



UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

**Guidelines for Drafting Uniform Legislation Giving Force of Law to an
International Convention (2019)**

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Uniform Act to Implement the [title of Convention] [(insert year of adoption by ULCC)]

Comment: In 2018, the ULCC tasked a Working Group to review uniform acts adopted by the ULCC in light of the Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention which were adopted by the ULCC in 2014. The Working Group prepared these Guidelines which complement the Principles by providing uniform provisions and comments that reflect the recommendations set out in the Principles. Working groups preparing uniform acts to implement international conventions should refer to the Guidelines and the Principles to assist them in this task.

The title of the uniform act should include the name of the convention and where needed, the name of the organization under which the convention was adopted and the date at which it was adopted or at which it entered into force internationally. Such information would be needed if including only the name of the convention in the title could lead to confusion.¹ The title should also contain an indication that the act implements the convention.

The introductory comment of the uniform act should state that it is drafted in accordance with the Principles and the Guidelines. In addition, it should state that the uniform act implements a convention and include a short description the convention's scope and purpose.

The comment should also provide the following explanation if a convention includes an article which allows states to identify by declaration the territorial units to which the convention applies:

Article [#] is a standard provision in private international law conventions. It allows federal states to identify by declaration the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon [signature, ratification, accession, acceptance or approval] or at any time thereafter. Canada will make declarations pursuant to Article [# of article as above] upon the request of provinces and territories that have enacted implementing legislation. The content of Article [#] is reflected in the force of law provision of the Uniform Act.

If relevant, the comment should provide that an enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction any of the

¹ See Principle 1, Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention.

declarations and reservations permitted by the convention and state which articles of the convention should be reviewed by jurisdictions for this purpose. The comment should also describe the possible declarations and reservations and, where applicable, include recommendations as to whether jurisdictions should request that they be made. In addition, the comment should state that if a declaration or reservation applicable to a jurisdiction is made in relation to a jurisdiction following the enactment of the jurisdiction's implementing legislation, the jurisdiction may amend its act to reflect the content of such declaration or reservation. Finally, the comment should indicate that any amendment by a jurisdiction of a provision giving effect to a substantive reservation or declaration would have to be coordinated with a subsequent declaration or reservation.

The comment could mention, where applicable, that the convention requires Contracting States to communicate certain information to the treaty depositary or the organization under which the convention was negotiated and that this information must be provided by the enacting jurisdictions to Justice Canada so that it may be communicated accordingly.

Finally, if needed, the comment should explain decisions taken by the drafters of the uniform act.

[Definitions²

1. In this Act,

[insert appropriate definitions, if any]

Comment: Where a uniform act includes this provision, the comment accompanying it should state the following: "The decision to put definitions and rules of interpretation under the same or separate sections depends on the practice of each jurisdiction. They appear in separate sections in this Uniform Act".]

[Interpretation³

2. In interpreting the Convention, recourse may be had to the [...].

Comment: Where a uniform act includes this provision, the comment accompanying it should provide information on supplementary sources of interpretation such as in the following example:

The Explanatory Report was prepared by [...] and is available on the Hague

² See *ibid.* at Principle 4.

³ See *ibid.* at Principle 5.

Conference on Private International Law website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

The comment would also provide that “Section [#] is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.”]

[Inconsistent Acts⁴

3. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.

Comment: Where it is determined that this provision should be included in the uniform act, the accompanying comment should state the following:

Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this

⁴ See *ibid.* at Principle 6.

act.]

Force of law⁵

Option A

4. The [title of Convention] set out in the Schedule has force of law in [jurisdiction] [mechanism in the Convention for calculating the date from which the [declaration extending the application of the Convention to the jurisdiction/instrument of ratification or accession] has effect internationally] in accordance with Article[s] [#] of the Convention.

Option B

4. The [title of Convention] set out in the Schedule, has force of law in [jurisdiction].

Comment: Private international law conventions now typically contain a provision which allows federal states to identify by a declaration made either with the deposit of their instrument of ratification, accession, acceptance or approval or subsequently, the territorial units to which the convention is to extend. Where this is the case, if possible option A of force of law provision should set out the mechanism in the convention for calculating the date from which the declaration extending the application of the convention to the jurisdiction has effect internationally and refer to the corresponding article[s].

It may not be possible for a jurisdiction to ascertain at the time of enactment, the period after which the declaration would have effect internationally. This would be the case when the mechanism prescribed by the convention sets out different periods depending on the circumstances surrounding the deposit of the declaration. For instance, the period may be different if a declaration is deposited: (1) before the convention enters into force internationally; (2) with a state's instrument of ratification, accession, acceptance or approval; or (3) after the deposit of the latter instrument but before the convention starts applying to the state internationally. Where the period cannot be ascertained at the time of enactment, the shorter form of option A which is set out in the uniform comment below should be selected as the force of law provision.

Where a state does not make such a declaration with the deposit of its instrument of ratification or accession or where the convention does not permit such a declaration, the convention will start applying to all of the state's territorial units when the state's instrument of ratification or accession has effect internationally. In practice, Canada

⁵ See *ibid.* at Principle 7.

will make such a declaration when it is permitted by the convention. Where it is not, option A should set out the mechanism in the convention for calculating the date from which the instrument of ratification or accession has effect internationally and refer to the corresponding article[s].

The title of the convention is provided in the force of law provision. The place where the convention was concluded as well as the date on which it was concluded may also be provided in the force of law provision if including this information is needed to clarify the convention to which the uniform act gives force of law.

The comment accompanying this provision should state the following:

The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in Article [#] between the deposit by Canada of [its instrument of ratification or a declaration extending the application of the Convention to a jurisdiction] and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying.

This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to Article [#] of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

The [title of Convention] set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with Article [#] of the Convention.

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of

the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

[Application of Convention]⁶

5. Where appropriate, insert provision providing the content of a declaration or reservation made by Canada that is applicable to the enacting jurisdiction.

Comment: Where a uniform act includes this provision, the comment accompanying it should state the following:

The [declaration[s]/reservation[s]] permitted by the Convention [is/are] described in the introductory comment. Giving force of law to the Convention gives force of law to its provision[s] on [declaration[s]/reservation[s]], which will, in many cases, operate to make the [declaration[s]/reservation[s]] made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, it might be advisable to reflect [its/their] content in the act, especially if [it/they] narrow or widen the scope of application of the Convention.]

[Responsible Authority]⁷

6. The [name of authority designated by Canada in consultation with the jurisdiction] is the [responsible authority under the Convention] for [jurisdiction] for the purposes of the Convention.

Comment: Where a uniform act includes this provision, the comment accompanying it should state the following:

In line with Article [#] of the Convention, an enacting jurisdiction will designate or identify the authority that will act as the [*responsible authority under the Convention*] for the purposes of this Convention and Canada will communicate this information to [*name of the international body to which the information must be communicated*].

The [*responsible authority*] may be identified in the act. Where the [*responsible authority*] has not been identified by a jurisdiction before it

⁶ See *ibid.* at Principle 8.

⁷ See *ibid.* at Principle 9.

adopts its implementing act or where it is liable to change over time, it may be more appropriate for the jurisdiction to identify it in regulations.

Some jurisdictions may choose not to identify the [*responsible authority*] in their act or regulations where they may have recourse to other mechanisms to assign authority, such as by orders in council or by simple *administrative assignment of responsibilities*.]

[Court Designation]⁸

7. The [*name of court*] is the competent court for the purposes of Article [*Article #*] of the Convention.

Comment: A convention may provide for the designation of courts that have responsibilities under the convention. Where a uniform act includes this provision, the comment accompanying it should state the following:

Enacting jurisdictions that designate responsible courts in their jurisdiction must indicate this to Justice Canada so that Canada may communicate this information at the international level by way of [a declaration/notice] to the treaty depository. Jurisdictions must decide whether the designation should be specified in their implementing act or regulations. Jurisdictions should take the following matters into consideration in making this decision:

- Does the designation of a court have the effect of limiting the jurisdiction of other courts in the jurisdiction?
- Was the designation made for a specific purpose such as to enforce foreign arbitral awards?
- Are new functions assigned to the court as a consequence of the designation?
- Would reflecting the designation in the act provide helpful guidance to those seeking to have recourse to the designated court?

An affirmative answer to one or more of these questions may favour including a provision in the act to specify which court has been designated and the purpose of the designation.]

[Minister Responsible for the Administration of the Act]⁹

8. The Minister of [*Ministry/Department*] is responsible for the administration of this Act.

⁸ See *ibid.* at Principle 10.

⁹ See *ibid.* at Principle 11.

Comment: Where a uniform act includes this provision, the comment accompanying it should state the following: “Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.”]

[Binding on Crown/Government/State¹⁰

9. This Act [is/is not] binding on the [Crown/Government/ State [of jurisdiction]].

Comment: Jurisdictions should consult the relevant interpretation legislation to ascertain the need to specify whether the Crown/Government/State is bound or not bound by acts.

The content of the comment that will be included under this provision in the uniform act will depend on whether the convention is binding on governments. When drafting the uniform act, it should be determined whether the convention which it implements binds governments, and if it does, whether this is clear from the text of the convention. If it is clear that it does and the uniform act gives force of law to the convention, it is not necessary to specify that the convention is binding on the Crown/Government/State. However, in the interest of transparency, it may be desirable to do so in jurisdictions where such provisions are usually included in acts.

[Regulations¹¹

10. The [name of regulation-making authority] may make regulations for carrying out the purposes of this Act.

Comment: The comment accompanying this provision in the uniform act should state the following: “Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulation-making powers should be clearly expressed and should be no broader than is necessary.”]

Commencement¹²

Option A – Commencement on assent before the Convention applies to jurisdiction

11. This Act comes into force on [assent/insert the date of assent to this Act].

¹⁰ See *ibid.* at Principle 13.

¹¹ See *ibid.* at Principle 12.

¹² See *ibid.* at Principle 16.

Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction

11. This Act comes into force on [proclamation/ the date or dates to be set by the Government].

Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction

11. This Act comes into force on [*insert day on which the Convention applies to jurisdiction*].

Comment: The comment accompanying this provision in the uniform act should state the following:

There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date

on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.

- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

Schedule [*Insert the full text of the Convention. It is available on the treaty depositary's website at: ...*]