fall under federal responsibility. It does consider lands in BC that are subject to inherent Indigenous title as held by First Nations, lands in BC over which First Nations have asserted Aboriginal title, and lands in BC over which a determination of Aboriginal title has been made. Importantly, the provinces' interest in lands, mines, minerals and royalties under section 109 of the *Constitution Act, 1867*, is subject to Aboriginal title interests.[55]

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49. English laws as they existed on November 19, 1858 were applied to the whole of the colony of BC under the *English Law Act*, SBC 1867, No. 266. The adoption of English laws as of that date continues to be recognized in the BC *Law and Equity Act*, RSBC 1996, c 253, s 2.

50. La Forest, *supra* note 20 at §3:30.20(a).

51. *Ibid* at §3:30.20(b).

52. MacKay, *supra* note 48 at 42.

53. *R v Canada (Attorney-General)* (1923), [1923] 4 DLR 690 (UK JCPC); *Ontario (Attorney General) v Mercer* (1883), (1882-83) LR 8 App Cas 767 (UK JCPC).

54. La Forest, *supra* note 20 at §3:30.20(b).

55. See *Delgamuukw v British Columbia*, [1997] 3 S.C.R. 1010 at para 175, citing *St. Catherine's Milling and Lumber Co. v The Queen* (1888), 14 AC 46 (UK JCPC).

Bona vacantia

Bona vacantia is a Latin term meaning "vacant goods". Like escheat, it is based on the idea that property cannot be ownerless. When personal property has no legal owner or heir, it passes to the Crown as an incident of sovereignty.[56]

Although *bona vacantia* originally applied only to personal property, some jurisdictions now use it for real property as well. For example, New Zealand's *Administrative Act* abolishes the term "escheat" entirely, providing that both real and personal property without heirs pass to the Crown as *bona vacantia*.[57]

When BC enacted its first *Escheats Act* in 1898, it specified that it applied to both real and personal property that escheated or was otherwise forfeited to the Crown.

Just as the colonial legal doctrine of *terra nullius* was used to dispossess Indigenous Peoples of their lands, colonial approaches to personal property ownership have been applied to dispossess Indigenous Peoples of property of significance to them. The imposition of European property laws and legal doctrines had the effect of denying the ownership interests Indigenous Peoples held and continue to hold in various forms of property.[58] This project considers ways of recognizing and respecting Indigenous Peoples' rights, laws, and legal orders as they apply to personal property and property of cultural significance when an individual ownership interest in the property lapses.

Historical developments in escheat law

Under the English feudal system, procedures for escheat inquiries developed. When a landholder died, an appointee of the Crown would initiate an inquiry into whether there was a legal heir or whether the land would revert to the Crown. English law continued to develop in a way that generally recognized escheat as a means of redressing wrongs, rather than enriching the Crown. The sovereign held prerogative powers to:

- restore property to someone with a legal or moral claim,

56. See H.C. Black, *Black's Law Dictionary*, 6 ed (West Publishing Co., 1990) "bona vacantia".

57. *Administrative Act 1969* (NZ), 1969/52 [*Administrative Act*].

58. See "Repatriaton of Ceremonial Objects and Human Remains under the UN Declaration on the Rights of Indigenous Peoples" (Report of an Expert Seminar hosted by the University of British Columbia in support of the work of the United Nations Expert Mechanism on the Rights of Indigenous Peoples, Vancouver, March 2020), online (pdf): <https://aboriginal-2018.sites.olt.ubc.ca/files/2020/11/UN_EMRIP_A_v3.1.pdf>.

- complete a disposition that the former owner had intended, or
- reward a person who discovers the escheat.[59]

Escheat provided a way to recognize people who had a moral right to property, even if they were not recognized under the law at the time. For instance, if a child born outside of marriage could not legally inherit, the Crown could grant the property to that child on moral grounds.

When Crown governments in Canada enacted escheat legislation, it tended to reflect these values, suggesting "a normative acceptance that the legitimate claims of private individuals should trump any claim the government has to use escheated property".[60] When BC enacted the *Escheats Act* in 1898, many of these principles were incorporated.[61]

A notable early case illustrates how these powers to restore property interests were used. In 1899, escheated funds were transferred to a First Nations woman whose marriage to a settler, conducted under Cowichan law, was not recognized under colonial law. When her husband and child both died, the estate escheated to the province. A court judgement held that the marriage was not lawful as it was not conducted in accordance with Christian tradition. However, under the *Escheats Act*, the Lieutenant Governor recognized the marriage conducted under an Indigenous law as a valid basis for the return of the estate to her. At the time, the order in council only allowed for the transfer of funds to the Superintendent of Indian Affairs for her benefit.[62]

Since 1899, the province has amended the Act several times to expand the types of property it applies to and to clarify the scope of the Crown's authority over escheated assets. What follows is a chronology of those amendments.

Legislation from 1898 to 1924

BC's first *Escheats Act* applied to both real and personal property. Property escheated when the owner died without a will or heir, or it was otherwise forfeited to the Crown. The Lieutenant Governor could exercise the following powers: restore property to a moral or legal claimant, carry out a disposition the former owner

59. *Mowatt* BCCA, *supra* note 15 at paras 61 – 63 & 65.

60. MacKay, *supra* note 48 at 49.

61. *Escheat Act*, *supra* note 3.

62. See OIC 320/1899 (BC).

contemplated, or reward a discoverer of the escheat.[63] An amendment in 1899 gave the Lieutenant Governor the additional power to sell escheated lands.

1924 & 1929 amendments

In 1924, the province amended the Act to apply to property owned by a corporation that dissolves. The Act provided for corporate property to vest in the Crown one year after corporate dissolution.[64]

In 1929, the province further expanded the Act to apply to incorporeal hereditaments, including easements, rights of way, leases, and mortgages attached to real property.[65]

Amendments in the 1940s

In 1947, the province amended the Act and expanded the powers of the Lieutenant Governor to include authority to rent, sell, or auction off escheated property or to appoint another person to take possession and manage the property. The amendments also clarified that proceeds from the exercise of these powers would be free from any claims and were to be paid into the consolidated revenue fund.[66]

The province brought in further changes in 1948 to extend the application of the legislation to Crown granted land, such as mineral titles and conveyances of Crown land. If these interests escheated, the Lieutenant Governor could sell or rent the land, deem it to be Crown land, or re-issue a new grant in the land.[67]

The Act as of 2002

By 2002, the province had amended the legislation to delay the vesting of any corporate property in the Crown to 2 years after dissolution.

63. *Escheats Act*, SBC 1898, c 21.

64. *Escheats Act Amendment Act*, 1924.

65. *Escheats Act Amendment Act*, 1929. Hereditaments are things which can be inherited. Corporeal hereditaments are physical objects that can be inherited. A fee simple interest in land is an example of a corporeal hereditament. Incorporeal hereditaments are interests in property that are not tangible or visible. For example, a right of way is a legally recognized right to pass over land belonging to someone else. It is not a tangible interest in land, but it can be inherited.

66. *Escheats Act Amendment Act*, 1947.

67. *Escheats Act Amendment Act*, 1948.

Further amendments in 2002 delegated the Lieutenant Governor's authority to manage, sell or re-issue a grant in escheated property to the Attorney General or a delegate of the Attorney General.[68]

Amendments in 2006

In 2006, the province expanded the Act to include the escheat of water system properties.[69]

2024 Amendments

In 2024, the province amended the legislation to give effect to provisions in the *Gaayhllxid • Gíihlagalgang "Rising Tide" Haida Title Lands Agreement* ("Rising Tide Agreement"). In the Rising Tide Agreement, the province recognizes and affirms that the Haida Nation holds Aboriginal title to Haida Gwaii and promises that BC will transfer to the Council of the Haida Nation any fee simple interests on Haida Gwaii that finally escheat or forfeit to the province.

Modern treaty agreements in BC also provide that the province will transfer any fee simple interest within the agreed upon territory to the treaty First Nation once it finally escheats to the province. However, no amendments have been made to the *Escheat Act* to give effect to those treaty provisions. Most notably, the term "finally escheats," which would give rise to a right of transfer, is undefined.[70] In the absence of a limitation period or clarification of a final escheat, it is unclear when the rights of any moral or legal claimants end, and a transfer to a First Nation can take place. As shown in the examples set out earlier in this chapter of applications of the *Escheat Act*, it is not uncommon for claims to be brought more than 10 years after an escheat has occurred. In a recent case involving a claim to escheated land, more than 80 years passed between the time of the escheat and the claimants' application.[71]

Summary of historical developments

There have been several changes to the *Escheat Act* since its first enactment in BC, but the principles on which it rests remain unchanged. It remains grounded in the principles that property cannot exist without an owner and that the Crown holds ultimate title to all land.

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68. BC Reg 340/02.

69. BC Reg 160/2006.

70. In contrast, s 4.2 of the *Escheat Act* clearly sets out timelines after which a transfer can take place to the Council of the Haida Nation.

71. See *Mowatt* BCCA, *supra* note 15.

Changes to the Act have expanded the scope of property to which it applies and the scope of provincial powers to manage that property. Recently, there has been some acceptance of First Nations' rights in land that escheats but the framework does not fully and effectively enable the exercise of rights held by First Nations throughout BC.

Relationship between historical developments and modern applications

The Crown's discretion to transfer property to a person who discovers an escheat remains in the current version of the *Escheat Act*. However, it appears the Attorney General does not exercise this discretion. The reasons for this are not clearly articulated in law or policy.

According to the BC Land Title Practice Manual, "the Attorney General does not grant escheated land to persons who discover the escheat".[72] In a recent case involving the application of the *Escheat Act*, the Attorney General issued reasons stating that the discovery of an escheat, on its own, was not sufficient to establish a valid claim. On review, the BC Court of Appeal found this decision unreasonable on several grounds, including the failure to explain why discovery alone could not support a claim to escheated property.[73]

Another historical element of the *Escheat Act* that has largely fallen into disuse is the Crown's investigation of title. As noted above, escheat procedures developed in medieval England such that when a landholder died intestate, a Crown appointtee initiated an investigation to determine whether property had escheated. In the modern context, most escheats arise from the dissolution of corporations, and there are no standard procedures for regulatory or government bodies to determine when property escheats.[74]

The *Escheat Act* still allows the Attorney General to apply to the Supreme Court for an order authorizing inquiries into whether property has escheated to the province if a person dies without known heirs or if administration is taken out under the

72. *Land Title Practice Manual*, online (Vancouver Continuing Legal Education Society of BC), vol 2, §40.9, accessed 19 November 2025, online: <https://ltpm.ltsa.ca/5-power-restore-land-legal-or-moral-claimants> [*Land Title Practice Manual*].

73. *Mowatt* BCCA, *supra* note 15 at paras 77 & 78.

74. See MacKay, *supra* note 48 at 49.

Wills, Estates and Succession Act.[75] However, the Attorney General is permitted to issue a new grant of land under the *Escheat Act* without undertaking any investigation.[76]

Often, the province only becomes aware of potential escheats when a private individual brings a claim for the property. As noted by both the BC Supreme Court and Court of Appeal, such notice allows the province to manage any risks associated with escheated property.[77]

Nature of Crown authority under the Escheat Act

When property escheats to the Crown under common law or vests in the Crown under the *Escheat Act*, the previous owner's interest in the property is terminated. For example, if the previous owner held a fee simple interest in land, that interest terminates upon escheat. When the Crown restores, transfers, or vests escheated land in another person, it is exercising its authority to create a new interest in land or to grant a new title.[78]

The *Escheat Act* provides that the Attorney General's delegated authority to transfer or restore land constitutes a Crown grant. Section 6 of the Act clarifies the scope of the power conferred by section 5. Specifically, a grant under section 5 may be made despite any claim of adverse possession, and the recipient of a Crown grant has the right to take legal action to recover the land if necessary.[79] The Act also limits the Attorney General's authority to create a new grant in land within 2 years of a corporate owner's dissolution.[80]

The BC Court of Appeal has recently held that the Attorney General's discretion to transfer escheated land is not a general or stand-alone power. Instead, it must be exercised within the boundaries established by sections 4, 5 and 11(b) of the *Escheat Act*.[81]

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75. *Escheat Act*, *supra* note 3, ss 9 & 10.

76. *Ibid*, s 6(1).

77. *Mowatt* BCSC, *supra* note 15 at paras 42 & 43; *Mowatt* BCCA, *supra* note 15 at para 24.

78. See *Pennistone Holdings, supra* note 12 at paras 18-22.

79. *Escheat Act*, *supra* note 3, ss 5 & 6. See also *Roberts v Trianon Holdings Ltd.*, 1991 CanLII 2324 (BCSC).

80. *Escheat Act*, *supra* note 3, s 4(3).

81. *Mowatt* BCCA, *supra* note 15 at para 32.

The Court also emphasized that the Attorney General's discretion is guided by the purposes underlying the doctrine of escheat. Historically, "escheat was intended not to enrich the Crown, but to redress wrongs suffered by *subjects of the Crown* due to a failure of heirs or other lapse in tenure; and by exercising its prerogative to restore the land to 'deserving' subjects, the Crown acts *for the public good*".[82] In the modern context, the Court noted that determining whether an individual has a moral claim to escheated property turns on whether the claim can be considered 'right' or 'fair'.[83]

Powers of the Court to transfer escheated property

The *Escheat Act* also grants the BC Supreme Court authority to make an order vesting land that has escheated to the government back in a revived corporation.[84]

However, the Court's authority to make such orders is limited by the Attorney General's powers under the Act. The Court may only issue an order to vest or sell escheated land if the Attorney General has not already created a new grant in the property. Additionally, the Attorney General must be served with notice of any application before the Court.[85]

Could a First Nation bring a moral or legal claim for escheated property?

In light of the purpose of escheat to redress wrongs and restore land to 'deserving' subjects, the committee considered whether a First Nation could bring a moral or legal claim for escheated property under the current framework. The committee considered this outside the context of First Nations who have agreements with the province, such as modern treaty nations and the Council of the Haida Nation.

The BC Court of Appeal's interpretation of the Attorney General's powers under the Act appears to make this option unlikely, if not foreclose it completely.

The Court of Appeal has held that the Attorney General does not have any standalone discretion to transfer escheated land outside of the circumstances recognized

82. *Mowatt* BCCA, *supra* note 15 at para 66 (emphasis in original).

83. *Ibid* at para 67.

84. *Escheat Act*, *supra* note 3, ss 4(5) & 4.1(6).

85. *Ibid*, ss 4(5) & (5.1), 4.1(6) & (7).

within the legislation.[86] Therefore, the Attorney General's discretion is limited to the following actions:

- transfer property to a person with a legal or moral claim against the previous owner;
- carry out a disposition the previous owner had contemplated;
- transfer property to a person who discovers the escheat;[87]
- sell, rent, or auction off the property.

Additionally, a revived corporate owner can bring a court application to recover escheated property.

One difference between BC's *Escheat Act* and legislation in some other jurisdictions is that it recognizes only moral or legal claims against the former owner, not claims grounded in rights to the property itself.

Therefore, a First Nation could potentially recover property under the current legislation, in the absence of an agreement with the province, if:

- the escheated property was previously owned by a First Nation-owned corporation, which dissolved;
- a First Nation can establish a moral or legal claim against the former property owner; or
- the province offers the property for sale or auction, and a First Nation purchases the property.

The common law in relation to Aboriginal title claims over land subject to private ownership interests is in development. At the time of the writing of this paper, it is challenging to say with certainty whether a First Nation could bring a moral or legal claim grounded in Aboriginal title against a former property owner under the *Escheat Act*. In light of the BC Court of Appeal's interpretation in *Mowatt* of the scope of Crown discretion to manage property under the *Escheat Act*, it appears unlikely that a claim rooted in an assertion of Aboriginal title would form the basis of an application for property under the Act. Given the current uncertainty around the common law of Aboriginal title claims in relation to lands subject to private ownership

86. *Mowatt* BCCA, *supra* note 15 at para 32.

87. See above for a discussion of whether or not this might apply in practice.

interests, this is an area of law where legislation grounded in the afirmation of co-existing rights and interests can provide greater certainty.[88]

The BCLI made inquiries into whether any escheated land has ever been transferred to a First Nation government by way of agreement or otherwise. The information we obtained did not indicate that any such transfers have occurred.

The review of recent Orders in Council documenting transfers of property under the *Escheat Act* demonstrates that escheated land is sometimes transferred to municipalities. Orders documenting these transfers from the province to local governments indicate that they are made under section 5 (moral or legal claims) rather than under sections 11 or 12 (sale of land).[89]

Parallel frameworks for lapses in property ownership

As noted in chapter 1, not all lapses in property ownership are subject to the *Escheat Act*. BC has other pieces of legislation governing the management of property when the owner cannot be located.

Threaded through this consultation paper are situations where the province might consider amendments to other legislation to support a consistent approach to recognizing Indigenous rights, including jurisdiction.

For instance, the *Unclaimed Property Act*, enacted in 1999, establishes a framework for managing certain unclaimed funds, including credit union accounts, money orders, securities, amounts due under insurance policies, and amounts due under

88. Some of the cases recently decided or currently before the courts which deal with Aboriginal title claims over land subject to private ownership interests include *Cowichan Tribes*, *supra* note 5 and *J.D. Irving, Limited et al. v Wolastoqey Nation*, 2025 NBCA 129. In another recent case dealing with a First Nation's treaty-protected reserve interests, the Ontario Court of Appeal held that the *bona fide* purchaser for value defence is not absolute and will not always carry the stronger equity interest when Indigenous interests in land are at stake: *Chippewas of Saugeen First Nation v South Bruce Peninsula (Town)*, 2024 ONCA 884, paras 239 & 241, leave to SCC dismissed. Additionally, in *Mowatt* BCCA, *supra* note 15 the BCCA did not consider the *UN Declaration* as a source of interpretation in relation to the *Escheat Act*. In *Gitxaala*, *supra* note 24, the BCCA held at para 129 that the *UN Declaration* "should be applied as a weighty source for the interpretation of Canadian law in accordance with the presumption of conformity". A different interpretive lens may have been applied to the *Escheat Act* in *Mowatt* if the issue of conformity with the *UN Declaration* had been before the Court.

89. The exact basis for these transfers is unknown. However, the incorporation of municipalities and their ability to collect property taxes may place them in a position as a corporation and legal person with a moral or legal claim as against the previous owner.

benefits plans. As property can be liquidated, there are situations where it could be managed under the *Unclaimed Property Act* or the *Escheat Act*.

The *Unclaimed Property Act* does not require unclaimed funds to be returned to the province. Rather, the property holder must make reasonable efforts to locate the owner and can transfer the property to the BC Unclaimed Property Society (BC Unclaimed), a non-profit society.[90] BC Unclaimed manages the funds until they can be returned to an owner. The Society is self-sufficient, and surplus funds are donated to charity.

The *Unclaimed Property Act* does not apply to land, buildings, vehicles, jewelry, electronics and physical possessions.[91] However, if an individual dies without any heirs, their estate may be liquidated and administered under the *Unclaimed Property Act* or, if paid into court, administered under the *Trustee Act*.

Therefore, whether property is managed under the *Escheat Act* or parallel legislation can depend in part on the kind of property at issue. It can also depend on who first learns of the lapsed ownership interest and whether that entity has authority to liquidate the property.

Different pieces of legislation allow for property to be managed in different ways. The *Unclaimed Property Act* only recognizes legal claims to property whereas the *Escheat Act* recognizes legal and moral claims. Where property is managed under the *Unclaimed Property Act*, an individual with a moral claim might request that it be transferred to the Attorney General for administration under the *Escheat Act*.

This is just one example of how parallel pieces of legislation can work in tandem. A consistent approach to recognition of Indigenous rights when ownership interests lapse can help support Indigenous legal orders also working in tandem with these provincial frameworks.

90. The Act provides that certain property holders must transfer property to BC Unclaimed and other property holders can choose to voluntarily transfer property to BC Unclaimed.

91. See BC Unclaimed Property Society, "The unclaimed property process" (last visited 15 July 2025), online: *BC Unclaimed* <www.bcunclaimed.ca/about/unclaimed-property-process>.

Chapter 3. Considerations for Alignment of BC Laws with the UN Declaration

"[W]hat makes Aboriginal title unique is that it arises from possession *before* the assertion of British sovereignty, as distinguished from other estates such as fee simple that arise *afterward*."[92]

"[T]he principle of the honour of the Crown grounds the Crown's duty to consult and if indicated accommodate Aboriginal peoples, even prior to proof of asserted Aboriginal rights and title. The duty of honour derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation."[93]

"Where the scope and extent of the claimed Aboriginal interests have not yet been determined, the duty to consult derives from the need to protect those interests while land and resource claims are ongoing".[94]

Overview of the UN Declaration and BC's Declaration Act

What does the UN Declaration reflect?

The *UN Declaration* sets out "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."[95] Adopted by the UN General Assembly in 2007, it represents decades of negotiation, collaboration, and compromise between UN Member States and Indigenous peoples from around the world.[96]

The *UN Declaration* affirms the inherent, pre-existing individual and collective rights of Indigenous Peoples; rights that exist independently of recognition by nation-states. Canada formally and fully endorsed the *UN Declaration* in 2016 and

92. *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at para 14 [*Tsilhqot'in*].

93. *Taku River Tlingit First Nation v British Columbia*, 2004 SCC 74 at para 24.

94. *Gamlaxyeltxw v British Columbia (Minister of Forests, Lands & Natural Resource Operations)*, 2020 BCCA 215 at para 65.

95. *UN Declaration*, *supra* note 10, art 43.

96. Canada, "Overview of the UN Declaration and obligations in the UN Declaration Act" (last modified 7 March 2025), online: <https://www.justice.gc.ca/eng/declaration/ap-pa/guide/overview-vue.html#:~:text=The%20UN%20Declaration%20is%20the,for%20analytical%20and%20reporting%20purposes.>.

committed to its implementation across Canada.[97] In 2019, the BC government took the further step of committing to implement the *UN Declaration* within provincial laws.[98] Canada followed suit in 2021 in passing the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, which requires the Government of Canada to take all measures to ensure the laws of Canada are consistent with the *UN Declaration* in consultation and cooperation with Indigneous Peoples.[99]

What is the effect of the BC Declaration Act?

The *Declaration Act* requires the BC government to align all provincial laws with the *UN Declaration*. The Act implicitly acknowledges that some BC laws are inconsistent with the standards set out in the *UN Declaration*. Achieving alignment must be done "in consultation and cooperation with the Indigenous peoples in British Columbia".[100]

This project does not replace or pre-empt the process established under the *Declaration Act*. Rather, it identifies potential areas where the *Escheat Act* may be inconsistent with the *UN Declaration* and proposes pathways that could support future alignment through consultation and cooperation with Indigenous Peoples.

The state obligation to "consult and cooperate" under the *Declaration Act* is not simply reflective of a right to participate in decision-making; it is a correlated state obligation of a right to meaningfully influence outcomes in matters that affect Indigenous Peoples. Through this process, Indigenous Peoples may propose alternative approaches or models for shaping and applying laws.[101]

97. See Canada, "The UN Declaration Explained" (last modified 21 August 2025), online: <https://www.justice.gc.ca/eng/declaration/what-quoi.html#:~:text=Canada%20supports%20the%20UN%20Declaration,and%20commits%20to%20its%20implementation.>.

98. *Declaration Act*, *supra* note 10.

99. SC 2021, c 14, s 5.

100. *Declaration Act*, *supra* note 10, ss 2-5. See also *Gitxaala* BCCA, *supra* note 10 at paras 465-466.

101. See British Columbia, *Interim Approach to Implementing the Requirements of Section 3 of the Declaration on the Rights of Indigenous Peoples Act* (accessed 20 November 2025) at 5, online (pdf): <https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/das-interim-approach-to-section-3-of-the-declaration-act_report.pdf>.

Understanding different forms of land ownership

First Nations in BC hold unique rights, including title to the lands and resources within their territories. These rights are distinct from private property rights and are recognized as such in both Canadian law and the *UN Declaration*.

Canadian law recognizes Aboriginal title as a property right grounded in Indigenous legal systems and rights that predate and survive the assertion of Crown sovereignty.[102] Some academics have described Aboriginal title as more akin to provincial title than private property interests and as a right of law-making jurisdiction over the title lands.[103] The *UN Declaration* recognizes that Indigenous rights in land are connected to Indigenous Peoples' rights to develop, control, and make decisions about their lands and territories and state obligations to respect Indigenous Peoples' laws and land tenure systems.[104] Indigenous Peoples' inherent and enduring rights as include:

- the right to own, use, and manage lands and resources based on traditional ownership or occupation;
- the right to maintain and strengthen Indigenous legal systems; and
- the broader rights of self-determination including self-governance.[105]

In BC, many land ownership interests are recorded in the land title registry. However, there are important exceptions. Escheat and Aboriginal title are both examples of forms of ownership that exist outside the land title system. When land escheats, it means the personal ownership interest has ended. In such cases, the land title registry cannot serve as conclusive evidence of ownership interests in the land.[106] Aboriginal title also exists outside the registry system. A registered title does not necessarily mean that Aboriginal title does not apply to the same land.[107]

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102. *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at paras 114 & 126 [*Delgamuukw*].

103. See Douglas Sanderson & Amitpal Singh, "Why is Aboriginal Title Property if It Looks Like Sovereignty?" (2021) 34:2 Can JL & Juris 417 at 417. See also Brian Slattery, "The Constitutional Dimensions of Aboriginal Title" (2015) 71 The Supreme Court Law Review: Osgood's Annual Constitutional Cases Conference 45 at 47-48.

104. *UN Declaration*, *supra* note 10 at arts 26, 27 & 32.

105. *Distinctions-Based Approach*, *supra* note 1 at 3. See also, *UN Declaration*, *supra* note 10, arts 3-5 & 26.

106. *Land Title Act*, RSBC 1996, c 250, s 23(2)(f).

107. *Cowichan Tribes*, *supra* note 5 at para 2259.

How the Escheat Act fits in

The *Escheat Act* sets out how property is managed when an ownership interest ends. It gives authority to the Crown, through the Attorney General, to create a new ownership interest in that property. This authority is based on the Crown's asserted sovereignty over land in BC.

However, in much of BC, issues of First Nations' jurisdiction and the exercise of inherent rights in relation to their lands, waters, and resources have not been resolved through historic or modern treaties, or other government-to-government agreements.[108]

Evolving approaches to reconciliation and escheat

Historically, BC laws on escheat and *bona vacantia* were developed from Crown law and reflect the assumption of Crown sovereignty. Only recently have there been efforts to integrate Indigenous perspectives, for example, through agreements allowing for the transfer of escheated land to First Nations under modern treaties or through agreements like the *Gaayhllxid • Gíihlagalgang "Rising Tide" Haida Title Lands Agreement*.

These examples show how escheat can provide opportunities for land to be transferred from a former owner to the Crown, and then a First Nation's underlying title interest can be respected and potentially restored. However, these situations remain limited in scope.

This paper explores how such opportunities could be expanded and how the law itself might evolve to better recognize First Nations' inherent rights, including title. Aligning BC laws with the *UN Declaration* and rights recognized in section 35 of the *Constitution Act, 1982* means not only updating procedures for property transfers but also rethinking how the law acknowledges the co-existence of Indigenous and Crown jurisdiction and title.

A path towards reconciling sovereign peoples

A recent decision of the Quebec Superior Court observed that reconciliation in Canada must move beyond reconciling Indigenous rights with Crown sovereignty. Instead, it should aim to reconcile sovereign peoples by respecting Indigenous

108. Approximately 95% of the land mass in BC is not subject to historic or modern treaties, or other constructive agreements with First Nations. See Okanagan College Library, "WET 219—Applied Water Law—Indigenous Rights—Unceded Lands" (last modified 7 September 2023), online: <libguides.okanagan.bc.ca/c.php?g=721994&p=5175676>.

Peoples' rights.[109] This perspective aligns with BC's commitments under the *Declaration Act*.[110]

Looking ahead

The draft recommendations in this consultation paper propose a framework for modernizing BC laws on lapses in property ownership, ensuring they serve all British Columbians while recognizing First Nations as sovereign peoples and holders of unique rights, including title.

The rights and obligations considered in this project, as affirmed in the *UN Declaration*, include:

1. **Self-determination**, including the correlated state obligation to obtain free, prior, and informed consent (FPIC);
2. **Jurisdictional and land rights**, including ownership and control of lands, waters, and resources;
3. **Cultural rights**, including the right to maintain and strengthen legal systems and rights in property of cultural significance; and
4. **Rights to fair and transparent decision-making** in matters that affect Indigenous peoples.

The following sections explore these rights and related government obligations in more detail before applying them to the specific issues that arise when property ownership interests lapse.

Self-determination, free, prior, and informed consent (FPIC) and jurisdiction

The right to self-determination

The *UN Declaration* recognizes that Indigenous Peoples have the right to self-determination. This includes the right to govern themselves through their own institutions and representatives.[111]

109. *R v Montour and White*, 2023 QCCS 4154 at paras 1220-1233.

110. *Declaration Act*, *supra* note 10, ss 2(c) & 3.

111. See *UN Declaration*, *supra* note 10, arts 3, 4, 5, 18, 19, and 38.

In BC, the *Declaration Act Action Plan* commits the province to rebuilding its relationship with Indigenous Peoples by supporting their right to self-determination. This commitment involves:

- Supporting Indigenous-led institutions that help rebuild governance systems and resolve boundaries; and
- Moving away from short-term, transactional arrangements towards co-developed, long-term agreements with Indigenous governments.[112]

The role of FPIC in decision-making

Self-determination includes the right to actively participate in decisions that affect Indigenous Peoples' rights and interests. Federal and provincial governments have an obligation to consult and cooperate with Indigenous Peoples to obtain their free, prior, and informed consent (FPIC) before adopting laws or policies that may affect them.

FPIC ensures that Indigenous Peoples are part of decision-making processes – not simply consulted after decisions are made. Articles of the *UN Declaration*, including Articles 10, 18, 19, 29, and 32, highlight this state obligation and set limits on state action in the absence of FPIC, especially when decisions involve land and resources. The obligation on federal and provincial governments to obtain the free, prior, and informed consent of First Nations titleholders prior to using land is also a correlated obligation of rights conferred by Aboriginal title within Canadian common law.[113]

How this relates to BC laws

Legislation that affects land and resource ownership, or that allows for the creation of new ownership interests when property ownership lapses, can affect First Nations differently from the rest of the population. For instance:

- A First Nation may hold a senior or underlying title to land even if that title has not yet been fully recognized by the Crown.
- First Nations may have their own laws governing the transfer of property with cultural significance or laws governing inheritance of property.

112. British Columbia, Ministry of Indigenous Relations and Reconciliation, *Declaration on the Rights of Indigenous Peoples Act Action Plan*, 2022-2027 at 10, online: https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf [*Declaration Act Action Plan*].

113. *Tsilhqot'in*, *supra* note 92 at para 76.

Respecting self-determination and the obligation to obtain FPIC means considering who has the authority to make decisions about land and property, and how those decisions should be made.[114]

Indigenous land-based rights

Rights in lands, waters, and resources

The *UN Declaration* affirms that Indigenous Peoples have the right to own, use, and control the lands, waters and resources they have traditionally owned, used, or occupied. It also recognizes the right to redress when those lands have been taken or damaged without consent.[115]

BC's *Declaration Act Action Plan* commits to creating a province where "Indigenous Peoples exercise and have full enjoyment of their inherent rights, including the rights of First Nations to *own, use, develop, and control lands and resources* within their territories in BC."[116] This goal is to be advanced through cooperative, government-to-government relationships.[117]

First Nations title and legal orders

When the province creates new ownership grants after an ownership interest ends (such as when land escheats), these decisions affect First Nations because their rights and title in land continue to exist even where Crown title has been asserted.

First Nations land tenure systems, grounded in First Nations legal orders, can take collective forms and may differ from the Canadian concept of private property. For example, title may be shared among several nations or held collectively by a community group distinct from modern-day *Indian Act* bands. Title, as grounded in First Nations legal orders, goes beyond Canadian legal concepts of reserve lands, treaty lands, and Aboriginal title; it can encompass a diversity of lands across various territories.[118]

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114. The state obligation to obtain Indigenous Peoples' FPIC places different requirements on the Crown than what has been required under Canadian law prior to the adoption of this commitment. See John Borrows, *Indigenous Legal Issues: Cases, Materials & Commentary*, 6th ed. (Toronto: LexisNexis Canada, 2022) at 369.

115. *UN Declaration*, *supra* note 10, arts 10, 25 and 26.

116. *Declaration Act Action Plan*, *supra* note 112 at 14, emphasis added.

117. *Ibid*.

118. S. Morales & B. Thom, "The Principle of Sharing and the Shadow of Canadian Property Law" in A.

Pathways for redress

Indigenous Peoples have a right to redress for lands, territories, and resources that have been taken, occupied, or used without their free, prior, and informed consent.[119] The province has a corresponding obligation to provide effective mechanisms for redress for any action which has the effect of dispossessing Indigenous Peoples of their lands, territories, or resources.[120]

The province has committed to the use of government-to-government agreements as one mechanism for ensuring First Nations can exercise their rights to own, use, develop, and control lands and resources within their territories in BC and for meeting state obligations to obtain free, prior, and informed consent.[121]

Cultural rights

Recognizing and protecting cultural heritage

A key part of reconciliation is respecting and restoring Indigenous control over their cultural rights. Indigenous Peoples in Canada have experienced cultural loss through colonization, including the suppression of languages, traditions, and laws.

The *UN Declaration* affirms the state obligation to provide redress for the denial of cultural rights, including rights related to archaeological and historical sites, artifacts, and works of art.[122]

BC has committed to ensuring that Indigenous Peoples fully exercise "their distinct rights to maintain, control, develop, protect, and transmit their cultural heritage [and] traditional knowledge". This includes a commitment to Indigenous control and protection of cultural heritage resources and art.[123] One action supporting this goal is the co-development of a framework for Indigenous repatriation of cultural heritage.[124]

Cameron, S. Graben & V. Napoleon, eds, *Creating Indigenous Property: Power, Rights, and Relationships* (University of Toronto Press, 2020) at 152.

119. *UN Declaration*, *supra* note 10, art 28.

120. *Ibid*, art 8(2)(b).

121. *Declaration Act*, *supra* note 10, ss 6 & 7. *Declaration Act Action Plan*, *supra* note 112 at 14-15.

122. *UN Declaration*, *supra* note 10, arts 8 and 11.

123. *Declaration Act Action Plan*, *supra* note 112 at 22.

124. *Ibid* at 27.

Cultural rights and property

Indigenous Peoples' rights to property of cultural significance and corresponding state obligations to provide effective mechanisms for redress for cultural property taken without free, prior, and informed consent or in violation of Indigenous laws must inform how property of cultural significance is handled when state-recognized ownership interests lapse. For example, if a corporation dissolves and holds artifacts or other items of cultural significance to a First Nation, legislation transferring that property must consider its cultural and legal significance.

Similarly, when land with historical or cultural significance is subject to escheat, special consideration may be required for how the property is managed or transferred.

Fair and transparent decision-making

Rights to fair processes and redress

The *UN Declaration* provides that state decisions affecting Indigenous Peoples' lands and resources must be made through fair, open, and transparent processes, developed in collaboration with Indigenous Peoples. Indigenous Peoples have a right to redress or restitution when lands and resources have been taken, used, or damaged without their free, prior, and informed consent.[125]

BC's *Declaration Act Action Plan* speaks to implementation measures to support the state obligation to develop transparent, administrative processes. Under Action 2.4, the province has pledged to "[n]egotiate new joint decision-making and consent agreements under section 7 of the *Declaration Act* that include *clear accountabilities, transparency, and administrative fairness* between the Province and Indigenous governing bodies." This includes making any necessary legislative changes to implement those agreements.[126]

Improving transparency in BC's escheat process

Currently, BC's framework for property that escheats or is considered *bona vacantia* does not involve proactive public notice or investigation. The province often only becomes aware of escheated property when a private individual submits a claim.

This approach limits transparency and makes it difficult for the general public and First Nations to know when property reverts to the Crown. The fact that an escheat

125. *UN Declaration*, *supra* note 10, arts 27 & 28.

126. *Declaration Act Action Plan*, *supra* note 112 at 15, emphasis added.

has occurred is often only a matter of public record after a new interest in the property is created or a transfer occurs.[127]

In contrast, some other jurisdictions maintain public records or notices of escheated property and require ministries to report on how such property is managed and how related funds are used.

Exploring similar measures in BC could help ensure greater openness, fairness, and accountability in how the province manages property that reverts to the Crown.

Indigenous rights within Canadian constitutional law

The rights, interests, and obligations described above are affirmed within the *UN Declaration* and reflected in BC's *Declaration Act* and *Declaration Act Action Plan*. These rights, interests, and obligations overlap with protections recognized within Canadian constitutional law, particularly in section 35 of the *Constitution Act, 1982*.

Recognition of inherent rights

The rights affirmed in the *UN Declaration* are inherent rights reflective of basic rights held by Peoples.

Section 35 of the *Constitution Act, 1982*, also recognizes Indigenous Peoples' inherent rights. Giving recognition to these rights within the Constitution "serves to recognize the prior occupation of Canada by Aboriginal societies and to reconcile their contemporary existence with Crown sovereignty".[128]

While the *UN Declaration* provides a comprehensive description of Indigenous rights, Canada's constitution leaves the detailed articulation of rights recognition within Canadian law largely up to courts. Increasingly, however, federal and provincial governments have affirmed specific Indigenous rights through legislation, an approach sometimes called legislative reconciliation.[129]

127. Decisions transferring property under the *Escheat Act* are made by way of Orders in Council, which are not necessarily accompanied by reasons for the decision.

128. *R v Desautel*, 2021 SCC 17 at para 31 [*Desautel*].

129. Naiomi Metallic, "Aboriginal Rights, Legislative Reconciliation, and Constitutionalism" (2023), 27:2 Rev Const Stud 1 at 4-5.

Legislative reconciliation

When Canadian governments explicitly recognize and affirm Indigenous rights in legislation, it serves several purposes:

- It clarifies the Crown's obligations to protect those rights under Canadian law.[130]
- It signals legislative intent, showing how Parliament or a provincial legislature interprets section 35 of the *Constitution*.[131]
- It also has the legal effect of lifting Crown immunity, meaning federal or provincial governments commit to act as though the recognized rights exist and must be respected in practice.[132]

Legislative recognition also has a pedagogical effect – it signals to other institutions, including courts, the legislature's intentions. This can exert persuasive influence on other institutions to adopt the same position. The Supreme Court of Canada has acknowledged that legislation can play an educational or guiding role in shaping social and institutional change.[133]

Beyond its legal effects, such legislation can also help foster a cultural shift within Canadian society toward greater understanding, respect, and reconciliation with Indigenous Peoples.

The need for clear legislative guidance

Even where rights are not explicitly recognized in legislation, courts have held, and legislation provides, that laws must be interpreted and applied in ways that do not infringe Aboriginal or treaty rights and in a manner consistent with the *UN Declaration*.[134]

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130. Metallic, *supra* note 129 at 8.

131. *Reference re FNIMCYF*, *supra* note 25 at para 110. Note that affirmation of a government's position does not restrict how courts will interpret the Constitution.

132. *Reference re FNIMCYF*, *supra* note 25 at paras 59-60.

133. *Ibid* at para 81.

134. See *Interpretation Act*, RSBC 1996, c 238, s 8.1 [*Interpretation Act*]. Section 8.1(2) requires that BC enactments be construed as upholding rights affirmed in s 35 of the *Constitution Act, 1982* while s 8.1(3) requires that Acts and regulations be construed as being consistent with the *UN Declaration*. The federal *Interpretation Act*, RSC 1985, c I-21, s 8.3 also requires that federal enactments be construed as upholding rights affirmed in s 35. In *Tsilhqot'in*, *supra* note 92 at paras 101-103, the SCC held that while provincial laws of general application can apply to lands held under Aboriginal title, their application is limited by s 35 of the *Constitution Act, 1982*.

Such limitations are especially important when legislation gives government ministers discretionary powers, for example, powers to make decisions affecting land ownership or resource use. Without clear guidance, discretionary powers could be exercised in ways that conflict with Indigenous rights or the honour of the Crown.

The *Escheat Act* is legislation of general application. This means it applies to everyone in BC, not just specific groups. However, laws of general application can have unique and significant effects on Indigenous rights, including title. Clear legislative direction can help ensure rights are respected.

Courts have emphasized that providing such direction is part of upholding the honour of the Crown. In other words, Crown governments must ensure that their actions, and the actions of those exercising powers on their behalf, are consistent with their obligations to Indigenous Peoples.[135]

The honour of the Crown

The honour of the Crown is a foundational principle of Canadian constitutional law. It encompasses a promise that Crown governments and those acting on their behalf will act honourably in relationships with Indigenous Peoples. The honour of the Crown applies in all contexts between the Canadian state and Indigenous Peoples.[136] It is a constitutionally protected check on the exercise of power by Crown governments. The honour of the Crown must be understood broadly. It gives rise to different Crown obligations in different circumstances. It is engaged by solemn and constitutional Crown promises to Indigenous Peoples and serves as an interpretive standard for how Crown governments and their representatives must act.[137]

The principle arises from the historical reality that the Crown asserted sovereignty over lands already inhabited and governed by Indigenous Peoples. It recognizes that Indigenous Peoples laws, legal orders, and sovereignty continue to exist despite the assertion of Crown sovereignty.[138]

The honour of the Crown predates the *Constitution Act, 1867* and exists as an unwritten constitutional principle now encompassed within section 35 of the *Constitution*

135. *R v Adams*, [1996] 3 SCR 101 at para 54. See also *R v Marshall,* [1999] 3 SCR 456 at para 64.

136. See *Haida Nation*, *supra* note 11 at paras 16 – 17.

137. *Manitoba Métis Federation Inc v Canada (Attorney General),* 2013 SCC 14 at paras 73 & 75 [*Manitoba Métis*]. See also *Haida Nation*, *supra* note 11 at paras 17 – 18.

138. *Manitoba Métis*, *supra* note 137 at paras 66 – 67.

Act, 1982.[139] Section 35 of the *Constitution Act, 1982* also reflects a promise by the Crown to recognize and respect Aboriginal rights, including title. This promise in turn engages the honour of the Crown. In other words, the Crown is required to act honourably to diligently fulfil its promise to respect Aboriginal rights, including title.[140]

Across much of BC, issues of title and jurisdiction have yet to be clarified through treaty or other constructive agreements between the Crown and First Nations. First Nations continue to hold inherent rights, including title. However, relationships between Crown and First Nations jurisdiction still need to be resolved in many parts of BC. The honour of the Crown requires the province to recognize and respect Aboriginal rights, including title and to act with integrity, fairness, and good faith in all dealings with Indigenous Peoples.[141]

At its core, the honour of the Crown is about fostering reconciliation between sovereign peoples. It requires Crown governments to respect Indigenous rights, fulfill their solemn and constitutional promises to Indigenous Peoples, and ensure that all decision-making processes are guided by fairness and respect.

Applying the principle in practice

The committee's draft recommendations are informed by the honour of the Crown. The goal was to envision a framework to help Crown decision-makers act consistently with the honour of the Crown at every stage of applying legislation governing lapses in property ownership.

In practical terms, this means ensuring that:

- Indigenous rights are considered early in decision-making;
- discretionary powers under the *Escheat Act* or reformed legislation are exercised transparently and fairly; and
- legislative reforms move beyond mere procedural fairness to reflect a genuine commitment to reconciliation and implementing Indigenous rights as articulated in the *UN Declaration*.

139. See *Scott v Canada (Attorney General),* 2017 BCCA 422 at para 68, leave to appeal to SCC dismissed.

140. *Haida Nation*, *supra* note 11 at paras 20 & 25.

141. *Desautel*, supra note 128 at para 30.

Part Two – Draft Recommendations

This section sets out the committee's draft recommendations for a new legislative framework for managing lapses in property ownership. The draft recommendations that make up the proposed framework build on parts of current BC escheat law and introduce principles. They aim to enable the exercise of First Nations jurisdiction and facilitate the return of land to First Nations or other forms of redress.

This section begins by setting out all draft recommendations. Subsequent chapters discuss the considerations informing different aspects of the recommendations. Those chapters also include questions to help guide readers in submitting feedback. However, readers are welcome to share feedback on any of the narrower issues for reform discussed in the paper.

Chapter 4. A Proposal for a New Framework

A. *Foundational principles and scope of reformed legislation*

A.1. Reformed legislation should contain a purpose statement clarifying that purposes of the legislation include:

a) respecting the inherent rights, title, and jurisdiction of First Nations in relation to lands, territories, and resources they have traditionally owned, occupied, used, or acquired;

b) respecting the inherent rights and jurisdiction of First Nations in relation to cultural property, including artefacts, regalia, and other forms of property of significance to First Nations; and

c) facilitating the exercise of rights, including jurisdiction by First Nations in relation to property with a lapsed ownership interest.

A.2. Reformed legislation dealing with lapses in ownership of real property should not be based on the law of escheat.

A.3. Reformed legislation should apply to property for which an ownership interest has lapsed, including:

a) land in BC;

b) real estate in BC, including any incorporeal or corporeal hereditament;

c) water system properties in BC; and

d) any moveable property or chose in action, wherever situated, of a person domiciled in BC.

A.4. Reformed legislation should provide that an ownership interest in property lapses when:

a) the person last entitled to it dies without an heir entitled to succeed to it;

b) the person last entitled to it is a dissolved corporate entity;

c) the person last entitled to it is a foreign entity which has failed to pay property taxes for 2 consecutive years prior to the current year;

d) an ownership interest in property is deemed to have lapsed under any Act; or

e) the property otherwise forfeits to or vests in the province as property with no owner.

A.5. Reformed legislation should provide that:

a) subject to the provisions below, when an ownership interest in property lapses, custodial control over the property is reallocated to the responsible minister at the time of the lapse for the purpose of carrying out responsibilities under the Act; and

b) if a corporation dissolves under BC law, custodial control of any ownership interest in land held by the dissolved corporation is reallocated to the responsible minister 2 years after the date of dissolution if the corporation does not revive under any Act in the intervening 2 years.

A.6. Reformed legislation should provide that First Nations not incur costs related to the reversion or return of property, including any applicable transfer taxes, environmental remediation costs, financial liabilities attached to property, or costs associated with the negotiation and entering into of agreements and arrangements with the responsible minster as enabled under the Act.

B. Ministerial responsibilities

B.1. Reformed legislation should provide that ownership interests in property which are reallocated to the responsible minister under the Act are not to benefit the Crown and are to be held in a custodial capacity for the purpose of carrying out the following responsibilities:

a) promoting the recovery of property by moral or legal claimants;

b) identifying encumbrances associated with the property;

c) identifying, mitigating, and addressing environmental and financial liabilities associated with the property;

d) consulting and cooperating with First Nations whose inherent rights, including title and jurisdiction may be impacted by decisions related to the property at issue in order to obtain their free, prior, and informed consent;

e) facilitating the return of property, or other forms of restitution and redress, to First Nations whose rights, including title may be impacted; and

f) carrying out its responsibilities within the Act as it relates to facilitating the exercise of the inherent rights, title, and jurisdiction by First Nations.

C. First Nations jurisdictional authority: Agreements with First Nations

C.1. Reformed legislation should:

a) Provide the responsible minister with the authority to negotiate and enter into agreements or arrangements with an entity authorized to act on behalf of a First Nation, for any of the following purposes:

   i. the exercise of powers or performance of duties and functions under the Act and as specified in the agreement or arrangement;

   ii. the exercise of jurisdiction over property for which an ownership interest has lapsed;

   iii. to enter an agreement under sections 6 and 7 of the *Declaration on the Rights of Indigenous Peoples Act* governing statutory powers of decision and consent of a First Nation in relation to the exercise of powers and duties under the Act.

b) Provide that if a First Nation indicates an interest in entering into an agreement or arrangement as set out above, the responsible minister must, within one year of receiving that indication, enter into good faith negotiations with the First Nation.

c) Provide that where an agreement or arrangement exists between the province and a First Nation(s) or the province, Canada and a First Nation(s) relating to:

   i. the reversion, return, or transfer of any property that escheats, has a lapsed ownership interest, or is otherwise forfeited to the province;

   ii. consent of a First Nation in relation to the exercise of powers under the Act;

   iii. the exercise of shared decision-making in relation to any property that escheats, has a lapsed ownership interest, or is otherwise forfeited to the province; or

   iv. jurisdiction of a First Nation over any property that escheats, has a lapsed ownership interest, or is otherwise forfeited to the province,

the agreement prevails to the extent of any conflict or inconsistency with the Act.

D. First Nations jurisdiction in the absence of an agreement

D.1. Reformed legislation should provide for the following:

a) Respect for First Nations' laws governing the management of or decision-making in relation to land, water systems, and cultural property, even in the absence of an agreement and enable the application of such laws to applicable property for which an ownership interest has lapsed.

b) Before the responsible minister makes a decision transferring real property or water systems to a legal or moral claimant or otherwise disposing of such property, the minister must provide notice to each First Nation which has asserted or established title to an area inclusive of the property at issue.

c) The responsible minister must make reasonable efforts to determine if any property over which it exercises custodial control under the Act holds cultural significance to a First Nation and to notify the First Nation before making a decision to transfer or dispose of the property.

d) An opportunity for First Nations whose rights, title, or jurisdiction may be impacted by a decision over property in the custodial control of the responsible minister to make submissions to the minister regarding asserted or established rights, title, jurisdiction, or ownership interests.

e) If the responsible minister receives confirmation that a First Nation claims ownership or title over property in the minister's custodial control or will be exercising jurisdiction in relation to property for which an ownership interest has lapsed in accordance with a First Nations' law, the minister must:

    i. promptly notify all legal and moral claimants of the applicability of a First Nations' law; and

    ii. enter good faith negotiations with the First Nation to determine the application of laws.

f) If an application is made under any Act to the Supreme Court for an order vesting an interest in real property or water system property in a dissolved corporation that has been revived, notice of the application must be served on First Nations with asserted or established rights, including title to an area inclusive of the property at issue.

g) An opportunity for First Nations served with notice of an application in accordance with D.1.f) to provide submissions to the Supreme Court on the basis of asserted or established rights, title, jurisdiction, or ownership interests.

h) In an application to the Supreme Court for an order vesting property in a revived corporate entity, the court must consider the appropriateness of an order enabling the province to reallocate the land for reconciliation purposes

and requiring the province to provide the corporate entity with monetary compensation in lieu of a vesting order.

i) Where land is in the custodial control of the province due to a lapsed ownership interest or where the Supreme Court makes an order enabling the province to reallocate land for reconciliation purposes, the limitation periods set by the Act apply, except to the extent of any conflict or inconsistency between the Act and an agreement with a First Nation.

E. Provincial authority: claims, restoration of title and limitation periods

E.1. Reformed legislation should continue to:

a) prohibit the Minister from making any grant or other disposition of land of a corporation for a 2-year period following dissolution under BC law;

b) provide for land to vest back in a corporation if it is revived under an Act of BC within 2 years from the date of its dissolution; and

c) subject to notice being served on impacted First Nations, provide the Supreme Court with discretion to order that an interest in land of a corporation vests in the corporation if revived more than 2 years after the date of dissolution, provided the minister has not granted or otherwise disposed of the land.

E.2. Reformed legislation should:

a) continue to provide the responsible minister with discretion to transfer property to a person with a legal or moral claim as against the former owner or to carry into effect any disposition the former owner may have contemplated; and

b) eliminate the discretion to reward a person who discovers property for which an ownership interest has lapsed.

E.3. Reformed legislation should limit the time period for applications and claims by a revived corporation or a moral or legal claimant to 5 years from the day custodial control of an ownership interest in property is reallocated to the responsible minister.

E.4. Reformed legislation should provide that, 5 years after custodial control of an ownership interest in property is reallocated to the responsible minister, and provided that no application by a revived corporation or moral or legal claimant has been made, or if made, has been finally determined or abandoned, the minister must consider, in consultation and cooperation with impacted First Nations, whether:

a) the property, or any portion of it, should be returned to First Nations with an interest in the property; or

b) another form of compensation should be made to impacted First Nations.

E.5. Reformed legislation should provide that, 5 years after custodial control of an ownership interest in property is reallocated to the responsible minister, the minister may:

a) transfer the property, or any portion of it, to another provincial ministry;

b) transfer the property, or any portion of it, to a local government; or

c) offer the property, or any portion of it, for sale.

E.6. Reformed legislation should provide that any decision to transfer or sell property in accordance with the recommendation above must be supported by reasons outlining the objective(s) of the decision, the impact of the decision on First Nations, and any alternative forms of compensation available to impacted First Nations for infringement of their inherent rights and title.

F. Provincial authority: Responsibility for liabilities

F.1. Reformed legislation should provide that:

a) the responsible minister must make reasonable efforts to determine if any property over which it exercises custodial control under the Act poses, or may pose, any liability or hazard to the environment, health, safety or economic interests;

b) the responsible minister must make reasonable efforts to prevent, mitigate or eliminate liabilities or hazards in relation to property over which it exercises custodial control under the Act;

c) the responsible minister or any other entity that incurs costs associated with determining, preventing, mitigating or eliminating liabilities or hazards in relation to property over which it exercises custodial control under the Act can recover costs from a former corporate owner if revived or from a former director or shareholder of the dissolved corporation;

d) a prior owner's liabilities to creditors do not pass to the Crown or a First Nation under the Act; and

e) the Province is not relieved of any liability for breaches of the honour of the Crown to which it would be subject in exercising authority under the Act.

G. Provincial authority: Search and notification requirements

G.1. Reformed legislation should provide as follows:

a) The responsible minister shall make reasonable efforts to conduct searches for land in which a corporation's ownership interest has lapsed, such that custodial control has transferred to the province.

b) If administration is taken out under the provisions of the *Wills, Estates and Succession Act*, the responsible minister may apply to the Supreme Court for an order for the making of inquiries necessary to determine whether the province is to assume custodial control over any portion of the estate of the deceased on account of the deceased dying without heirs, or inquiries to determine if a First Nations' laws apply to the dissolution of all or part of an estate due to property being of cultural significance to a First Nation or the deceased having been a member of a First Nation.

c) If a person dies in possession of or entitled to land in BC and without any known heirs, the Attorney General may apply to the Supreme Court for an order for the making of inquiries necessary to determine whether or not the province or a First Nation is entitled to any portion of the deceased's land.

d) The responsible minister must promptly provide notice to potentially impacted First Nations of land, water system property, and cultural property for which an ownership interest has lapsed and when the responsible minister learns that a member of a First Nation has died without any known heirs to inherit their property.

e) The responsible minister shall maintain a publicly searchable online registry of property for which an ownership interest has lapsed.

f) The responsible minister shall promptly register notice with the land registry of real property for which an ownership interest has lapsed.

Chapter 5. Foundational Principles and Scope of Reformed Legislation

Extracts from the *United Nations Declaration on the Rights of Indigenous Peoples*:	
Art 10	Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
Art 26	Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired. Indigenous peoples have the right to own, use, develop, and control the lands, territories, and resources that they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

Truth and Reconciliation Commission of Canada, Call to Action #47[142]
We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

Introduction

The current *Escheat Act* operates alongside the common law of escheat. The draft recommendations propose a statutory framework that abolishes the common law of

142. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 200.

escheat but continues to recognize lapses in property ownership engaging provincial authority. That provincial authority must be exercised in accordance with the purposes of the Act, the ministerial responsibilities set out in the Act, and the honour of the Crown.

In developing the draft recommendations, the committee considered the common law principles that inform the current law and continue to operate alongside the legislation. [143]

Interpretative principles

Draft recommendation A.1 proposes a purpose statement articulating the objectives reformed legislation is intended to accomplish. This includes respect for inherent Indigneous rights and implementation of those rights. The purpose statement is intended as a further interpretive tool which is binding on how substantive provisions of reformed legislation are to be construed.

The proposed framework would also be informed by section 8.1(2) of the *Interpretation Act*, which requires legislation to be interpreted as upholding the Aboriginal and treaty rights of Indigenous peoples as affirmed by section 35 of the *Constitution Act, 1982*, and section 8.1(3) of the *Interpretation Act*, which requires legislation to be interpreted consistently with the *UN Declaration*.[144] The requirement to construe BC laws as consistent with the *UN Declaration* also applies as a result of the common law presumption of conformity. The proposed legislative framework would be presumed to comply with the values and principles of customary international law affirmed in the *UN Declaration*.[145]

Guidance for the exercise of provincial statutory authority under reformed legislation is also integrated into the draft recommendations. Consistent with current escheat law, the intention of reformed legislation would not be to enrich the Crown, but to guide the Crown in redressing wrongs.[146] Pathways would be created to support the recovery of property by restored corporations and moral or legal claimants.

143. *Mowatt* BCCA, *supra* note 15 at para 23.

144. *Interpretation Act*, *supra* note 134, s 8.1.

145. *Gitxaala* BCCA, *supra* note 10 at paras 125-126 & 129. Under Canadian law, customary international law is directly incorporated into Canadian domestic common law via the doctrine of adoption and is enforceable, absent conflicting legislation, without the need for legislative action: *Nevsun Resources Ltd v Araya*, 2020 SCC 5 at paras 94-96.

146. The intention of the current framework as interpreted by the BC Court of Appeal. See *Mowatt* BCCA, *supra* note 15 at para 66.

Additional pathways would support the exercise of First Nations' laws, legal orders, and jurisdiction.

Foundational principles

The draft recommendations support a statutory framework that is not grounded in the common law of escheat. However, it incorporates aspects of escheat law into a codified framework.

The principles on which the proposed framework would be based include:

- Ownership interests in property can end without a transfer of property by the previous owner despite the law's best efforts to prevent such outcomes. As the law recognizes corporations' ability to die and revive, not all these incidents are final. They are more accurately described as **lapsed ownership interests**, which captures incidents in which the absence of an ownership interest may be temporary or final.
- When ownership interests lapse, a government can assume **custodial control of the property** to mitigate liabilities and support recovery of the property. A custodian does not hold a beneficial interest in property.
- Indigenous Peoples have a **right to redress**, including restitution or fair and equitable compensation, for lands, territories, and resources which they traditionally owned, occupied, or used, and which have been confiscated, taken, occupied, used, or damaged without their free, prior, and informed consent.[147] States are obliged to provide effective mechanisms to prevent and redress any action which has the aim or effect of dispossessing Indigenous Peoples of their lands, territories, or resources.[148] These rights and obligations are engaged when the province exercises authority, including custodial control, over lands and resources traditionally owned, occupied, or used by First Nations. The province must carry out its state obligations owed to Indigenous Peoples in a manner consistent with the honour of the Crown.
- States are obliged to establish and implement, **fair, open, and transparent processes** to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories, and resources. This obligation must be met in conjunction with the Indigenous Peoples concerned, and with due consideration to Indigenous Peoples' laws and land tenure systems. Indigenous

147. *UN Declaration*, *supra* note 10, art 28

148. *Ibid,* art 8.

> Peoples have a right to participate in these processes.[149] These rights and obligations are engaged by provincial action to establish and implement legislative or administrative processes for determining ownership interests in land and resources traditionally owned, occupied, or used by First Nations.

These foundational principles are reflected throughout the draft recommendations and emphasized in draft recommendations A.1 through A.5.

Abolishing the common law of escheat

The committee considered whether reformed legislation should continue to be based on the common law of escheat. A shift toward a codified framework that does not rely on the common law of escheat was important for the committee to achieve alignment with the *UN Declaration*. The assumption underlying the common law of escheat – that the Crown holds ultimate title to all land in BC – is not consistent with recognition of and respect for Indigenous rights, including title.

Some other jurisdictions have shifted away from the common law of escheat toward a greater codification of this area of law. The committee considered some of these approaches.

New Zealand

New Zealand has abolished the common law of escheat in intestate succession. In taking this step, a clear legislative pronouncement was made. The New Zealand *Administration Act 1969* provides "[t]here shall be no escheat to the Crown for want of heirs or successors".[150] The legislation recognizes that where no one survives the deceased, their estate will vest in the Crown as ownerless property by virtue of the Act.[151] This approach demonstrates one way to codify the law while recognizing the Crown as the sovereign power entitled to take possession of and control over ownerless property.

The scope of authority to deal with ownerless property on behalf of the Crown in New Zealand is set out in the *Public Finance Act*.[152] Under that Act, the minister has powers to sell ownerless property. However, the sale of land by the Crown is subject to three preceding steps:

149. *Ibid*, art 27.

150. *Administration Act*, *supra* note 57, s 76.

151. *Ibid*, s 77(8).

152. *Public Finance Act 1989* (NZ) 1989/44.

1) a consultation to determine if the land is needed for public use,
2) a determination of whether the land should be returned to the successors of the previous owner, and
3) a right of first refusal under a treaty settlement with the Māori if the land has been designated under a treaty settlement.[153]

The Māori Protection Mechanism provides an additional means of setting land aside for a potential future treaty settlement when a settlement has not yet been finalized. Under this mechanism, land can be placed in a regional land bank for future treaty settlements.[154]

Recommendations made by the New Zealand Law Commission, further recommend that taonga (Māori personal property having social or cultural value) be removed from state succession law. If this recommendation is implemented, questions related to the succession of taonga would be determined by the laws of the relevant whānau or hapū (family group or clan). Further, what constitutes taonga would be defined within a tikanga Māori construct or worldview.[155] Implementation of this approach would also mean that in the absence of an heir or successor, taonga would not constitute *bona vacantia* or ownerless property under the *Administration Act*, it would be managed in accordance with the laws of the relevant whānau or hapū.

Ontario

Recent statutory amendments in Ontario mean that escheat continues to apply within succession law and a new framework has been developed for property of dissolved corporations. The Ontario *Forfeited Corporate Property Act* codifies the law pertaining to property of a corporation that has not been distributed prior to

153. The right of first refusal is not limited to property acquired by the Crown as ownerless property. It applies to all land sales by every department of the Crown. See New Zealand, "Crown Property Disposals" (last updated 14 May 2025), online: <https://www.linz.govt.nz/guidance/crown-property/crown-property-disposals>. See also New Zealand, "Right of First Refusal" (accessed 20 November 2025), online: <https://www.linz.govt.nz/guidance/crown-property/treaty-settlements/right-first-refusal-rfr#c-0-s-0>.

154. See New Zealand, "Treaty Settlements Landbank and the Māori Protection Mechanism" (last updated 11 November 2025), online: <https://www.linz.govt.nz/guidance/crown-property/treaty-settlements/treaty-settlements-landbank-and-maori-protection-mechanism>.

155. Te Aka Matua o te Ture Law Commission, *Review of succession law: rights to a person's property on death* (November 2021), chapter 3, online (pdf): <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R145.pdf>. Of note, this recommendation does not prevent someone from expressing wishes in their will in relation to taonga they hold. The applicable law of the whānau or hapū may give effect to those wishes. Additionally, provisions in wills may inform the development of the applicable law.

dissolution. The Act provides that upon dissolution, all real property the corporation owned is forfeited to the province. The right of revival under the statute is restricted to corporations that have been involuntarily dissolved. However, upon revival, property remains forfeited to the Crown and does not automatically vest back in the revived corporation. The only mechanism by which a restored corporation, or any other party, can recover forfeited corporate property is by making an application for relief from forfeiture in accordance with the legislation.[156]

Three years post-dissolution, the province of Ontario can at any time, register a notice on title indicating that it intends to use the property for Crown purposes.[157] The legislation also allows for use of the property for Crown purposes earlier than three years post-dissolution provided that the dissolution was voluntary and the Minister provides notice of its intention to the former directors or officers.[158]

Alberta

Alberta has a codified approach to managing unclaimed property under the *Unclaimed Personal Property and Vested Property Act*.[159] That Act sees property vest in the province when an ownership interest ends, but it does not rely on the common law of escheat.

Quebec

Quebec's legislation governing unclaimed property establishes a trust-like framework for the province to hold property and support claimant recovery. While Quebec's property laws differ somewhat from those in other provinces, the civil property law regime operates within Canada's constitutional framework, which recognizes provincial rights in lands and resources, subject to other interests.[160]

Within Quebec's legally plural property law framework, legislation provides for unclaimed property to fall to the province for management. However, the legislation clearly states that the unclaimed property falls to the province for the

156. *Forfeited Corporate Property Act, 2015*, SO 2015, c 38, Sch 7 [*Forfeited Corporate Property Act*].

157. Two years for dissolved cooperatives. Three years for other types of corporations. *Forfeited Corporate Property Act*, *supra* note 156, s 24(1), (2) and (3).

158. *Forfeited Corporate Property Act*, *supra* note 156, s 24(4) and (6).

159. *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5 [*Unclaimed Personal Property and Vested Property Act*].

160. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, s 109 [*Constitution Act, 1867*].

administration of the assets, not as a beneficial interest. The legislation refers to the property of others which is entrusted to the minister to administer.[161]

The legislation restricts how the minister can manage the property it holds. Any property with a value greater than $40,000 can only be sold with judicial authorization.[162]

Creating a custodial role

The proposed framework has similarities with the Quebec approach where the responsible minister holds property for the benefit of others in a custodial role. The draft recommendations would see no beneficial interest falling to the Crown. The absence of a beneficial interest going to the Crown is consistent with current interpretations of the common law of escheat.

By the province assuming a custodial role over property with a lapsed ownership interest, the Crown can continue to support the recovery of property by claimants and uphold the Crown's obligations to First Nations rights and title holders. The draft recommendations support the recognition of potential beneficial interests in land for revived corporations, claimants, and First Nations.[163]

Examples from other jurisdictions show that some statutory models do confer a beneficial interest on the Crown. Ontario is perhaps the most notable example of this. The Ontario *Forfeited Corporate Property Act* enables the Crown's use of forfeited property of a dissolved corporation within 3 years of dissolution. This approach is distinct from the common law of escheat.

As the BC Court of Appeal recently clarified:

> [E]scheat was intended not to enrich the Crown, but to redress wrongs suffered by *subjects of the Crown* due to a failure of heirs or other lapse in tenure; and by exercising its prerogative to restore land to 'deserving' subjects, the Crown acts *for the public good*.[164]

161. *Loi sur les biens non réclamés*, RLRQ c B-5.1, s 14 [*Loi sur les biens non réclamés*]. The French version refers to "les biens d'autrui qui son confiés à l'administration du ministre".

162. *Loi sur les biens non réclamés*, *supra* note 161, s 24.

163. Aboriginal title includes a beneficial interest in land. See *Tsilhqot'in*, *supra* note 92 at para 70.

164. *Mowatt* BCCA, supra note 15 at para 66.

The proposed recommendations would carry this aspect of the common law into a statutory framework. Similar to the Quebec model, it would clarify within the legislation that property interests reallocated to the custodial control of the responsible minister under the Act are not to benefit the Crown.

Statutory rights of claimants

Potential claimants' interests are currently recognized within the *Escheat Act*. The Attorney General has discretion to transfer property to a person with a legal or moral claim as against the former owner; to carry into effect any disposition the former owner may have contemplated; or to reward a discoverer of the escheat. The third ground, a transfer as a reward for a discoverer, appears to not be applied in practice.[165] It is also not a ground on which land can be transferred to a claimant within the area where the Council of the Haida Nation holds Aboriginal title.[166]

The draft recommendations propose continued recognition of claimants' ability to apply for a transfer on legal or moral grounds, or to carry out a disposition contemplated by the former owner. To bring reformed legislation in line with current practice, the recommendations would remove the grounds for transfer on the basis of discovery.

Respecting Indigenous rights including title

The draft recommendations envision a framework founded on respect for inherent Indigenous rights, including title as held by First Nations and includes pathways for implementing those rights.

Aboriginal title is characterized as a beneficial interest in land that is senior to personal ownership interests, such as a fee simple.[167] It is also upstream of provincial interests in land. Much of the province of BC is subject to claims of Aboriginal rights, including title.[168] Any interest the province may have in land is limited by Aboriginal title, which is a constitutionally protected right to the land itself.[169] Aboriginal title holders have a right to use land, control it, occupy it, manage it, enjoy it, and profit

165. See *Land Title Practice Manual*, *supra* note 72, §40.9.

166. *Escheat Act*, *supra* note 3, s 4.2.

167. *Tsilhqot'in*, *supra* note 92 at para 70. *Cowichan Tribes*, *supra* note 5 at para 2189.

168. Law Society of BC, *Practice Material: Real Estate* (Professional Legal Training Course 2025) at 6.

169. *Constitution Act, 1867*, *supra* note 160, s 109. *Constitution Act, 1982*, *supra* note 11, s 35. See also *Tsilhqot'in*, *supra* note 92 at para 112.

from its economic development.[170] Where a First Nation asserts title, the honour of the Crown requires provincial and federal governments to respect potential claims.[171] Indigenous Peoples' inherent right to the lands, territories, and resources they have traditionally owned, occupied, or otherwise used or acquired is also affirmed in the *UN Declaration*.[172] These inherent and constitutionally protected rights and title mean that provincially created grants of personal ownership interests in land, such as fee simple interests, do not have the legal effect of extinguishing or permanently displacing the more senior interest of Aboriginal title.[173]

Aboriginal title and inherent Indigenous rights in lands and resources can apply to lands in which there also exists a personal ownership interest. In such situations, the interests of the fee simple holder in that land may be unaffected in practice.[174] When a personal ownership interest in land ends, however, there is an opportunity to respect the more senior title holder, which may be a First Nation.

The committee's draft recommendations propose pathways for Indigenous title to be respected following the legal termination of personal ownership interests in land.

Terminology used in reformed legislation

The discussion above on foundational principles raises a related issue: how should reformed legislation refer to the legal procedures it recognizes and gives effect to?

The committee considered a range of terminology to describe the legal mechanisms for managing lapses in property ownership under reformed legislation. The draft recommendations put forward in this paper recognize the following legal mechanisms:

1) personal ownership interests in property can lapse,
2) when a personal ownership interest lapses, custodial control of the lapsed ownership interest in the property is reallocated to the province,
3) the province is to exercise custodial control over interests in property in a manner that respects First Nations rights, including title and jurisdiction,

170. *Tsilhqot'in*, *supra* note 92 at paras 70 & 73.

171. *Ibid* at para 113.

172. *UN Declaration*, *supra* note 10, art 26.

173. *Cowichan Tribes*, *supra* note 5 at para 3551.

174. *Ibid* at para 2208.

4) First Nations rights, including title, can be restored in property in the custodial control of the province, and
5) other forms of redress can be provided where restoring a beneficial interest in land is not feasible.

The reference to a "lapse" in personal ownership acknowledges that corporate owners can revive. A "lapse" of ownership interests can encompass situations in which an interest fully terminates as well as situations where an owner is temporarily absent but revives. Current escheat law addresses both situations but lacks clarity on the nature of the interest that vests in the Crown at different points in time.

For example, the legislation provides that land in BC owned by a corporation escheats to the province upon dissolution. If the corporation is revived under BC legislation within 2 years, the legal effect of the revival is to treat the escheat as if it did not occur. The ambiguity the legislation creates around when corporate land actually escheats to the province was recently noted by the Supreme Court of Canada.[175]

The draft recommendations aim to address some of this ambiguity while allowing for property interests to re-vest in a revived corporation. This ambiguity is addressed in part by characterizing the legal mechanisms as a lapse in personal ownership interests, which results in a reallocation of custodial control of the property to the province. The ambiguity is also addressed in part through the implementation of limitation periods on certain types of property transfers, which are discussed in chapter 8.

Characterizing the transfer of interests from the previous owner to the province as one of custodial control recognizes that different people may hold different interests in relation to a piece of property at the same time, and that the province's custodial role may be limited to certain interests. For example, a corporate mortgagee can dissolve, resulting in only the interest it holds in land as a mortgagee passing to the province.

The committee considered that the restoration of Indigenous rights, including title, in property held in the province's custodial control could be described as a restoration, return, or reversion of rights to the land itself. Each of these terms is proposed

175. See *Nelson (City) v Mowatt*, 2017 SCC 8 at para 7. That case concerned a previous version of the *Escheat Act*, which provided for a 1 year revival period. The SCC was able to decide the case without resolving the ambiguity around the exact date of escheat. However, the Court noted the different interpretations of the legislation as argued by the parties, which led to the Court holding that the escheat could have taken effect on two different dates.

as an option consistent with the Crown's existing obligations to respect inherent Indigenous rights, including title.

As the restoration of a beneficial interest in property may not always be feasible, other forms of redress may be considered under the legislation. The *UN Declaration* provides that redress for lands occupied without consent, may take the form of a restored ownership interest or other forms of just, fair, and equitable compensation.[176]

Clarifying the scope of legislation

Types of property included

The draft recommendations seek to clarify the scope of the reformed legislation and allow for a uniform approach to managing lapses in property interests whether the property at issue is real property, a water system property, or personal property. Draft recommendations A.3 and A.4 are consistent with recommendations for reform put forward by the BCLI in its 2006 report on *Wills, Estates and Succession: A Modern Legal Framework*.[177] However, they have been updated to reflect the addition of water system properties to the BC escheat framework in 2006 and to incorporate the language of lapsed ownership interests.

Currently, the 3 types of property covered by the legislation, and the ways they transfer to the province, are recognized in separate parts of the Act. The proposed framework envisions a uniform approach to all three existing property categories.

The draft recommendations aim to clarify the overall scope of the legislation at the outset, enable restoration of ownership interests for all applicable property, and enable the exercise of Indigenous rights in relation to each type of property as applicable. The recommendations would maintain the status quo as it relates to the types of property captured by the legislation; this is reflected in recommendation A.3.

The draft recommendations do, however, suggest clarifying at the outset the types of property the legislation encompasses. With respect to all such property, reformed legislation could recognize that ownership interests may lapse, custodial control may pass to the province, and, through agreements and respect for Indigenous

176. *UN Declaration*, *supra* note 10, art 28(1).

177. BC Law Institute, *Wills, Estates and Succession: A Modern Legal Framework* (June 2006) at 302-303, online: <https://www.bcli.org/publication/45-wills-estates-and-succession-modern-legal-framework/>.

rights, including title, property can be managed in accordance with BC laws and/or applicable Indigenous laws.

Below are some of the potential scenarios the committee considered in developing these recommendations:

1. BC and First Nations can enter into shared decision-making agreements in relation to watersheds.[178] Privately owned water system pumps operate in some places for commercial or industrial use. Water system properties may draw on a watershed subject to a government-to-government agreement. In the event of a lapse in ownership interests in a water system property and a transfer of custodial control to the province, a uniform approach would enable shared decision-making with a First Nation in accordance with an agreement.
2. If a member of a First Nation dies intestate, off-reserve, and without a legal heir as recognized within provincial law, their ownership interest in their personal property will lapse, and custodial control can pass to the province. The First Nation of which the deceased was a member may have laws applying to the devolution of property and which recognize an heir. A uniform approach would create clear pathways for the province to respect the First Nation's jurisdiction.
3. Personal property held by a private owner may hold cultural significance to a First Nation. In the event of a lapse in personal ownership interests over such property, a uniform approach would enable opportunities for First Nations laws around the devolution of cultural property to govern how it is dealt with.[179] For example, this scenario may arise where the property at issue is art, an artefact, or intellectual property. The approach supported by the recommendations recognizes that cultural property is more than its

178. The BC-First Nations Water Table provides opportunities for shared decision-making in relation to watersheds. See British Columbia, "Declaration on the Rights of Indigenous Peoples Act 2023-2024 Annual Report" (accessed 20 November 2025) at 40-42, online (pdf): <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/2023-2024_declaration_act_annual_report.pdf>.

179. The committee considered recent recommendations of the New Zealand Law Commission that state legislation dealing with the administration of estates should create a statutory exclusion around taonga (socially or culturally valuable objects, resources, phenomenon, ideas and techniques). That report recommended all questions of succession of taonga should be determined by the law of the relevant family group or clan and not state law. Secondly, it recommended that what constitutes taonga should be defined within a tikanga Māori construct. While the scope of recommendations and context of the New Zealand Law Commission Report differ from that at issue here, the manner in which it dealt with state legislation pertaining to cultural property was informative. See Te Aka Matua o te Ture Law Commission, *supra* note 155, chapter 3.

tangible form, and that holders of cultural property are not necessarily owners of the property as that concept is understood within Canadian property law.

Events resulting in a lapse in ownership

Draft recommendation A.4 clarifies the events which would result in a lapse in ownership. Many of these mirror current BC escheat law. These include situations in which the previous owner dies without a legal heir or is a dissolved corporation that failed to distribute all its assets prior to dissolution.[180]

Draft recommendation A.4.c) provides a further situation in which legislation would deem a lapse in ownership to have occurred. This pertains to foreign entities and is intended to clarify an area of the law that currently lacks certainty.

Specific considerations in relation to foreign entitites

Foreign corporations, which include any corporation not registered as a BC corporation, present unique issues in the context of property that escheats.

This is in part because the dissolution of a foreign corporation is governed by its home jurisdiction. Foreign jurisdictions may regulate dissolution differently from BC. For example, the triggers for a non-voluntary dissolution may differ. Additionally, other jurisdictions may permit a dissolved corporation to retain assets for certain purposes.

Draft recommendation G.1.a) proposes that the province make reasonable efforts to conduct searches to identify property with a lapsed ownership interest. However, this recommendation would be ineffective in identifying lapsed ownership interests of dissolved foreign corporations.[181]

There are no ongoing filing requirements within BC that apply to all foreign corporations that hold property in BC. This is in part because foreign corporations may hold property in BC regardless of whether they carry on business in BC.

180. See *Escheat Act*, *supra* note 3, ss 1, 3, 4, 4.1 & 8; and *Business Corporations Act*, SBC 2002, c 57, s 344 [*Business Corporations Act*].

181. A fuller discussion of searches is contained in chapter 10. That discussion notes that it would be possible to gain some insight into lapsed property interests in land by cross-referencing land title records with business registration records. However, BC records of corporate dissolutions would not assist in identifying foreign entities that have dissolved without while holding land in BC.

Certain statutory filing requirements can apply to a foreign corporation holding property in BC at select points in time, but these requirements are not necessarily ongoing. Some of the statutory requirements for different types of foreign entities include:

1. An entity registered as a corporation outside of BC that carries on business in BC is required to do annual filings to indicate an ongoing intention to do business in BC. This includes if the company maintains a warehouse, office or place of business in BC under its own control or under the control of a person on behalf of the foreign entity.[182] Such an entity may cease to do annual filings in BC without having dissolved in its home jurisdiction.
2. A foreign corporation that intends to purchase land in BC would have to provide proof of incorporation in its home jurisdiction at the time of acquiring its interest in land.[183] The entity could subsequently dissolve in its home jurisdiction.
3. A foreign entity which holds residential property within certain designated tax areas of BC may be required to file an annual declaration for the BC speculation and vacancy tax. This filing requirement applies only in certain regions and to certain types of propery.

One requirement applicable to owners of property in BC regardless of where they live is the requirement to pay property taxes. The draft recommendations provide that if a foreign entity holds an ownership interest in land in BC and fails to pay property taxes for 2 consecutive years, its ownership interest will be deemed to have lapsed under reformed legislation.

This is consistent with the trigger for a municipal tax sale and in that regard does create some complications. However, those complications could be remedied by amending other pieces of legislation to ensure a consistent approach.

Complications arise in part because in BC, property tax notices are issued by different levels of government depending on the property's location. If someone owns property within a municipality, the municipal government collects property taxes. If someone owns property in a rural area or leases Crown land, the province collects property taxes. On the treaty lands of a modern treaty nation, property tax is administered by the nation itself.[184]

182. *Business Corporations Act*, *supra* note 180, s 375.

183. *Land Title Practice Manual, supra* note 72, vol 3, §67.27.

184. See British Columbia, "Annual Property Tax" (16 June 2025), online: *Property Taxes* <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax>.

If property taxes owed to a municipal government are delinquent, meaning they have been unpaid for 2 consecutive years, municipal governments are empowered to recover the unpaid taxes through a tax sale of the property.[185] For rural property, delinquent property taxes are levied as a lien and charge in favour of the provincial government against the property.[186]

A notice of delinquent property taxes is not an indicator of an escheat or lapsed property interest in all cases. In some cases, escheat arises from an unrealized mistake in the survey or transfer of property. Consequently, property can escheat, and taxes may continue to be paid on the property by a party who is unaware of the escheat.

However, a notice of delinquent property taxes for property held by a foreign corporation can indicate that a foreign entity is non-compliant with statutory requirements. Further, unlike some of the statutory filing requirements for foreign entities listed above, property taxes reflect an ongoing annual requirement for the duration of the ownership interest.[187]

Draft recommendation A.4.c) is intended to address the challenges around determining when a foreign entity which held property in BC ceases to exist by deeming the ownership interest to lapse when property taxes from the previous 2 consecutive years have been unpaid. One outcome of this recommendation would be to enable the province to use property previously held by a foreign entity, on which property taxes are delinquent, for reconciliation purposes in line with reformed legislation.

This recommendation is made recognizing the fact that municipal governments' recovery of delinquent property taxes is regulated differently and the laws governing municipal tax sales are beyond the scope of this project. The committee encourages the provincial government to explore amendments to the *Local Government Act* to ensure a consistent approach to municipal tax sales. The BC Supreme Court recently held that municipal tax sales do not affect a transfer of land in the same way as the issuance of a Crown grant. However, BC's legislated tax sale process can result in a disposition that impacts Aboriginal title.[188]

185. *Local Government Act*, RSBC 2015, c 1, s 645; *Community Charter*, SBC 2003, c 26, s 254.

186. *Taxation (Rural Area) Act*, RSBC 1996, c 448, s 30.

187. Exceptions to taxes levied by the province are listed in s 15 of the *Taxation (Rural Area) Act*.

188. *Cowichan Tribes*, *supra* note 5 at paras 2369 – 2372. While that decision dealt with tax sales

Guiding Questions for Feedback on Foundational Principles and Scope of Reformed Legislation

1. a) Should BC legislation dealing with lapses in property ownership be based on the law of escheat, meaning an area of law based in assumed Crown title?

   b) If not based on escheat, should the legislation be based on the province having custodial responsibility over certain property when the individual owner cannot be located?

2. Should land, buildings, water systems, and personal property be treated in similar ways under BC legislation dealing with lapses in property ownership?

3. Should ownership interests of foreign entities in land lapse after 2 consecutive years of unpaid property taxes under BC legislation dealing with lapses in property ownership?

under previous versions of BC's *Municipal Act*, the current version of the *Local Government Act*, RSBC 2015, c 1, s 650 continues to provide that where no bid equals the upset price in a tax sale, the municipality must be declared the purchaser.

Chapter 6. Ministerial Responsibilities

"Indigenous Peoples exercise and have full enjoyment of their inherent rights, including the rights of First Nations to own, use, develop and control lands and resources within their territories in B.C." – stated goal of BC government within the *Declaration on the Rights of Indigenous Peoples Act Action Plan, 2022-2027*	
The province has committed to the following actions to advance this goal:	
2.4	Negotiate new joint decision-making and consent agreements under section 7 of the *Declaration Act* that include clear accountabilities, transparency, and administrative fairness between the Province and Indigenous governing bodies. Seek all necessary legislative amendments to enable the implementation of any section 7 agreements.
2.5	Co-develop and employ mechanisms for ensuring the minimum standards of the *UN Declaration* are applied in the implementation of treaties, agreements, and under sections 6 and 7 of the Declaration Act and other constructive agreements with First Nations.
2.7	Collaborate with First Nations to develop and implement strategies, plans, and initiatives for sustainable water management, and to identify policy or legislative reforms supporting Indigenous water stewardship, including shared decision-making.

Introduction

The existing framework requires the Attorney General, as the responsible minister, to act for the public good in exercising the Crown's prerogative powers to restore interests in land to deserving parties.[189] The purpose of the law of escheat in common law informs and constrains the exercise of Crown authority under the legislation.

The reforms proposed by the committee aim to clarify the purpose and intent of the legislation and the scope of Crown authority within a legislative provision

189. *Mowatt* BCCA, *supra* note 15 at para 66.

articulating ministerial responsibilities. Ministerial responsibilities can also help guide the interpretation and application of legislation.

In developing draft recommendation B.1, the committee considered a variety of approaches to legislating Crown obligations, including those related to recognition of and respect for Indigenous rights.

Legislative recognition and respect for rights and obligations

Some statutes include affirmations of specific rights and statements of specific Crown obligations. This approach can give effect to statutory rights. It can also serve to affirm inherent rights. A statutory affirmation of inherent rights does not alter the nature or source of those rights. It can, however, give effect to state obligations related to those rights and influence the interpretation of inherent rights.

The topic of legislative reconciliation was introduced in chapter 3. Below is a discussion of what legislative reconciliation could look like in reformed legislation for managing lapsed ownership interests.

Affirming inherent Indigenous rights and title within legislation

Whereas the *UN Declaration* sets out a comprehensive articulation of inherent Indigenous rights, section 35 of the *Constitution Act, 1982* recognizes "existing [A]boriginal and treaty rights" and leaves much of the articulation and interpretation of specific rights up to the courts. Some legal scholars argue that this Constitutional approach results in insufficient protection of inherent Indigenous rights in Canadian law.[190]

Comparisons have been drawn between the protection given to *Charter* rights by courts in contrast to inherent Indigenous rights as exemplifying the different pathways courts have taken in recognizing these two types of rights. For example, in Aboriginal rights cases, litigants must prove the existence of each right on a case-by-case basis. This involves demonstrating that a claimed modern right is demonstrably connected to and reasonably regarded as a continuation of a pre-contact practice, tradition or custom that was integral to the Aboriginal society pre-contact.[191] This test involves the court determining what Aboriginal right needs to established on the basis of the activities the claimant(s) engaged in.[192] In other words, the role of the courts involves "defining the substantive content of inherent rights" affirmed in

190. See Metallic, *supra* note 129 at 17-18.

191. *Desautel*, *supra* note 128 at para 51.

192. *R v Gladstone*, [1996] 2 SCR 723 at para 23.

section 35.[193] It is only after courts are satisfied the test for proving a modern Aboriginal right has been met that they go on to consider whether the right has been infringed. In cases involving individual *Charter* rights, however, the litigant claiming an infringement does not have to first prove the existence of the right.

There are, however, other approaches, outside of litigation, to affirming inherent Indigenous rights and giving specificity to how they are exercised in a modern context. Turning to the *UN Declaration* as a framework for a comprehensive articulation of inherent Indigenous rights is one approach to mitigating current challenges within Canada's constitutional framework for recognition and respect of Aboriginal rights.[194] Treaties and other constructive agreements are another means of giving scope to inherent rights in a modern context and some specificity to how they are exercised.

Legislative reconciliation is yet another approach. Clarifying understandings of inherent rights and creating a framework for their exercise in legislation can facilitate the implementation of Indigenous peoples' inherent rights. This approach is seen in some US legislation and, more recently, in Canadian legislation.[195] The federal *Indigenous Languages Act*[196] and *An Act respecting First Nations, Inuit and Métis children, youth and families*[197] exemplify this approach.[198]

Legislative reconciliation does not negate the role of courts in interpreting and applying constitutionally and legislatively recognized rights when disputes arise. Its role is largely to clarify state government intentions and obligations.[199] Parliament and legislatures can enact legislation that affirms their positions on the meaning of section 35 of the *Constitution*.[200]

193. Metallic, *supra* note 129 at 20.

194. *Ibid* at 18 & 20.

195. *Ibid* at 4-5.

196. *Indigenous Languages Act*, SC 2019, c 23.

197. *An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, SC 2019, c 24 [*Act respecting FNIMCYF*].

198. *Reference re FNIMCYF*, *supra* note 25 at para 91. See also Metallic, *supra* note 129 at 7.

199. Metallic, *supra* note 129 at 8.

200. *Reference re FNIMCYF*, *supra* note 25 at para 110.

Legislative guidance on the exercise of statutory discretion can help ensure that Crown actors do not exercise their discretion in a manner inconsistent with the honour of the Crown.[201]

Applications to this project

Legislation managing lapses in property ownership serves multiple purposes. A reconciliation purpose would be just one. It is also legislation that involves the exercise of ministerial discretion in a manner that could have distinct impacts on First Nations.

Such legislation must be interpreted with a view to carrying out the multiple purposes it serves and in a manner consistent with the honour of the Crown. The principle of the honour of the Crown informs how Indigenous rights and interests are integrated into the application of the legislation.

In this context, BC adopting legislation that affirms specific rights might help mitigate legislative applications that adversely impact Indigenous rights.

The committee has, however, proposed a somewhat different approach, one which focuses on providing clear guidance for the exercise of ministerial discretion without necessarily defining specific rights. The approach envisioned by the draft recommendations is intended to support an interpretation of legislation consistent with the honour of the Crown. It supports an approach that enables First Nations to exercise their inherent rights, including jurisdiction, or delegate it to the province in accordance with their priorities. Further, it allows for recognition and respect of property laws within Indigenous legal orders that are distinct from BC property laws while serving an analogous purpose.

Draft recommendation A.1 proposes a purpose statement to clarify principles reformed legislation is intended to accomplish. Draft recommendation B.1 proposes a legislative statement of ministerial responsibilities. This is intended to clarify the province's role under the legislation and guide Crown decision-makers in exercising their discretion in light of the legislation's multiple purposes.

A statement of ministerial responsibilities can help ensure that potential Indigenous interests are considered early in the decision-making process. This can assist in guiding how the exercise of Crown discretion ought to be limited in light of applicable co-existing jurisdictional authorities.

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201. *R v Adams*, [1996] 3 SCR 101 at para 54. See also *R v Marshall,* [1999] 3 SCR 456 at para 64.

This approach is consistent with the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*. These principles affirm that the province must uphold the honour of the Crown. A responsibility that "requires the provincial government and its departments, agencies, and officials to act with honour, integrity, good faith, and fairness in all of its dealings with Indigenous peoples" and "ensure that Indigenous peoples are treated with respect and as full partners in Confederation".[202]

The specific ministerial responsibilities proposed in the draft recommendations are informed by the overall framework. They include responsibilities to British Columbians generally, environmental and financial responsibilities, responsibilities specific to reconciliation, and obligations to rights and title holders.

Guiding Questions for Feedback on Ministerial Responsibilities

1. Should BC legislation dealing with lapses in property ownership include a statement of ministerial responsibilities to guide the exercise of statutory discretion?

   If yes, do you agree with the following articulation of ministerial responsibilities:

   a) promoting the recovery of property by moral or legal claimants;

   b) identifying encumbrances associated with the property;

   c) identifying, mitigating, and addressing environmental and financial liabilities associated with the property;

   d) consulting and cooperating with First Nations whose inherent rights, including title and jurisdiction, may be impacted by decisions related to the property in order to obtain their free, prior, and informed consent;

   e) facilitating the return of property, or other forms of restitution and redress, to First Nations whose rights, including title may be impacted; and

   f) carrying out its responsibilities within the Act as it relates to facilitating the exercise of inherent rights, title, and jurisdiction by First Nations.

202. British Columbia, *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, at 3, online (pdf): <https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [*Draft Principles*].

Chapter 7. First Nations Jurisdictional Authority

Extracts from the *United Nations Declaration on the Rights of Indigenous Peoples*:	
Art 4	Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs.
Art 18	Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.
Art 19	States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
Art 32(2)	States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of minerals, water or other resources.

Introduction

The draft recommendations would enable a range of agreements, including jurisdictional, decision-making, consent, and property transfer agreements. By enabling a range of agreements, the legislation would allow for First Nations to exercise their inherent rights in accordance with their priorities and capacity.

The draft recommendations also propose pathways for the responsible minister to respect inherent Indigenous rights and and facilitate the exercise of those rights, even in the absence of a formal agreement.

Enabling agreements

Implementing the *Declaration Act* to align BC laws with the *UN Declaration* largely depends on government-to-government agreements. Agreements help coordinate how the province and First Nations exercise their co-existing jurisdictions.

Some existing agreements, such as modern treaties and the *Gaayhllxid • Gíihlagalgang "Rising Tide" Haida Title Lands Agreement*, already include provisions related to the transfer of escheated land. The draft recommendations build on these examples. They propose to recognize existing agreements and expand opportunities for First Nations to exercise rights, including jurisdiction in this area.

Agreements under the Declaration Act

Sections 6 and 7 of the *Declaration Act* authorize the Executive Council to enter into agreements with Indigenous governing bodies. These agreements can provide for joint or consent-based decision-making in exercising statutory powers.

Currently, any negotiation or agreement by a member of the Executive Council requires specific authorization. The draft recommendations aim to streamline this process by granting the responsible minister the authority to negotiate and enter into agreements directly with First Nations regarding the exercise of powers and duties under the proposed legislation.

Scope of agreements

The draft recommendations are not limited to agreements under sections 6 and 7 of the *Declaration Act*. They would enable a broader range of agreements and arrangements to:

- Support the exercise of inherent rights by First Nation; and
- Manage conflicts of laws that may arise when different jurisdictions operate together under an agreement.

To promote active engagement, it is also recommended that the responsible minister be required to enter good faith negotiations with a First Nation within one year of that Nation expressing interest in an agreement related to the exercise of powers and duties under the legislation. The committee makes this recommendation with the intention and understanding that the province would support the capacity needs of First Nations to negotiate and enter an agreement.

Supporting diverse approaches

By providing a broad framework for agreements, the recommendations are designed to support First Nations in exercising a range of rights recognized in the *UN Declaration* in ways that reflect their own priorities, capacities, and governance structures. For example, some First Nations may pursue shared decision-making agreements aligned with their governance priorities. Others may prefer an agreement that facilitates property transfers or facilitates the exercise of jurisdiction in specific areas.

This flexible approach is intended to promote practical pathways for self-determination and cooperative exercise of jurisdiction between the province and First Nations.

Scope of agreements enabled

The range of agreements the draft recommendations intend to capture include:

- Agreements enabling the exercise of the right to self-determination, self-governance, and active participation in decision-making on matters affecting First Nations' inherent rights.[203]
- Agreements guiding the province on its obligations to obtain the free, prior, and informed consent of First Nations on administrative matters that may affect them, including approvals that affect their lands or other resources.[204]
- Agreements affirming the rights of First Nations in lands, territories, and resources they traditionally owned, occupied, or otherwise used or acquired and providing for redress where such lands have been confiscated, taken, occupied, used or damaged without free, prior and informed consent. This can include restoring First Nations' ownership interests or other forms of just, fair, and equitable compensation.[205]

In addition to rights to land and natural resources, such as water, Indigenous Peoples hold rights to property of cultural significance. This includes archaeological and historical sites, artefacts, designs, ceremonies, technologies and artistic works.[206]

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203. Rights affirmed within *UN Declaration*, *supra* note 10, arts 3, 4, 18 and 32(2).

204. The obligations of the states in this regard are set out in *UN Declaration*, *supra* note 10, art 19.

205. These rights and obligations for redress are articulated in *UN Declaration*, *supra* note 10, arts 26(1) and 28(1).

206. *UN Declaration*, *supra* note 10, art 11(1).

As discussed in chapter 5, a uniform approach to property within reformed legislation would clarify its application. It would also facilitate agreements encompassing a range of inherent rights held by First Nations. A uniform approach to all of the forms of property covered by the legislation would enable agreements that address rights in land, water, and culturally significant property, reflecting their interconnectedness.

In considering the scope of rights affirmed in the *UN Declaration* that relate to property with a lapsed ownership interest, the committee developed a recommendation intended to ensure that government-to-government agreements can speak to the exercise of a range of rights and state obligations.

In keeping with the right to self-governance, where the previous owner of property with a lapsed interest was a member of a First Nation, such agreements could also provide for the application of that Nation's laws governing intestacy or the absence of heirs. This ensures that culturally appropriate legal orders can be applied in such cases.

Priority of laws

As noted earlier, several existing agreements with First Nations already address the transfer of ownership interests in escheated land. These and future agreements may differ in their details from the framework proposed in the draft recommendations. For instance, the criteria for restoring an ownership interest to a First Nation under the proposed legislative framework may not align exactly with those negotiated through agreements.

The following chapters examine the exercise of provincial jurisdiction under the proposed legislation. To respect established government-to-government agreements, draft recommendation C.1.c) proposes that the terms of an agreement would prevail to the extent of any conflict or inconsistency with the legislation. This approach upholds the integrity of agreements and reinforces the principle of mutual respect and consent.

Flexibility in the form of agreements

Draft recommendation C.1 refers to "agreements or arrangements" to provide flexibility in formalizing government-to-government relationships. For example, a memorandum of understanding may be preferable to a formal agreement when coordinating shared decision-making. Since lapses in ownership interests are infrequent, an informal arrangement that allows a First Nation to exercise jurisdiction over a limited scope of property may be more efficient and practical than negotiating a comprehensive formal agreement.

This flexible approach allows both the province and First Nations to tailor the form and process of collaboration to the context, capacity, and needs at hand, while maintaining consistency with the principles of the *UN Declaration*. A flexible approach would be further supported by recognizing the responsible minister's authority to respect inherent First Nations rights, including jurisdiction even in the absence of an agreement as discussed below.

Respecting rights, title, and jurisdiction in the absence of an agreement

Excerpt from *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*
Government-to-government relationships include "ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdictions and laws".[207]

Incidents of lapsed ownership interests are relatively rare, negotiating government-to-government agreements can be time-consuming and costly. However, the absence of an agreement does not mean that a First Nation ceases to hold or exercise governmental authority and jurisdiction through its own laws and procedures.

Consistent with the principle of flexibility in government-to-government relationships, draft recommendation D.1 aims to facilitate respect for First Nations' rights, title, and jurisdiction even where no agreement has been established. While formal agreements can play an important role in advancing shared decision-making, they may not be practical for all First Nations. Importantly, the absence of an agreement does not diminish or negate inherent rights or title.

As both the responsible minister and the BC Supreme Court have decision-making authority under the legislation, draft recommendation D.1 proposes pathways for each body to identify and consider First Nations' interests based on asserted or established rights, title, jurisdiction, or ownership interests before making a final decision.

Under the current legislation, the BC Supreme Court has jurisdiction to issue vesting orders for real property or water system properties in a revived corporation. The

207. *Draft Principles*, *supra* note 202 at 3.

responsible minister has decision-making authority over all types of property that may pass to the province under the legislation. Draft recommendation D.1 maintains this division of decision-making authority, while clarifying how each decision-maker can appropriately recognize and respect First Nations' rights and interests.

Lessons from other models

Alberta's *Unclaimed Personal Property and Vested Property Act* provides an example of how legislation can authorize a responsible minister to recognize the jurisdiction of another government even without a formal agreement. The Act acknowledges that another jurisdiction could exercise "a role or function similar to the Minister" in relation to unclaimed personal property.[208]

Section 42 of Alberta's legislation allows the minister to transfer unclaimed personal property, or related records, to another jurisdiction to help locate the rightful owner. This authority exists in addition to the minister's power to enter into agreements with other governments that fulfil similar roles or functions.[209]

Thus, while Alberta's framework permits formal agreements with other governments, it does not require them for collaboration. The minister may liaise with, share information with, or transfer property to an official in another jurisdiction exercising comparable authority.[210] A similar approach could be applied in BC to enable coordination with co-existing Indigenous governing bodies. The committee's draft recommendations aim to reflect and adapt this model to the BC context.

Framing of the draft recommendations

Drawing on lessons from Alberta's approach, the committee developed draft recommendations that more fully reflect First Nations laws and perspectives. These recommendations recognize that First Nations laws and legal orders may define lapsed property interests differently, in accordance with the principles and values underlying those legal orders.

To operationalize this recognition, the draft framework proposes a process for identifying First Nations rights and interests through steps that include:

208. *Unclaimed Personal Property and Vested Property Act*, *supra* note 159, s 42.

209. *Ibid*, s 43.

210. *Unclaimed Personal Property and Vested Property Act*, *supra* note 159, s 42 allows for a transfer of property or information even in the absence of an agreement.

- active steps for identifying First Nations with asserted or established rights, title, jurisdiction, or ownership interests;
- providing notice to those Nations before a final decision is made by either the responsible minister or the BC Supreme Court; and
- ensuring First Nations whose rights and interests may be affected by a decision under reformed legislation by either the responsible minister or the BC Supreme Court have an opportunity to make submissions to the decision-making body.

The committee has not made a recommendation on whether First Nations who receive notice would have status as a party or intervenor in proceedings under reformed legislation. However, it makes recommendations with the intention that a First Nation would have standing to make submissions to the decision-making body.

Draft recommendation D.1.h) would require the court to consider the appropriateness of an order enabling the province to reallocate land for reconciliation purposes. This framing envisions the possibility of a process where a revived corporation may recover monetary compensation in lieu of an order vesting land and the responsible minister would exercise custodial control over the land in accordance with reformed legislation. This process would engage the province's obligations to consult and cooperate with First Nations whose rights and interest may be affected to obtain their free, prior, and informed consent in accordance with procedures and limitation periods set out in reformed legislation.

Potential implementation issues

In the case of a ministerial decision, the obligation to identify and notify First Nations with asserted or established rights or interests would rest with the responsible minister. In court proceedings, this responsibility would rest with the party applying for a vesting order.

The committee felt that at present, the most practical tool for identifying First Nations whose rights or interests may be affected is BC's Consultation Areas map, which facilitates contact with Nations that have formally asserted or established interests.[211] While the map may not capture all First Nations rights and title interests, it offers a useful starting point. As methods for identifying rights and title holders improve, implementation of these draft recommendations can proceed with greater certainty and precision.

211. See British Columbia, *Contacts for First Nation Consultation Areas*, online: <https://maps.gov.bc.ca/ess/hm/cadb/>.

Guiding questions for feedback on First Nations jurisdictional authority

1. Should BC legislation dealing with lapses in property ownership enable the exercise of First Nations jurisdiction?

Chapter 8. Provincial Authority: Claims, Restoration of Title, and Limitation Periods

Excerpts of *UN Declaration on the Rights of Indigenous Peoples*	
Art 10	Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
Art 28(1)	(1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. (2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Introduction

Draft recommendations E, F and G pertain to provincial authority. They are intended to guide and constrain the exercise of provincial authority under the proposed legislation. They give effect to the ministerial responsibilities through clear, transparent steps governing the management of property under the province's custodial control. As noted in the preceding chapter, where an agreement exists between the province and a First Nation, these steps are not intended to override an agreement in cases of inconsistency.

Land of dissolved BC corporations

Revival of a dissolved corporation within two years

Draft recommendation E.1 proposes that a reformed framework continue to allow a dissolved corporation's land to automatically return to its ownership if the corporation is revived under BC law within 2 years of dissolution.

To clarify the process, the committee recommends reframing the rule so that administrative and custodial control of the land does not transfer to the responsible minister until 2 years after dissolution. This reframing is captured in recommendation A.5.b). This would have the effect of delaying the transfer of custodial control, rather than requiring the land to revert, thereby minimizing confusion about when ownership formally vests in the province.

Under the proposed model, corporate owners could continue to apply to the BC Supreme Court for an order returning land to the corporation. As with other types of property, this process would require notifying First Nations with a potential interest in the land before a final decision is made and ensuring an opportunity for First Nations to provide submissions.

Comparative approaches

In developing these recommendations, the committee examined Ontario's *Forfeited Corporate Property Act*, which takes a more restrictive approach. Under that legislation, a corporation's property is fully forfeited to the province of Ontario upon dissolution, and there is no automatic right of reversion if the corporation is revived. Applications for recovery of forfeited property may be made in certain cases through the same process as provided for moral and legal claimants.

In contrast, BC's existing model, which automatically reverts property to a revived corporation, offers a greater prospect of continued viability, particularly for small businesses and community organizations that may experience a short hiatus in direction and management.

Rationale and practical implementations

The committee recognized that dissolution often occurs unintentionally. For instance:

- A small business operated by a single shareholder and director may dissolve if that individual passes away and their family is unaware of the corporate filing requirements. As the estate is being settled, corporate filings may lapse, resulting in dissolution and the transfer of assets to the province. Once the situation is discovered, the family or executor may apply to revive the corporation to manage its assets.
- A small non-profit society might fail to update its mailing address after a change in directors. Filing notices sent to the outdated address may not reach the new directors, resulting in dissolution. The oversight can later be corrected, and the society revived.

These scenarios illustrate why maintaining the automatic return of property upon revival remains important, particularly for small entities with limited administrative capacity.

Accordingly, draft recommendation A.5.b) proposes that custodial control of land held by a dissolved corporation not pass to the responsible minister until 2 years after the date of dissolution, provided the corporation has not been revived under BC law during that period. This approach preserves the current framework's features while improving clarity and reducing administrative confusion.

By ensuring that control does not transfer to the province until 2 years after dissolution, the framework supports fairness and administrative efficiency. The following section considers how similar principles could be adapted for land held by foreign or extra-provincial corporations, where questions of jurisdiction and intergovernmental coordination are more complex.

Land of foreign corporations

BC legislation allows for an automatic return of property only to corporations revived under BC law. Because foreign or extra-provincial corporations are subject to laws of their home jurisdiction, these provisions do not apply to them under the current framework.

However, as discussed in chapter 5, the proposed framework would deem land held by a foreign corporation to have a lapsed ownership interest after 2 consecutive years of unpaid property taxes. In practical terms, this provides foreign entities with a 2-year grace period to address any non-compliance before the province assumes custodial control of the land.

The proposed framework would also maintain opportunities for foreign corporations to recover property that has come under provincial custodial control, while adding measures to recognize and respect inherent First Nations rights and interests where they exist.

Under the current framework, when a foreign corporation dissolves in its home jurisdiction while holding property in BC, it has a few options for recovery. The corporation can revive under the laws of its home jurisdiction and apply to the BC Supreme Court for the return of its property. Similarly, under the proposed framework, a foreign corporation whose ownership interest has lapsed could apply to the Court for an order vesting the property back in the entity. Draft recommendation D.1.f)

requires that notice of the application for a vesting order be served on First Nations with asserted or established rights, including title in the property.

The proposed framework would also continue the existing approach that allows for individuals with a moral or legal claim against a dissolved corporation to apply to the Attorney General for a grant of the property. These claimants need not reside in BC, and the Attorney General would retain discretion under the proposed framework to consider such claims.

The recommendations for management of land of foreign corporations in which an ownership interest is deemed to lapse aim to maintain fairness, a continuation of certain current practices, and respect for Indigenous rights. The next section considers how the framework could continue to support claims from individuals with a moral or legal claim against the former property owner.

Recovery of property by moral and legal claimants

Current legislative framework

When property escheats to the province, the Attorney General has discretion to grant an ownership interest to a claimant who can demonstrate a moral or legal claim against the previous owner, or to someone the previous owner contemplated transferring the property to.[212] The Attorney General also has the discretion to reward someone who discovers an escheat by granting them an interest in the property, although such grants do not appear to be used in practice.[213]

This discretionary authority applies to both real and personal property.[214]

Comparisons with other jurisdictions

BC's framework differs from those in some other jurisdictions in three key areas: 1) the basis of the claim, 2) who can bring a claim, and 3) whether there is a time limit on claims.

Under BC's *Escheat Act*, a claimant must be a legal person and must establish a claim against the previous owner. Both the BC Supreme Court and the BC Court of Appeal have confirmed that this is a statutory limit on the Attorney General's discretion;

212. *Escheat Act*, *supra* note 3, s 5.

213. *Ibid,* s 5(b)(iii).

214. *Ibid*, s 8.

there is no general authority to grant escheated property on broader grounds not specified in the legislation.[215]

Examples of claims currently permitted under the Act include:

1. A former corporate owner that has revived.
2. A director or shareholder of a dissolved corporation with a legal or moral claim against that corporation.
3. A family member or relative of a director or shareholder of a dissolved corporation.
4. A distant relative of a deceased owner whose right to inherit is not recognized under the *Wills, Estates and Succession Act*.
5. A municipality, exercising its corporate powers, can assert a claim against the former owner.

In contrast, Alberta's *Unclaimed Personal Property and Vested Property Act* allows claims by "a person, governmental organization or other entity" based on an entitlement to the property itself.[216] Ontario's *Forfeited Corporate Property Act* likewise allows applications for relief based on a claim to the property, without explicitly restricting who may apply.[217] Similarly, New Brunswick's *Escheats and Forfeitures Act* authorizes grants to "any person or persons having a moral claim to the property, or on the person to whom it had belonged".[218]

BC's legislation, by comparison, does not recognise moral claims to the property itself. This has been interpreted as a deliberate statutory limit on the Attorney General's discretion.[219] As a result of how BC's current framework is structured, it may be challenging for a First Nation to bring a claim to property on the basis of underlying title.

215. *Mowatt* BCCA, *supra* note 15 at para 74.

216. *Unclaimed Personal Property and Vested Property Act*, *supra* note 159, s 48.

217. *Forfeited Corporate Property Act*, *supra* note 156, s 26.

218. *Escheats and Forfeitures Act*, RSNB 2014, c 107, s 2(1).

219. See *Mowatt* BCSC, *supra* note 15 at para 99. Given the amount of time that can lapse between an escheat and a subsequent claim, the ability to establish a moral claim as against the previous owner can be challenging. Noting that unfairness may arise from such a situation, the BCCA held that the ability to bring a moral claim is intended to relieve against legal obstacles. That may mean there can be a successor to a moral claim. It does not create a new claim as against the property. See *Mowatt* BCCA, *supra* note 15 at paras 70 – 74.

BC's *Escheat Act* also does not impose a time limit on moral or legal claims. This can create uncertainty, especially in cases where agreements anticipate potential land transfers to First Nations upon a "final escheat," a term not defined in the legislation.[220]

Proposed approach

Draft recommendation E.2 proposes maintaining the existing ability for persons with a moral or legal claim against the previous owner, or those contemplated as transferees by the previous owner, to apply for recovery of property. However, the proposed framework, and in particular draft recommendation E.3, would introduce clear limitation periods to define when property with a lapsed ownership interest may be used for other purposes, reducing uncertainty for all parties.

In developing these recommendations, the committee considered whether the claimant framework could be expanded to explicitly recognize First Nations as potential claimants based on underlying title interests. A key concern with such an approach is that it could require the responsible minister to balance individual personal claims against the collective rights and interests held by First Nations. The recommendations therefore propose separate processes and timeframes – one for considering individual moral and legal claims, and another for considering the return of property to a First Nation. This approach is intended to ensure clarity and fairness in decision-making.

While the framework continues to recognize opportunities for individuals or entities to recover property through moral or legal claims, it also aims to clarify when such opportunities conclude. Establishing limitation periods is key to ensuring transparency, administrative efficiency, and certainty for all parties, including First Nations, claimants, and the province.

Limitation periods

Under the current framework, there are no limitation periods on when claimants may recover property. However, the Attorney General has discretion to dispose of escheated property, and the province has entered into agreements with treaty first nations for the transfer of property that has "finally escheated" to the Crown. The absence of limitation periods, combined with this discretionary authority, creates uncertainty around when the Crown may choose to use or transfer escheated property for purposes other than recovery by a former owner or a moral or legal claimant.

220. Guidance has now been added into the *Escheat Act* in relation to escheats on Haida Gwaii only.

To address this uncertainty, the committee recommends introducing clear limitation periods.

Comparative context

Some other jurisdictions have implemented time limits on claims. For example, both Alberta and Ontario apply a 10-year limitation period on the recovery of unclaimed or forfeited property.[221] In Ontario, the limitation period begins at the date of corporate dissolution, and the province may convert forfeited corporate property to Crown use after 3 years, provided it registers a notice of intent on title.[222] These examples demonstrate how limitation periods can help balance fairness to potential claimants with the Crown's ability to manage property efficiently.

Proposed limitation periods

The draft recommendations propose a 5-year limitation period beginning on the date when custodial control of the property transfers to the responsible minister. This timeframe is designed to provide sufficient opportunity for legitimate claims while ensuring the property can ultimately be put to beneficial use.

This is how this approach would apply in different contexts:

BC corporations

If a BC corporation misses 2 consecutive years of filings it is dissolved. Any ownership interests in land would be reallocated to the custodial control of the responsible minister 2 years after the date of dissolution. If the corporation revives within 2 years of dissolving, it automatically retains any ownership interests in land. Following that, there would be an additional 5-year period during which the corporation could revive and apply to the BC Supreme Court for recovery of property. Within this same 5-year period, a moral or legal claimant could apply to the responsible minister for a transfer of property. This effectively creates a period of 9 years from the first missed filing date in which a corporation governed by BC law could recover property.

Foreign corporations

If a foreign corporation misses 2 consecutive years of property tax payments, any ownership interest it holds in land in BC is deemed to lapse and custodial

221. See *Unclaimed Property and Vested Property Act*, *supra* note 159, s 48(8); *Forfeited Corporate Property Act*, *supra* note 156, s 26(2). In Ontario, there is discretion to permit an application after 10 years if the property has not otherwise been granted or disposed of.

222. *Forfeited Corporate Property Act*, *supra* note 156, s 24.

control transfers to the province. In the 5-year period following that, the corporation could seek recovery of the property through the BC Supreme Court or a moral or legal claimant could apply to the responsible minister for recovery of the property.

Individuals without heirs

If an individual dies without a will or legal heirs, custodial control of their property passes to the province upon death. A moral or legal claimant would have 5 years to apply to the responsible minister for a grant of the property.[223]

The committee also recognized that claims initiated near the end of the limitation period, and any resulting reviews or appeals, would extend the overall timeframe for resolution. For this reason, a 10-year limitation period was considered but ultimately thought to be unnecessarily lengthy when coupled with the grace periods provided to dissolved corporations.

Uses of property enabled at the end of the limitation period

Once the limitation period has passed, draft recommendations E.4 and E.5 propose several ways the province could administer property under its custodial control. At this stage, ministerial discretion would focus on determining whether the property should be transferred to a First Nation, used for Crown purposes, or otherwise disposed of. These decisions would occur independently of any earlier applications by revived corporations or moral or legal claimants.

Under the proposed framework, any ministerial decision made after the limitation period must include written reasons, in accordance with recommendation E.6. This ensures transparency and supports potential judicial review, reinforcing accountability in the exercise of Crown discretion.

Pathways for post-limitation period use

At the end of the claimant period, the responsible minister would be required to consider several possible pathways, including:

- whether the property, or any portion of it, should be restored to First Nations with an underlying interest;

223. Consistent with current practice, the estate could also be liquidated and managed under the *Unclaimed Property Act*, which does not have limitation periods.

- if restoration is not appropriate, whether another form of compensation is warranted; and
- whether to transfer the property, or a portion of it, to another provincial ministry, a local government, or offer it for sale.

Consideration of these options must be done in consultation and cooperation with impacted First Nations, recognizing both the diversity of potential property types and the differing priorities of First Nations.

Flexibility and practical considerations

As escheated property can vary widely, from mineral title and residential lots to partial interests within strata developments, the recommendations acknowledge that a direct restoration of property may not always be practical or preferred. Some properties may carry environmental liabilities from prior use, require costly remediation, or hold limited value for cultural or community purposes. Additionally, where multiple First Nations share interests within a territorial area, a physical return of property may be complex to administer.

In such cases, other forms of compensation may be more appropriate. The responsible minister's discretion to sell the property or transfer it to another provincial ministry or local government could be used to facilitate or fund this form of redress.

Consideration of distinct interests

Under the proposed framework, Crown or local government use of property would be permitted after:

1. revived corporations or moral and legal claimants have had an opportunity to exercise their statutory rights; and
2. First Nations have had an opportunity to exercise their inherent rights.

This sequencing preserves an important principle of existing escheat law: that legitimate claims take precedence over the Crown's general interest in using escheated property for public purposes. As has been observed:

> One major final theme is the Crown's ability to revest escheated property to individuals who have a moral claim to the property, or against the individual from whom the property escheated. This feature of escheat legislation suggests a normative acceptance that the legitimate claims of private individuals

> should trump any claim the government has to use escheated property for the common good of all Canadians.[224]

The proposed framework builds upon this principle by establishing parallel pathways for First Nations. It recognizes that legitimate First Nations' claims based on underlying rights and title should similarly take precedence over Crown or local government use of property where personal ownership interests have ended. Importantly, the framework separates the considerations applicable to private claimants from those applicable to First Nations, ensuring each is addressed within its proper legal and constitutional context.

Guiding questions for feedback on provincial authority: claims, restoration of title, and limitation periods

1. Should BC legislation dealing with lapses in property ownership place a time limit on the ability of revived corporations and moral or legal claimants to apply for recovery of property interests?
2. Should the BC Supreme Court be required to consider whether to reallocate land to the province for reconciliation purposes before deciding on an application for a vesting order by a revived corporation?
3. Should moral or legal claims to property be allowed based on discovery of a lapsed interest?

224. MacKay, *supra* note 48 at 49.

Chapter 9. Provincial Authority: Responsibility for Liabilities

Introduction

The *Escheat Act* currently offers limited guidance on responsibilities for liabilities that may attach to property. The Act provides that money arising from renting or selling escheated property "is freed from any claims on it, whether legal, equitable or moral, and must be paid into the consolidated revenue fund". However, the Attorney General also has discretion to authorize the Minister of Finance to pay a person with a legal, equitable or moral claim "an amount of money the minister considers appropriate".[225]

Under English common law, an escheat terminates the ownership interest of the deceased or dissolved corporation but does not terminate derivative interests. For example, if a corporation owns land in fee simple and a separate entity holds a mortgage interest in the land, dissolution of the corporation that holds the fee simple interest only terminates that interest and not the mortgage.[226] In BC, however, section 13 of the *Escheat Act* suggests that payment of an outstanding mortgage on fee simple land that escheats would depend entirely on the minister's discretion.

Furthermore, the *Escheat Act* does not clarify who bears responsibility for any financial or environmental liabilities associated with escheated property. Draft recommendation F.1 aims to address this uncertainty by clarifying responsibility for liabilities.

Comparative context

Other jurisdictions

Ontario's *Forfeited Corporate Property Act* allows the responsible minister to cancel encumbrances on forfeited corporate property, thereby ending any right to enforce the encumbrance against the property or its proceeds. While the Act provides some exceptions to this authority, such as an inability to cancel interests held by the Crown or debts in the form of property taxes, it does include the ability to cancel mortgages and liens against the property.[227] Ontario's legislation also makes it clear

225. *Escheat Act*, *supra* note 3, s 13.

226. See *Pennistone Holdings*, *supra* note 12 at para 22.

227. *Forfeited Corporate Property Act*, *supra* note 156, ss 1 & 18.

that any liabilities and obligations of the prior owner do not fall to the Crown upon dissolution and forfeiture.[228] Further, the Crown is immune from liabilities arising from forfeited property and has no obligation to maintain or manage it.[229]

Alberta's *Unclaimed Property and Vested Property Act* also provides the responsible minister with discretion to cancel encumbrances on vested land. The holder of a registered interest can commence an action to enforce it. However, the province is not liable for any costs arising from an encumbrance or registered interest that arose before the vesting of land in the Crown. The province can only be liable for costs arising from an encumbrance or registered interest after the vesting of land in the Crown if the responsible minister has actual knowledge of and accepts the registered interest.[230]

Other forms of abandoned property

The committee also looked to frameworks for managing liabilities associated with other forms of abandoned property. Specifically, abandoned or ownerless marine vessels.

Canada's *Wrecked, Abandoned or Hazardous Vessels Act* addresses responsibilities and liabilities for abandoned marine vessels at the federal level. Under that legislation, the Minister of Fisheries and Oceans may decide whether a vessel poses, or may pose, a hazard. Hazards can relate to navigation, the environment, health, safety, or economic interests.[231] If the minister has reasonable grounds to believe a vessel poses, or may pose, a hazard, they have powers under the legislation to prevent, mitigate or eliminate the hazard. Costs incurred by the minister for steps taken to prevent, mitigate or eliminate a hazard can be recovered from the vessel owner, if found, and/or from proceeds of a disposition of a vessel.[232]

Proposed approach

The committee considered the possibility that an approach that limits Crown liability for environmental damage to land caused by a previous owner could shift those liabilities to a First Nation in a property transfer.

228. *Forfeited Corporate Property Act*, *supra* note 156, s 3.

229. *Ibid*, s 4.

230. *Unclaimed Property and Vested Property Act*, *supra* note 159, s 28.

231. *Wrecked, Abandoned and Hazardous Vessels Act*, SC 2019, c 1, ss 8 & 27 [*WAHVA*].

232. *Ibid*, ss 36, 37, 41 & 45.

The committee also considered that many frameworks for ownerless property ensure that the financial liabilities of a previous owner do not pass to the underlying title holder and allow for recovery of expenses associated with property administration and remediation from a prior corporate owner if revived or from directors and shareholders of the dissolved corporation.

These considerations informed draft recommendation F.1, which would clarify that a prior owner's liabilities to creditors do not pass to the Crown or a First Nation upon a lapse in property ownership. It also places responsibility for identifying, preventing, mitigating, and eliminating hazards that the property may pose on the minister responsible for custodial control of the property. Hazards would include those related to environmental, health, safety, and economic interests. The responsible minister may recover costs incurred in identifying, preventing, mitigating, and eliminating hazards arising from a prior corporate owner if revived, or from a director or shareholder of that prior corporate owner.

Guiding questions for feedback on provincial authority: responsibility for liabilities

1. Should BC legislation dealing with lapses in property ownership require the province to address liabilities and have the ability to recover associated costs from prior owners?

Chapter 10. Provincial Authority: Search and Notification Requirements

> "One oddity of escheat legislation is that the provincial Crowns do not appear to have any active means of determining when property escheats to them."[233]

The interrelated issues of searches and notifications

The process of escheat under the common law is best described as passive. No action is required on the part of the Crown to trigger an escheat, nor are active steps generally taken by the Crown to monitor escheats. In some jurisdictions, however, governments are required to maintain public, searchable registries of escheats. Registries facilitate the recovery of property interests by claimants and promote transparency in the administration of property interests that fall to the government.

A register of property that passes to the province under the *Escheat Act* is not a requirement in BC, nor does one exist. When land escheats, it is an exception to the general rule of indefeasible title, meaning the land title registry does not accurately reflect the state of ownership.[234]

In the absence of any active means of identifying and recording property that passes into the custodial control of the province, the reformed framework proposed herein would be ineffective in practice. Draft recommendation G.1, therefore, proposes implementation of search mechanisms and notification systems for lapsed ownership interests.

The passive process

Recent litigation involving the *Escheat Act* demonstrates the province's passive role in escheat discovery.

The case of *Mowatt v British Columbia* involves a judicial review of the Attorney General's exercise of discretion in relation to a claim for escheated land. The case involved a parcel of land, now located in the municipality of Nelson. The owners of the neighbouring parcel of land initiated court proceedings to clarify the ownership

233. MacKay, *supra* note 48 at 49.

234. *Land Title Act*, *supra* note 106, s 23(2)(f).

interest in the land at issue. One outcome of those proceedings was a determination by the Supreme Court of Canada in 2017 that the land had escheated to the province around 1930.[235] The escheat occurred without the province's knowledge and despite the province having taken a position for a period of time that the land had not escheated. It occurred despite the City of Nelson continuing to charge taxes on occupiers of the land and, for a period of time, taking the position that the land was City land.[236]

The escheat resulted from an error in the corporate owner's dedication of the land prior to dissolution. The error meant the land was never legally disposed of through processes recognized under BC law. Prior to dissolution, the corporate owner made an invalid dedication of the land as a road allowance. As the dedication was invalid, the land was not legally disposed of prior to dissolution.[237] The result was decades of various parties (both governmental and individual) taking different positions on the ownership of the land and many years of litigation to clarify and resolve the issue.

Whereas the common law of escheat previously developed in a way that required the Crown to investigate potential escheats of land upon the death of a landholder without a legal heir, modern legislation has largely evolved to eliminate investigations in most escheat contexts. BC's *Escheat Act* continues to provide the Attorney General with discretion to apply to the Supreme Court for an inquiry when an individual landholder dies without a known heir. However, the Act does not provide for any inquiry to occur upon the dissolution of a corporate landholder – the context in which most modern escheats occur. This leads to the above-noted oddity in escheat legislation that Crowns have no active means of determining when land escheats to them.

Impact of the absence of investigations

The lack of investigative mechanisms means the province generally becomes aware of an escheat only when a revived corporation or a moral or legal claimant notifies the Crown. This process can lead to significant delays in discovering an escheat and to a prolonged period during which the title status is unclear.

If this process were to continue under the proposed framework, there would likely be situations in which the limitation period would run its course before claimants

235. *Nelson (City) v Mowatt*, *supra* note 175 at para 7.

236. *Mowatt* BCCA, *supra* note 15 at paras 5 – 10.

237. *Ibid* at paras 4-5.

learn of the lapsed ownership interest. Further, First Nations would face significant barriers to learning of lapsed ownership interests in areas where they hold rights and title.

The province, however, has access to and control over records of land ownership and corporate registries. The Attorney General is also entitled to notice of court applications for estate proceedings where any part of the estate would pass to the province under the *Escheat Act* and to notice of court proceedings by revived corporations for property vesting orders.[238]

Draft recommendation G.1 proposes implementing active searches and notification systems for property in which an ownership interest has lapsed. These recommendations intend to facilitate the process outlined in the proposed framework and promote greater fairness and transparency.

Enabling searches

The committee considered present-day challenges with implementing searches for lapsed ownership interests in property. The committee also considered how challenges could be addressed through legislative reform, supported by improved search technology. The implementation of searches is likely to result in a best efforts system for identifying lapsed property interests.

Draft recommendation G.1.a) requiring the responsible minister to make reasonable efforts to run searches for land with a lapsed ownership interest would involve gathering information from across provincial agencies. Interoperable systems can enable the exchange of data and information across agencies with minimal ongoing human involvement. Automated searches and improved interoperability across agencies could significantly facilitate the implementation of the processes proposed.

Records managed by the Registrar of Companies

Many escheats follow non-voluntary corporate dissolutions. Prior to the non-voluntary dissolution of a BC corporation, the Registrar of Companies issues various notices.

If a BC corporation has failed to file annual reports or other records as required by the *Business Corporations Act* for 2 consecutive years, the Registrar issues a letter to the corporation informing them of the failure and the powers of the Registrar to

238. *Supreme Court Civil Rules*, BC Reg 168/2009, Rule 25-2. *Escheat Act*, *supra* note 3, s 4(5).

dissolve the company.[239] If the company does not respond to address the failure within one month, the Registrar publishes a further notice on the BC Laws website providing an additional month to comply with the legislation.[240] If the company continues to not comply, the Registrar may dissolve the corporation and a notice of dissolution is published on BC Laws.

Provincial land registry records

Any assets the corporation holds at the time of dissolution, including interests in land, vest in the province under the *Escheat Act*.[241] If the corporation is restored within 2 years after dissolution, any land that vested in the province will automatically revert to the corporation as though it had not dissolved.[242] These changes in property ownership are not recorded in the land title registry. The registry continues to show the dissolved corporation as the owner throughout.

The land title registry is updated after the province creates a new grant. For example, after the province grants the land to a moral or legal claimant. If the property that escheated was initially Crown granted property, for example under the *Mineral Tenure Act* or the *Land Act*, the Attorney General can direct the Surveyor General to cancel the survey of the property and subsequently update the land registry.[243]

Challenges with searches

There are challenges in implementing systems to identify escheated properties. To identify escheats from dissolved corporations, corporate dissolution records would need to be cross-referenced with land title records. However, as the corporation may revive and recover its property, automatically or by court application, a corporate revival would also need to be considered.

Land title record searches can be challenging if a corporation's registered name does not match the name used in the land title registry. The Land Title Survey Authority of BC advises that property searches by owner name can vary, particularly for

239. *Business Corporations Act*, *supra* note 180, s 422(1).

240. Law Society of BC, *Practice Material: business: Company* (Professional Legal Training Course 2025) at 61.

241. *Escheat Act*, *supra* note 3, s 4(1).

242. Law Society of BC, *supra* note 240 at 67.

243. *Escheat Act*, *supra* note 3, s 14.

corporations. To account for this, they suggest using fuzzy searches with partial names and alternative spellings to locate records associated with a corporation.[244]

The need to cross-reference different registries, the possibility of corporate name changes, and the possibility of corporate revival all create challenges for identifying lapses in property ownership. However, as the capabilities of automated search systems improve and interoperable systems are implemented, these challenges are likely to be easier to address.

One way to address some of the challenges in identifying properties is to minimize reversionary rights for revived corporations. This approach was adopted in Ontario under the *Forfeited Corporate Property Act*. Under that legislation, property of a dissolved corporation fully vests in the province at the time of dissolution. Revival of a corporation does not entitle the prior corporate owner to any interest in the property.[245] Any statutory right of revival is limited to non-voluntary dissolutions and revived corporations can apply for a return of forfeited property under the same application procedure as a moral or legal claimant. This process limits the avenues for recovering forfeited property by revived corporations compared with those in BC. Presumably, it also simplifies the process of identifying forfeited properties and the province's ability to generate a publicly searchable list of forfeited properties.[246]

For reasons discussed in chapters 5 and 7, the committee proposes that a reformed framework not divest corporations of their land immediately upon dissolution. Rather, there would be a grace period during which interests in land would return to a revived corporation. Therefore, the proposed approach must address any challenges this grace period creates.

There are other factors which impact the identification of lapsed property interests in the context of foreign corporations. As discussed in chapter 5, dissolution of a foreign corporation is governed by its home jurisdiction and a search of the BC corporate registry would not identify dissolved foreign corporations. This complication is addressed in part through the proposed approach of deeming ownership interests of foreign entities to lapse upon 2 consecutive years of unpaid property taxes. A proposal for identifying these properties is included below.

244. Land Title Survey Authority of BC, "Title Search by Owner Name", (last modified 11 July 2022), online: *LTSA System Help* <https://help.ltsa.ca/ltsa-enterprise/title-search-owner-name>.

245. *Forfeited Corporate Property Act*, *supra* note 156, s 9(2).

246. See Ontario, "Forfeited corporate properties" (last updated 4 March 2025), online: <https://www.ontario.ca/page/forfeited-corporate-properties>.

Proposed approach

Draft recommendation G.1.a) proposes that legislation require the responsible minister to make reasonable efforts to run searches for land held by dissolved corporations, resulting in a transfer of custodial control to the province.

For BC corporations, this would involve obtaining records from the corporate registry of corporations which have been dissolved for more than 2 years. It would further involve obtaining records from the land title registry of any registered interests in land in the name of those dissolved corporations.

For foreign entities, it would also involve obtaining records of delinquent property taxes.

This draft recommendation is made with an awareness that it would likely require updates to how these records are maintained. Interoperable record systems and the use of automated searches would facilitate the fulfilment of a legislative requirement of this nature.

For land and other forms of property flowing from the estate of a deceased person without a legal heir, draft recommendations G.1.b) and c) propose a continuance of the current procedure whereby the responsible minister can apply to the Supreme Court for an order for making inquiries necessary to determine whether custodial control of any of the property falls to the province. However, these provisions would also include the ability to determine whether custody falls to the province or to a First Nation pursuant to the laws of the First Nation. This is intended to recognize that a First Nation's laws and legal orders may govern the distribution of certain property, including land, based on cultural significance or based on the identity of the previous owner as a member of the First Nation.

Property of cultural significance to a First Nation

Increasingly, there is recognition that property of cultural significance to a First Nation should not be subject to state laws of distribution, both in family law contexts and estate distribution.

The BC Ministry of Attorney General has considered how the distribution of family property under the *Family Law Act* impacts property of Indigenous cultural value or significance. Within that context, the Ministry suggested changes to the *Family Law Act* that would exclude Indigenous cultural property from the property courts consider in distributing family property. The proposed changes would mean that where an Indigenous spouse holds property of cultural significance to them or their Indigenous community, it would be excluded from the divided assets upon separation. The

proposed changes would also include measures to recognize First Nations legal orders that may apply to the property.[247]

In the context of succession law, the New Zealand Law Reform Commission has recommended reforms that would see taonga, or property of Māori cultural significance, excluded from state succession law and governed by tikanga Māori instead. As they note in their report, taonga is already excluded from the definition of family chattels in New Zealand and therefore not considered in the division of family property. The recommendations made in the context of succession law, if enacted, would mean that a person could express a testamentary wish in their will regarding taonga, but any dispute regarding the succession of taonga would be determined by tikanga, and taonga would be excluded from distribution under the state's *Administration Act* on intestacy. The recommendations further provide that taonga should be defined within a tikanga Māori construct, recognizing that taonga and the value it holds for communities exists on a spectrum.[248]

Summary of proposals

The committee's proposed approach recognizes that, in the context of the types of property and situations encompassed by the *Escheat Act*, there is a need to identify land, waters, and property of cultural significance in which First Nations may have an interest and there is a need to identify situations where a First Nation has succession laws that apply to its members. The draft recommendations are intended to ensure that the responsible minister makes reasonable efforts to identify these situations. Regular automated searches of provincially held records are one means of enhancing awareness of lapses in ownership interests.[249] Another means is inquiries by the responsible minister in estate administration proceedings with a two-fold purpose: 1) identifying responsibilities held by the province and 2) identifying responsibilities held by First Nations governments.

Enabling notification requirements

Draft recommendations G.1.d), e) and f) pertain to requirements to provide notice of lapsed ownership interests to the public and to potentially impacted First Nations.

247. British Columbia, Ministry of Attorney General, *Family Law Act* Modernization Project "Phase 2: Care of and Time with Children and Protection from Family Violence", Policy Intentions Paper (August 2025), at chapter 7, online: https://engage.gov.bc.ca/app/uploads/sites/121/2025/08/FLA-Policy-Intentions-Paper.pdf.

248. Te Aka Matua o te Ture Law Commission, *supra* note 155, chapter 3.

249. As water system properties are generally attached to real property, they could generally be identified through the same measures as land.

The current framework does not require the province to maintain publicly accessible records of property that has passed to the province under the *Escheat Act*.

Comparative context

In Alberta, Ontario, and Quebec, legislation analogous to the *Escheat Act*, requires the province to publish a notice when property falls to a provincial ministry to administer. The form of publication can vary.

In Alberta, the responsible minister must maintain a repository of detailed information on unclaimed and vested property. In addition, an online search tool must be maintained that allows the public to access records of unclaimed property held by or vested in the province.[250]

Where it falls to the responsible minister to administer unclaimed property in Quebec, a notice of this fact must be published in the official gazette as well as newspapers in the locale of the assets. In respect of any real estate, a notice must also be published on the land register.[251]

In Ontario, property that falls to the province by way of escheat for lack of legal heirs is regulated differently from property of a dissolved corporation that is forfeited to the province by law. Under the *Forfeited Corporate Property Act*, the province can take steps to dispose of or use forfeited property for Crown purposes 3 years after dissolution so long as the provincial government publishes a public notice of its intention to use or dispose of the property.[252] These public notices are posted on the government of Ontario's website.[253]

Public records are sometimes maintained for other types of property held by federal or provincial governments. For example, there are public databases of government surplus property, forfeited and seized property offered for sale, and directories of government owned and leased properties. These types of public databases could serve as models for a searchable, online registry of properties for which ownership interests have lapsed.

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250. *Unclaimed Personal Property and Vested Property Act*, *supra* note 159, ss 46 & 47.

251. *Loi sur les biens non réclamés*, *supra* note 161, s 17.

252. *Forfeited Corporate Property Act, supra* note 156, s 24. Note that property of a dissolved co-operative can be disposed of or converted to Crown use 2 years post-dissolution. Public notices are not required under the Ontario *Escheat Act*, *2015*, SO 2015, c 38, Sch 4.

253. Ontario, "Forfeited corporate properties" (last modified 4 March 2025), online: <https://www.ontario.ca/page/forfeited-corporate-properties>.

Notice to First Nations

Separate from and in addition to any requirements to maintain a public registry, draft recommendation G.1.d) would require the province to give notice to potentially impacted First Nations of land, water system properties, and cultural property for which an ownership interest has lapsed or where a member of a First Nation dies without any known heirs to inherit their property.

Situations that involve succession and an absence of legal heirs are likely best managed through direct notification to the First Nation of which the deceased was a member.

Situations involving land and other forms of property that would typically flow from corporate dissolution, and that may involve property in which First Nations have an interest, could be managed under an approach similar to that taken in BC's *Environmental Assessment Act*. Drawing on this approach, procedural steps could include:

a) The responsible minister identifies lapsed ownership interests through active searches of provincial records or the receipt of information through other sources.

b) The responsible minister identifies First Nations whose rights and interests may be affected using available consultation area tools and existing relationships and knowledge of treaty or established rights or asserted Aboriginal rights or title within the locale of the property.

c) The responsible minister reviews any agreements in place with the First Nations whose rights and interests may be impacted to consider whether there are additional considerations outside the legislative framework.

d) The responsible minister notifies First Nations whose rights and interests may be impacted of the lapsed ownership interest and shares information regarding potential next steps, as guided by the legislation or any agreements.

e) The responsible minister lists information regarding property with a lapsed ownership interest on a publicly searchable database that allows for sharing a description of the property, the stage the property is in within the legislative framework (i.e., accepting claims), and information on how to submit a claim for the property.[254]

254. The BC EPIC database for sharing information on environmental assessment projects provides a good example of a searchable database with this level of information. See British Columbia, "EPIC", online: <https://projects.eao.gov.bc.ca>.

f) For any real property, the responsible minister registers the status of the property in the land title registry.

Draft recommendation G.1 is intended to support a procedural framework similar to that set out above.

The committee recognizes that due in part to past restrictions on the ability of certain First Nations to hold fee simple interests, many First Nations have created corporate bodies to hold land. These steps may have been necessary where fee simple lands were provided to a First Nation as part of a reconciliation agreement. Such lands can potentially escheat if the corporate body defaults on filing requirements. In these types of situations, there would be a heightened onus on the province to engage in early consultation and cooperation with First Nations whose rights and interests may be affected.

Guiding questions for feedback on provincial authority: search and notification requirements

1. Should BC legislation dealing with lapses in property ownership require the province to take reasonable steps to identify lapsed ownership interests?
2. Should the province be required to provide notice to the public and First Nations of property in the province's custodial control?

Chapter 11. Conclusion

This consultation paper aims to inform readers of the issues considered by the Escheat Act Modernization Project Committee in developing draft recommendations to reform BC's legislation governing lapses in ownership interests. It further invites readers' input on issues related to modernizing BC's *Escheat Act*.

Part one sets out foundational information through an introduction to the project, an overview of the development of escheat law in BC, and considerations related to the obligation under the *Declaration Act* to align BC laws with the *UN Declaration*.

Part two sets out the committee's draft recommendations. It starts by providing a holistic outline of the proposed reformed framework. It then explores the issues and factors the committee considered in developing the draft recommendations.

Once the paper moves into a discussion of the issues informing the draft recommendations in chapters 5 through 10, it presents guiding questions at the conclusion of each chapter. These are intended to help readers provide input on the proposed framework. These questions gauge views on the proposed framework at a high level. However, as noted at the outset, input on specific issues discussed in the paper is also welcome.

The broad issues considered in the development of the draft recommendations include:

- What the foundational principles informing reformed legislation ought to be and the scope of the legislation. This issue is discussed in detail in chapter 5. The draft recommendations propose a framework that is not grounded in the common law of escheat but is informed by aspects of current escheat law.
- How reformed legislation might guide the exercise of ministerial discretion. This issue is discussed in chapter 6. The draft recommendations propose a statement of ministerial responsibilities informed by the distinct purposes the proposed framework would serve.
- Recognition of and respect for First Nations rights, title, and jurisdiction within reformed legislation is explored in chapter 7. The draft recommendations propose enabling a broad range of agreements as well as recognition of inherent rights and jurisdiction even in the absence of an agreement.
- The exercise of provincial jurisdiction in relation to claims for property and restoration of title interests. This issue also includes consideration of limitation periods. It is discussed in chapter 8. The draft recommendations aim to

provide pathways for recovery of property by revived corporations and claimants as well as separate pathways for the restoration of First Nations' interests. These distinct pathways would be facilitated through the introduction of limitation periods.

- The exercise of provincial authority in relation to liabilities that attach to property in the province's custodial control. Chapter 9 explores potential approaches to managing liabilities. The draft recommendations would require the province to identify and address hazards the property may pose. They also provide pathways to recover associated costs.
- The exercise of provincial authority in relation to searches and notifications of lapsed property interests. Chapter 10 examines ways to enhance awareness of lapsed property interests. The draft recommendations propose implementation of routine searches and requirements to provide notice to the general public and First Nations.

The framework as a whole is further informed by comparative research of legal frameworks adopted in other jurisdictions for managing lapses in ownership interests and consideration of the rights and obligations affirmed in the *UN Declaration*.

BCLI and the Escheat Act Modernization Project Committee strongly encourage the public to consider the options for reform set out in this consultation paper and to provide a response. Responses are important to help the committee move to the next stage of this project, which involves crafting final recommendations for law reform.

APPENDIX A

List of Guiding Questions for Feedback

This is a list of all the guiding questions set out in this paper and that inform the draft recommendations for reform. All of the questions relate to how BC legislation governing lapses in property ownership should be framed.

Responses can be submitted through our online survey or by email:
https://www.surveymonkey.com/r/EAMP
consultations@bcli.org

Issue 1: Foundational principles and scope of reformed legislation (chapter 5)

1. Should the legislation be based on the law of escheat, meaning an area of law based in assumed Crown title?

   If not based on escheat, should the legislation be based on the province having custodial responsibility over certain property when the individual owner cannot be located?

2. Should land, buildings, water systems, and personal property be treated in similar ways under the legislation?

3. Should ownership interests of foreign entities in land lapse after 2 consecutive years of unpaid property taxes?

Issue 2: Ministerial responsibilities (chapter 6)

3. Should the legislation include a statement of ministerial responsibilities to guide the exercise of statutory discretion?

   If yes, do you agree that the following are appropriate ministerial responsibilities:

   a) promoting recovery of property by moral or legal claimants;

   b) identifying encumbrances associated with the property;

   c) identifying, mitigating, and addressing environmental and financial liabilities associated with the property;

   d) consulting and cooperating with First Nations whose inherent rights, including title and jurisdiction may be impacted by decisions related to the property in order to obtain their free, prior, and informed consent;

e) facilitating the return of property, or other forms of restitution and redress, to First Nations whose rights, including title may be impacted; and

f) carrying out its responsibilities within the Act as it relates to facilitating the exercise of inherent rights, title, and jurisdiction by First Nations.

Issue 3: First Nations jurisdictional authority (chapter 7)

4. Should the legislation enable the exercise of First Nations jurisdiction?

Issue 4: Provincial authority: Claims, restoration of title, and limitation periods (chapter 8)

5. Should there be a time limit on the ability of revived corporations and moral or legal claimants to apply for recovery of property interests?
6. Should the BC Supreme Court be required to consider whether to reallocate land to the province for reconciliation purposes before deciding on an application for a vesting order by a revived corporation?
7. Should moral or legal claims to property be allowed based on discovery of a lapsed interest?

Issue 5: Provincial authority: Responsibility for liabilities (chapter 9)

8. Should the province be required to address liabilities and have the ability to recover associated costs from prior owners?

Issue 6: Provincial authority: Search and notification requirements (chapter 10)

9. Should the province be required to take active steps to identify lapsed ownership interests?
10. Should the province be required to give notice to the public and First Nations of property in the province's custodial control?

APPENDIX B

Project-Committee Members

Lydia Hwitsum (Xtli'li'ye) was the committee chair from the start of the project until December 2025. Ms. Hwitsum has over 20 years of experience in leadership positions in Indigenous governance in BC and Canada, and recently served a term as Chief of the Cowichan Tribes. She previously served four two-year terms as the elected Chief, and in 2019 was elected to a second term on the First Nations Summit Political Executive. Ms. Hwitsum has been a staunch advocate for Indigenous and human rights, presenting at local, national, and international stages, including at the UN Permanent Forum on the Rights of Indigenous Peoples.

Nigel Baker-Grenier is the committee chair as of January 2026. Nigel is an Associate at White Raven Law. He holds a Bachelor of Arts in the History Honours program at the University of British Columbia and a Juris Doctor from the Peter A. Allard School of Law. He was called to the BC Bar in 2020. He was awarded the Beverly McLachlin Legal Access Award in 2019 and the Fasken Martineau DuMoulin LLP Indigenous Entrance Scholarship in 2016. Nigel has authored the following articles: "Kitimahkinawow ekwa Kitimahkisin: Pity and Compassion in Cree Law" (published in Western Journal of Legal Studies in 2021) and "Esdii Wal: Gitxsan Law Grounded in Epistemology" (published in the University of Toronto Faculty of Law Review in 2018). Nigel is a recipient of the 2022 Courage in Law award from the Indigenous Law Students Association and teaches as an Adjunct professor at the Indigenous Community Legal Clinic.

Nigel belongs to the Gisgahaast clan from the Gitxsan Nation. He is also Mushkegowuck (swampy Cree) from Churchill, Manitoba. During his upbringing, he was immersed in song, dance, oral history and law from his communities. Nigel chose to study law to revitalize Indigenous laws which are grounded in oral histories and traditions. Nigel is a lead dancer for Dancers of Damelahamid, an Indigenous dance company based in Vancouver.

Alexandra Flynn is an Associate Professor with Peter A. Allard School of Law. Alexandra's teaching and research focus on municipal law and governance, administrative law, and property law. She has published numerous peer-reviewed papers, public reports, media articles, and a book on how cities are legally understood in law and how they govern, including the overlapping geographies and governance of city spaces, and the formal and informal bodies that represent residents. She is the Director of the Housing Research Collaborative, which comprises CMHC and SSHRC-

funded projects focused on Canada's housing crisis. She is also working on several projects related to precariously housed people in Canadian cities, including the governance of personal property of precariously housed people, and human rights and tent encampments.

Alexandra has a long history working in law and policy. Prior to entering academia, she practiced banking and securities law at Milbank, Tweed, Hadley & McCloy in New York where she was the recipient of several Legal Aid awards. She also practiced Aboriginal Law at Ratcliff & Company in Vancouver, representing First Nations, and worked in a senior policy role at the City of Toronto focused on intergovernmental relationships.

Stephen Mussell is Michif (Métis) and a citizen of the Manitoba Métis Federation. Among others, his mother Constance Mussell's (née Waldo) family is descended from the Brown, Whitford, Price, Spence, and Cook families, and his father Michael Mussell's family is descended from the Klyne, LaFrance, Cyr, and Nolin families.

Stephen is committed to using his western legal education and his belief in the inherent weight and force of Indigenous legal orders to bring about transformational change. Stephen is an associate with Mandell Pinder LLP. His practice focuses on advancing the legal rights of Indigenous Peoples and supporting Indigenous Peoples in exercising their right to self-determination. Stephen is driven by a desire to continue the good work of those who came before him, and to leave a better world for future generations.

Jeffrey Nicholls, an associate with Ratcliff LLP, has a practice which focuses on litigation, negotiation and law & policy development. He provides support on a wide range of files that come before courts in British Columbia, Saskatchewan, Ontario, the Federal Courts and administrative tribunals. Jeff advises on land and resource issues, Aboriginal rights and title, matters under the *Indian Act*, First Nation governance issues, and Indigenous legal traditions.

Jeff is a proud member of the Lax Kw'alaams First Nation. Outside the practice of law, he is an avid birder, and photographer.

Greg Nielsen, Executive Counsel to the Public Guardian and Trustee, was called to the BC bar in 1990. He has worked for the Public Guardian and Trustee of BC since 1997 and has served that organization as a solicitor in Child and Youth Services, as Information and Privacy Officer and currently as Executive Counsel where he leads on issues such as corporate contracts, information sharing agreements, policy and legislative reform.

Brandi Stocks, in-house legal counsel to the Public Guardian and Trustee of BC works to help protect the legal and property interests of vulnerable persons in the province. Brandi enjoys being active in the legal community, including speaking for the People's Law School and Continuing Legal Education Society of BC. Brandi articled and practiced in the Vancouver office of a large international law firm and clerked for the Supreme Court of British Columbia. She earned a law degree from the University of British Columbia.

Mary Childs, KC, General Counsel for Tsawwassen First Nation (TFN), frequently speaks at continuing education events, addressing issues relating to modern treaty nations. Before joining TFN in 2020, she practiced with a national law firm, working primarily with charities, cooperatives, and other purpose-driven organizations. She has also practiced corporate and commercial law. Mary has degrees from Carleton University, UBC, and Oxford University. She has held academic positions in law faculties in Canada and the UK, and has published scholarly articles on a variety of legal topics. Mary chairs the board of governors of the Law Foundation of British Columbia, is a member of BC's Passenger Transportation Board, and chairs the board of the Motor Dealer Customer Compensation Fund. In both 2021 and 2022 she was named one of BC's 500 most influential business leaders by *Business In Vancouver*. She lives on the unceded territory of the Musqueam, Squamish and Tsleil-Waututh people.

Tyler Nyvall (liaison / observer) works as legal counsel with the BC Ministry of Attorney General. Tyler has worked in law reform for 19 years and has participated as an observer on several past BCLI projects. He is also BC's civil law jurisdictional representative with the Uniform Law Conference of Canada