

UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

**ACTIVITIES AND PRIORITIES OF THE DEPARTMENT OF
JUSTICE
IN INTERNATIONAL PRIVATE LAW**

**REPORT OF THE DEPARTMENT OF JUSTICE CANADA
2008**

**Quebec City, Quebec
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Report of the Department of Justice Canada

August 2008

INTRODUCTION

[1] This report sets out the status of implementation of international private law instruments, describes measures that have been taken by Canadian jurisdictions in the past year for their implementation, describes projects currently under negotiation and gives an outline of the projects the Department of Justice, in conjunction with its partners, will work on in the future and their level of priority.

[2] This year marks the 40th year of Canada's involvement in international private law. Although Canada's record on implementation of international instruments leaves room for improvement, that is not the sole standard by which we can assess the benefits of some forty years of work. With Canada joining the Hague Conference on Private International Law and Unidroit in 1968, Canadian jurisdictions have had access to and influence on international developments in the field for four decades. The effects can be seen in Canadian legislation that is in tune with international norms and in the subject matter and texts of many international instruments which reflect Canadian interests and approaches.

[3] In 2007-2008, implementation activity continued in Canada. Again this year, efforts were devoted to the implementation of the *ICSID Convention*, signed by Canada in December 2006, and to the *Unidroit Mobile Equipment Convention*, among others. In addition, through the Uniform Law Conference of Canada (ULCC), the Department of Justice and other federal, provincial and territorial partners have embarked on new projects, including efforts aimed at implementation of the *UN Convention on the Use of Electronic Communications in International Contracts*, the *UN Convention on Independent Guarantees and Stand-by Letters of Credit* and the *Hague Convention on Choice of Court Agreements*.

[4] Progress has also been made in terms of developing new international instruments. The Department of Justice has continued to allocate resources over the last year to improve and develop the international and national legal framework in international private law. For example, in November 2007 the Hague Conference finalized and adopted the *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* and the *Protocol on the Law Applicable to Maintenance Obligations*. Negotiations continued at UNCITRAL and Unidroit on projects that will culminate in new international private law instruments.

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[5] The first part of this report deals with the various Canadian actors in international private law. In the course of its activities, the Department of Justice consults regularly with the provinces and territories, as well as with other interested federal departments, the private sector and the members of its Advisory Group on Private International Law. Contacts in the International Private Law Section (IPLS) are set out in Annex A.

[6] The international and regional organizations involved in international private law and the projects in which Canada has participated will be briefly described in the second part of the report.

[7] Finally, the third part of the report presents the activities of the Department of Justice in international private law by theme. Projects are ranked with respect to their level of priority. To evaluate priority, IPLS, in collaboration with the Advisory Group on Private International Law, considers the following: the interest of the international community, Canada's interest and the interest of national actors; the project's costs and benefits; and the challenges and difficulties related to implementation.

[8] In addition to the order of priority (high, medium, low), projects are categorized by the following themes:

- International Commercial Law
- Judicial Cooperation and Enforcement of Judgments
- Family Law
- Protection of Property.

[9] Key projects are displayed in similar order in the Overview Chart of International Private Law Priorities (Annex B) which provides an outline of the activities in the field of international private law and information on the status of instruments or projects. Another chart provides details on all of these subjects (Annex C).

[10] We also have attached a provisional list of international meetings for the coming year (Annex D) to inform you of activities in which the Department may be involved.

I. NATIONAL ACTORS

[11] As matters dealing with international private law most often fall within provincial jurisdiction, federal-provincial-territorial cooperation is essential to real progress in this area. Consultations with the legal and business community, as well as with other private groups, are useful where the work of IPLS relates so closely to their interests.

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A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

[12] The Advisory Group on Private International Law is composed of five provincial representatives (representing British Columbia, the Prairie Provinces, Ontario, Quebec and the Atlantic provinces) and federal representatives from the Department of Justice and the Department of Foreign Affairs and International Trade. The Group provides the Department with continuing advice on the provincial aspects of the international private law projects in which Canada is involved. The Group met by conference call in March 2008. The Group is generally referred to as the “Advisory Group” in this text.

B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION

[13] In addition to federal-provincial (FP) cooperation through the Advisory Group, the Department also communicates directly with provincial and territorial authorities to obtain their official views on international instruments. These exchanges take place through written and oral communications among FPT authorities as well as with the presentation of reports to the Uniform Law Conference of Canada (ULCC) and to the Civil Justice Committee.

1. Uniform Law Conference of Canada (ULCC)

[14] Instituted in 1918 with a view to ensuring uniformity in provincial legislation, the ULCC today participates actively in the implementation of international conventions and other international private law instruments such as model laws. This year, the Department of Justice continued to participate in the ULCC’s activities. From the perspective of the Department of Justice, the ULCC constitutes the key mechanism for facilitating implementation of international private law instruments through the development of uniform implementing legislation.

2. Civil Justice Committee

[15] This committee was first established as an ad hoc committee of government officials in the late 1980s to assist in the preparation for and follow-up to the meetings of federal, provincial and territorial Deputy Ministers responsible for Justice matters. Its efforts in the adoption of implementing legislation recommended by the ULCC are greatly appreciated.

C. PRIVATE SECTOR AND LAW FACULTIES

[16] The Department of Justice maintains contacts with the Canadian Bar Association (CBA) as well as with private sector groups. This year the Department is establishing an Academic Liaison Committee aimed at facilitating the exchange of information between

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Departmental officials and law professors on international private law matters. We plan to hold the first meeting of this committee in the fall.

II. INTERNATIONAL ORGANIZATIONS

A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

[17] The Hague Conference on Private International Law, which held its first session in 1893, has 69 Members, including Canada since 1968 and the European Community since 2007. Its objective is to work toward the progressive unification of rules of private international law. The Permanent Bureau, the Secretariat of the Conference, is responsible for administration and supporting research. Its working cycle is approximately four years, at the end of which Sessions of the Conference are convened, attended by all Members. Members also meet during the intersessional period in “Special Commissions”, which develop draft conventions to be adopted at the next Session. Further information on the Hague Conference on Private International Law can be found at: www.hcch.net.

[18] The Conference’s work programme is now reviewed each year at a meeting of the Council on General Affairs and Policy. At this year’s meeting, held in April, the Council approved a workplan which for the first time does not include the negotiation of a new international instrument. It does however include preliminary work on a range of subjects, including cross-border mediation in family matters, choice of law in international contracts, access to foreign law and the feasibility of developing a protocol to the new Maintenance Obligations Convention to address maintenance for vulnerable persons. The conclusions of the Council’s meeting are available on the Hague Conference website.

[19] Over the last year, Canada participated in the following activities of the Conference: expert and drafting group meetings, Special Commissions, the April 2008 meeting of the Council on General Affairs and Policy of the Conference and the Diplomatic Session to adopt the *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* and the *Protocol on the Law Applicable to Maintenance Obligations* in November 2007.

[20] Canada is party to four Hague Conference Conventions in private international law: the *Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters* (1965, in force for Canada 88/05/01); the *Convention on the Civil Aspects of International Child Abduction* (1980, in force for Canada 83/12/01); the *Convention on the Law Applicable to Trusts and on their Recognition* (1985, in force for Canada 93/01/01); and the *Convention on Protection of Children and Cooperation in*

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Respect of Intercountry Adoption (1993, in force for Canada 97/04/01). Not all jurisdictions in Canada have implemented all four.

B. UNCITRAL

[21] The United Nations Commission on International Trade Law, the core legal body within the UN system in the field of international trade law, aims to further the progressive harmonisation and unification of the law of international trade. To reach this goal, the Commission uses various instruments: it has prepared 10 conventions, model laws, uniform rules and a number of legal or legislative guides. Further information on UNCITRAL, including instruments adopted by the Commission, status of ratifications and adoption of instruments, and working group reports, can be found at: www.uncitral.org.

[22] UNCITRAL comprises 60 Member States representing various geographic regions and the principal economic systems and legal traditions of the world. Members are elected for a six-year term by the General Assembly. Other States and international governmental and non-governmental organizations may participate as observers in meetings of the Commission and its working groups, which operate by consensus. Canada was a member of UNCITRAL from 1989 to 1995, participated actively as an observer from 1995 to 2001, and was elected to the Commission for a term commencing in June 2001 and ending in June 2007. Canada was re-elected in 2007 until 2013.

[23] At the second part of its 40th session in December 2007, UNCITRAL finalized and adopted the Legislative Guide on Secured Transactions. At its 41st session this year, UNCITRAL adopted its tenth convention, the Convention on contracts for the international carriage of goods wholly or partly by sea, which will be submitted to the General Assembly this fall for approval and opening for signature, ratification and accession.

[24] In terms of future work, the Commission decided this year to continue the work undertaken by its Working Groups on procurement, arbitration, secured transactions in intellectual property and insolvency. In addition, it requested its Secretariat to participate, with the assistance of experts, in work being done by the World Customs Organization on the creation and operation of single windows in international trade. Canada succeeded in obtaining the agreement of the Commission that Working Group II on arbitration should take up the question of rules for transparency in investor-State arbitration immediately following completion of the revisions to the UNCITRAL Arbitration Rules. Further information on UNCITRAL's work programme is available on its website.

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[25] Canada is party to two UN conventions relating to international commercial law: the *U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958, in force for Canada 86/08/10) and the *U.N. Convention on Contracts for the International Sale of Goods* (Vienna Convention of 1980, in force for Canada 92/05/01). Canada has also enacted domestic legislation implementing UNCITRAL's Model Law on International Commercial Arbitration (1985). Legislation drawing on UNCITRAL's Model Law on Electronic Commerce has been adopted by the federal government, the provinces and two territories.

C. UNIDROIT

[26] The International Institute for the Unification of Private Law, known as Unidroit, was created in 1926 as an organ of the League of Nations. Since 1940 it has been an independent inter-governmental organization based in Rome. There are 61 Member States, including Canada since 1968. Unidroit's mandate differs from that of the Hague Conference as it aims to harmonize and co-ordinate the private law of its Member States, rather than their private international law rules. Further information on Unidroit can be found at: www.unidroit.org.

[27] Since its creation, Unidroit has drafted more than seventy studies, model laws and conventions on various private law subjects including sales, international leasing and factoring, transport, security interests, franchising and cultural property. Its current work program includes ongoing work on the Unidroit Principles of International Commercial Contracts, finalization of a Model Law on Leasing, additional protocols to the Convention on International Interests in Mobile Equipment and further work in the area of capital markets, including finalization of the draft Convention on Intermediated Securities. Details of Unidroit's work programme are available on its website.

[28] This year Canada designated two depositary libraries for Unidroit documents: the law library of the Faculty of Law at the University of British Columbia and the Nahum Gelber Library at the McGill Faculty of Law. These libraries will receive copies of Unidroit materials and make them available to the public.

[29] Canada is party to only one of the ten Unidroit conventions, the *Convention Providing a Uniform Law on the Form of an International Will* (1973) (in force for Canada since 78/09/02). Canada has also signed the *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol*. Not all jurisdictions have implemented these instruments.

D. WORLD BANK

[30] The World Bank's role in the field of international private law stems in part from the creation of the International Centre for the Settlement of Investment Disputes (ICSID) under the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada signed this Convention in December 2006. To facilitate ratification, the ULCC has adopted a uniform act to implement the Convention. Further information on the World Bank and the *ICSID Convention* can be found at: www.worldbank.org.

E. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF AMERICAN STATES

[31] The Organization of American States (OAS), with 35 member States, provides a forum for political, economic, social and cultural cooperation in the Americas. In the legal field, the Inter-American Juridical Committee, composed of eleven jurists who are nationals of Member States, serves as an advisory body to the OAS. The Committee recommends the convening of specialized legal conferences, such as the Inter-American Specialized Conference on Private International Law (CIDIP) which meets approximately every four or five years to deal with technical matters and further cooperation in the area of international private law. Further information on the OAS can be found at: www.oas.org.

[32] Canada is not party to any of the 21 OAS conventions in international private law, and had only observer status for the first four CIDIP meetings. Since becoming a member of the OAS in 1990, Canada has been exploring ways of enhancing legal cooperation with other OAS countries. Canada did participate officially in the 1994 Fifth Inter-American Conference on Private International Law (CIDIP-V) and in CIDIP-VI which took place in 2002. Since the adoption of an OAS General Assembly resolution in 2003, CIDIP-VII has been under preparation. Two topics have been selected: one on consumer protection, and the other on secured transactions and electronic registries. Canadian working groups comprised of representatives of the Department of Justice Canada (IPLS) and of federal and provincial/territorial experts are actively participating in the development of both projects. In addition, consultations with stakeholders will continue.

F. BILATERAL ACTIVITIES

[33] Canada has entered into bilateral conventions on the enforcement of judgments. The first convention of this type was the *Canada-UK Convention on the Reciprocal Recognition*

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and Enforcement of Judgments in Civil and Commercial Matters (1984) which is in force for all provinces and territories except Quebec.

[34] The *Canada-France Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance* was signed on June 10, 1996. A uniform act to implement this Convention was adopted by the ULCC in August 1997.

[35] Canada is also party to bilateral treaties on judicial cooperation (service and taking of evidence abroad) with 25 States. These treaties are available on the website of the Department of Foreign Affairs and International Trade at <http://www.accord-treaty.gc.ca/> (under the headings “Bilateral” and “Judicial Co-operation (civil and commercial)”).

**III. PRIORITIES OF THE DEPARTMENT OF JUSTICE IN
INTERNATIONAL PRIVATE LAW**

A. INTERNATIONAL COMMERCIAL LAW

1. HIGH PRIORITIES

**a. Project on Harmonised Substantive Rules Regarding Indirectly Held Securities
(Unidroit)**

[36] At Unidroit, intersessional work continued on the first element of its project on transactions on transnational and connected capital markets, that is, the creation of clear and consistent rules for the taking of securities, especially securities held indirectly through intermediaries in multi-tiered holding patterns and evidenced by book entries in the investor’s account, as collateral. This Unidroit project is complementary to the *Convention on the law applicable to certain rights in respect of securities held with an intermediary*, adopted under the auspices of the Hague Conference on Private International Law in December 2002.

[37] Four meetings of governmental experts have been held on this project: May 2005, March 2006, November 2006 and March 2007. The text is now well-developed and will take the form of a convention. A diplomatic conference to finalize the instrument will be hosted by Switzerland in Geneva from September 1 - 13, 2008.

[38] Given the relatively recent enactments in several Canadian jurisdictions of legislation based on the Uniform Securities Transfer Act, it will continue to constitute the main point of reference for Canada's position on the substance. Consultations will be held to develop Canada's position for the diplomatic conference and will include provincial and territorial authorities, the Uniform Law Conference of Canada (ULCC) Working Group on the Uniform Securities Transfer Act, federal departments and agencies, the private bar, academics and non-governmental organizations.

[39] *Action required in Canada:* Consultation on the draft convention in preparation for the diplomatic conference from September 1 - 13, 2008.

b. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) (World Bank)

[40] The *ICSID Convention*, prepared under the auspices of the World Bank in 1965, establishes rules and a venue for conciliation or arbitration of international investment disputes. The Convention applies to disputes between States and nationals – the investors – of other States party. It is a unique mechanism as awards rendered by ICSID are enforceable in any country party to the Convention as if they were final court judgement of that country.

[41] Recourse to ICSID conciliation and arbitration is entirely voluntary. However, once the parties have consented to arbitration under the *ICSID Convention*, neither can unilaterally withdraw its consent. Provisions on ICSID arbitration are commonly found in free-trade agreements such as the North-American Free-Trade Agreement (NAFTA) and foreign investment protection agreements (FIPAs). These agreements constitute advance consents by governments to submit investment disputes to ICSID arbitration.

[42] The Convention creates an organization, the International Centre for Settlement of Investment Disputes (ICSID), which provides facilities for conciliation and arbitration of investment disputes. Under the *ICSID Convention*, proceedings need not be held at the Centre's headquarters in Washington, D.C. The parties to a proceeding are free to agree to choose another venue for their proceeding. The *ICSID Convention* contains provisions that facilitate advance stipulations for such other venues when the place chosen is the seat of an institution with which the Centre has an arrangement for this purpose (e.g., Australian Commercial Dispute Center in Sydney). Canadian arbitration centres such as the Canadian Commercial Arbitration Centre and the British Columbia International Arbitration Centre could potentially make similar arrangements, which would promote ICSID and their own centre.

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[43] The Additional Facility Rules allow the ICSID Secretariat to administer certain types of proceedings between States and foreign nationals which fall outside the scope of the Convention. These include conciliation and arbitration proceedings where either the State party or the home State of the foreign national is not a member of ICSID. When parties have recourse to the Additional Facility Rules, they are not covered by the Convention and therefore they do not benefit from the same enforcement rules ICSID awards have.

[44] The vast majority of our trading partners have ratified the *ICSID Convention* - 143 States are party to the Convention – and Canada has now signed it. The federal government has been actively promoting the Convention in recent years to obtain the agreement of all provinces and territories to implement the Convention.

[45] A uniform act for the implementation of the *ICSID Convention* was adopted by the ULCC in 1998. The uniform act is still considered suitable for implementing the Convention and is relatively simple since the obligations of States under the Convention are essentially to recognize and enforce ICSID arbitral awards. The arbitration proceedings, the conduct of the arbitration, and the appeal mechanism fall under the responsibility of ICSID.

[46] In 1999, the province of Ontario adopted the *Settlement of Investment Disputes Act* (S.O. 1999, c.12, Sch. D) and became the first jurisdiction to have adopted implementing legislation for the Convention. In 2006 four jurisdictions adopted legislation to implement the Convention: Saskatchewan, British Columbia, Newfoundland and Labrador and Nunavut. Federal legislation was adopted in March 2008.

[47] The adoption of these bills represents a significant development in Canada for the adoption of the *ICSID Convention*. We are grateful to those jurisdictions that have adopted implementing legislation and to those that are currently taking steps to do so. We would invite those jurisdictions who wish to be designated under the Convention to adopt implementing legislation as well.

[48] The Department maintains the adoption of the *ICSID Convention* as a high priority. We will continue to work closely with the Department of Foreign Affairs and International Trade as well as our provincial and territorial colleagues to answer their questions and to seek to resolve any issues they may have with the Convention or how the Convention would apply in their jurisdiction. Federal-provincial-territorial discussions have continued over the last year at various levels. We will continue to seek a productive dialogue with our colleagues in the coming year, with a view to taking steps for ratification in the near future.

[49] *Action required in Canada:* Continue to work with the Department of Foreign Affairs and International Trade towards ratification. Continue to encourage provinces and territories to consider adopting implementing legislation.

c. *Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit/ICAO)*

[50] The Convention provides a framework for the creation of international interests in mobile equipment and an international registry in which these interests can be registered. Each type of mobile equipment is the subject of a specific protocol under the Convention. There are no limitations on the categories of mobile equipment for which a protocol could be adopted. In addition to aircraft equipment, the Convention could apply to registered ships, oil rigs, containers, railway rolling stock, agricultural equipment, mining equipment, space property, and other objects that could be identified in the future.

[51] The Convention entered into force internationally on April 1, 2004, after its third ratification. It only enters into force as regards a specific category of objects to which a Protocol applies as of the date of the entry into force of that Protocol. The Aircraft Protocol entered into force at the international level on March 1, 2006 after the eighth instrument of ratification or accession required for its entry into force was deposited. Canada signed the Convention and Aircraft Protocol in March 2004.

[52] The ULCC adopted a uniform implementing act in 2002. Canadian jurisdictions have been asked to consider adopting legislation to implement the Convention and Aircraft Protocol. Legislation implementing the Convention and Aircraft Protocol has been adopted at the federal level as well as in Ontario, Saskatchewan, Nova Scotia, Alberta, Newfoundland and Labrador, and Quebec.

[53] The federal government is in a position to consider ratifying the Convention and Aircraft Protocol given the support for ratification that has been expressed by the adoption of implementing legislation in the provinces and territories. The Department has worked with provinces and territories to develop a proposed list of uniform declarations. Although it is up to each province and territory to determine the nature of the declarations it wishes to have made on its behalf, there seems to be consensus on almost all of the proposed declarations at this time. The Department will continue to work with the Department of Transport Canada towards ratification in the near future. The federal government will continue to encourage provinces and territories to consider adopting legislation to implement the instruments.

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[54] *Action required in Canada:* Continue to work with the Department of Transport Canada towards ratification. Continue to encourage provinces and territories to consider adopting implementing legislation.

d. *Convention on the Law Applicable to Securities Held by Intermediaries (Hague) – ULCC Uniform Act*

[55] Canada actively participated in the negotiations of the *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary*. The Convention was finalized and adopted during the Diplomatic Session held from December 2 to 12, 2002 in the Hague.

[56] This Convention is a first attempt worldwide to draft cross-border rules on the law applicable to securities held with an intermediary. The objective is to enable financial market participants in the global market to ascertain readily and unequivocally which law will govern the proprietary aspects of transfers and pledges of interests in respect of securities held through indirect holding systems. This Convention is intended to provide certainty and predictability on a limited but crucial aspect of such transactions.

[57] The Canadian delegation included Manon Dostie, IPLS, Department of Justice Canada, two practitioners: Brad Crawford (common law expert) and Michel Brunet (civil law expert), and two experts from the Canadian securities commissions: Eric Spink (Alberta) and Daniel Laurion (from Quebec, absent at the last meeting). Maxime Paré from the Ontario Securities Commission participated as a representative of the International Organization of Securities Commissions (IOSCO) and represented Canada on the Drafting Group leading up to the Diplomatic Conference.

[58] In 2004, the ULCC agreed that the Canadian Securities Administrators (CSA) authorize the Task Force to prepare a uniform implementing statute for the Convention once the Explanatory Report for the Hague Convention was finalized, which occurred in late 2004. Securities Administrators approved the CSA Task Force pursuing Convention implementation work in April 2005.

[59] Since then, Canadian experts have continued to focus on USTA implementation as a priority with the result that no progress has been made on a uniform act to implement the Convention apart from informal discussion suggesting that implementation might be accomplished via a small addition to USTA legislation. We hope to see a convention implementation Working Group making progress on uniform implementing legislation over this coming year. Note that the United States and Switzerland signed the Convention on July 5, 2006 and Mauritius on April 28, 2008.

[60] *Action required in Canada:* Form a joint working group with the ULCC and the CSA Task Force to prepare uniform implementing legislation.

e. *Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL)*

[61] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 26 States party to the *Limitation Convention* of 1974, and 19 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico.

[62] The Conventions dovetail with the United Nations *Convention on Contracts for the International Sale of Goods* (Vienna, 1980), which is in force for all of Canada. There is substantial similarity between the three Conventions, in particular the articles setting out the sphere of application, declarations and reservations, the federal State clause, and the final clauses.

[63] The purpose of the *Limitation Conventions* is to eliminate all disparities in the national laws governing limitations on the initiation of legal proceedings arising from contracts for the international sale of goods, as these disparities can create hardship both in cases where meritorious claims are statute-barred by a very short limitation period, and where parties are left open to liability for an inordinately long time in jurisdictions with very long limitation periods. The Conventions establish a uniform prescription period of four years for commercial litigation.

[64] In 1975-76, the ULCC adopted a uniform act to implement the 1974 *Limitation Convention (An Act to Amend the Uniform Limitation of Actions Act)* and recommended it to provinces for enactment. This recommendation was made on the grounds that, given the importance of international trade to Canada as a whole, the *Limitation Convention* warranted a close consideration of the Conference as it was to become the basis of international uniformity on limitation in disputes involving the international sale of goods. This argument remains valid.

[65] In 1995, the Advisory Group on Private International Law recommended that the Department take steps toward acceding to and implementing the Conventions. In August 1998, the ULCC adopted the *Uniform International Sales Conventions Act*. This Act would implement the *United Nations Convention on Contracts for the International Sale of Goods*, already in force in Canada, and the *Conventions on the Limitation Period in the International Sale of Goods*.

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[66] Since then, the federal Minister of Justice has undertaken consultations with provincial and territorial counterparts on the desirability of implementing the Limitation Conventions. Some provinces have expressed support for implementation and Nunavut has already enacted the *International Sales Conventions Act*, which received assent on June 6, 2003. A further consultation of provincial and territorial Deputy Ministers took place in 2005.

[67] *Action required in Canada:* Follow-up on the consultations with provinces and territories. Consider the adoption of federal implementing legislation, which would apply to contracts for the sales of goods involving the Crown in right of Canada.

f. *Convention on the Assignment of Receivables in International Trade (UNCITRAL)*

[68] In July 2001, UNCITRAL adopted the *Convention on the Assignment of Receivables in International Trade* after six years of development. The Convention was opened for signature in December 2001. The rules are intended to facilitate financing by removing uncertainty encountered in various legal systems as to recognition and effects of assignments in which the assignor, the assignee and the debtor are not in the same country. Canada was an active participant in the development of this Convention.

[69] A preliminary implementation study was prepared through the ULCC's Commercial Law Strategy and the Department of Justice by two leading experts in the field in Canada, Catherine Walsh for the common law perspective and Michel Deschamps for the civil law perspective. The study was presented at the ULCC meeting in August 2005.

[70] The ULCC Working Group on Assignments of Receivables prepared a draft uniform implementation act and a final report, presented at the annual meeting of the ULCC in 2006. This work was part of a joint project with the then US National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Mexican Uniform Law Centre. At the 2006 annual meeting, the adoption of the draft uniform act was postponed to allow the joint project to proceed. The Uniform Act was adopted by the Conference in 2007.

[71] Internationally, the Convention's importance continues to be recognized. The United States has indicated that it anticipates taking the steps necessary for ratification. The European Commission, by letter of June 22, 2006 to UNCITRAL, stated its intention to ensure coherence between the Convention and the Rome I Regulation and to facilitate the ratification of the Convention by EU Member States.

[72] *Action Required in Canada:* Monitor developments toward ratification in the US and other countries. Encourage provinces and territories to adopt implementing legislation.

g. *Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)*

[73] The Convention aims at establishing greater uniformity in the law relating to independent guarantees and stand-by letters of credit in international commercial transactions. It was finalised in 1995 and has been in force since 2000. Eight States are currently party to the Convention.

[74] A study reviewing the Convention rules in relation to current law in Canada was prepared for the ULCC in 2006 and a ULCC Working Group was established in 2007. Since then, the Working Group has prepared a draft uniform act and commentaries to implement the Convention and is in the process of developing parallel domestic legislation in the area of letters of credit along the lines of the Convention rules, taking into account existing common law and civil law rules. The Working Group has been working in co-operation with the Uniform Law Commission (ULC) in the United States and the Mexican Uniform Law Centre to attempt to bring about a harmonized approach to implementing the Convention across the Americas.

[75] The Working Group has consulted stakeholders, including major Canadian banks, the Canadian Bankers Association and the Canadian Bar Association, on the merits of this project. The Working Group intends to complete a draft uniform act and commentaries to implement the Convention as well as domestic legislation in the area of letter of credit for presentation at the ULCC Annual Meeting in 2009.

[76] *Action required in Canada:* Complete uniform implementing legislation as well as parallel domestic legislation for 2009.

2. MEDIUM PRIORITIES

a. *Review of Model Law on Procurement of Goods, Construction and Services (UNCITRAL)*

[77] In 2004, UNCITRAL mandated a Working Group to work in the area of procurement. The purpose of the work is mainly to review the UNCITRAL Model Law on Procurement of Goods, Construction and Services from two perspectives: one concerns the use of electronic commerce in public procurement and the other consists of

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exploring new practices in order to enhance transparency and efficiency in public procurement.

[78] The Working Group met for two sessions over the last year, September 3-7, 2007 and April 7-11, 2008. The Canadian delegation comprised representatives of the Department of Justice and the Department of Foreign Affairs and International Trade as well as provincial experts in civil and common law. Canada was represented by Mireille-France Blanchard, IPLS, Justice Canada, Dany Carrière, Foreign Affairs and International Trade Canada, Eleanor Andres, Manitoba Justice, Margaret A. MacDonald, Ministry of Energy Ontario, and Marie-Andrée Gauthier, Justice Québec.

[79] The work is progressing on the four main work topics: (1) how to accommodate electronic procurement in the Model Law; (2) electronic reverse auctions; (3) abnormally low tenders; and (4) framework agreements. Work has already begun to prepare for the next session of the Working Group which is scheduled from September 8-12, 2008.

[80] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from September 8-12, 2008.

b. UNCITRAL Working Group on Insolvency Law – Treatment of enterprise groups

[81] The subject of corporate groups in insolvency law arose in the context of the development of the UNCITRAL Insolvency Guide. The treatment of this topic in the Insolvency Guide was limited to a brief introduction. Therefore, the Commission, at its 39th session in July 2006, agreed that the subject of corporate groups in insolvency law should be referred to the Working Group on Insolvency Law for consideration in 2006 and that the Working Group should be given the flexibility to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take. The Commission also agreed that the topic of post-commencement financing should initially be considered as a component of work to be undertaken on insolvency of corporate groups. The Working Group was given sufficient flexibility to consider proposals for work on additional aspects of post-commencement financing.

[82] At the 31st session of the Working Group in December 2006, initial discussions took place with respect to corporate groups on such issues as definitions (e.g., corporate group and other terms), commencement proceedings, effects of commencement (e.g., insolvency representation, joint administration, disposal of assets, post-commencement financing), reorganization, remedies and international issues (e.g., centre of main interest, jurisdiction, recognition, harmonization). During the session, keeping in mind that the Working Group was free to consider proposals for work on additional aspects of post-

commencement financing, it was decided that because discussions with respect to the scope of the work on corporate groups were still in their initial stages, it was too early to discuss post-commencement financing more substantively outside the context of corporate groups and beyond the Working Group's immediate mandate.

[83] The Working Group continued its work at its 32nd, 33rd, and 34th sessions, with much of the same issues being discussed as listed above. Overall, work progressed well, with NGOs providing helpful commentary. Some States remain uncomfortable with the notion of corporate groups and with recommendations proposed by the Secretariat in its most recent working document.

[84] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from November 17-21, 2008.

**c. UNCITRAL Working Group on International Arbitration and Conciliation –
Revision of UNCITRAL Arbitration Rules**

[85] In 1999, the Commission mandated the Working Group on International Arbitration and Conciliation to examine four subjects: 1) conciliation; 2) requirement of written form for the arbitration agreement; 3) enforceability of interim measures of protection; and possibly 4) enforceability of an award that had been set aside in the State of origin. The Working Group examined the first three subjects. The Model Law on International Commercial Conciliation was adopted in June 2002. In June 2006 the Commission adopted legislative provisions on the written form of the arbitration agreement and draft article 17 of the UNCITRAL Model Law on International Commercial Arbitration regarding the power of an arbitral tribunal to grant interim measures of protection including *ex parte* measures.

[86] At its 39th session in 2006, the Commission agreed that the Working Group would consider revisions to the UNCITRAL Arbitration Rules adopted in 1976 to bring them up to current standards and practices.

[87] Work on the revision of the Rules began in February 2007, and continued in September 2007 and February 2008. The Working Group explored provisions that could require updates and introduced new issues, including transparency in the arbitral process and public access to hearings, consolidation of cases before arbitral tribunals; truncated arbitral tribunals, obstructing arbitrators, arbitrators' fees and time-limits for rendering awards. Procedural issues, such as the desirability to have notices of intention to commence arbitration, were also raised. Overall, however, delegates were generally of the view that the Rules in their current form were adequate and responded to a variety of

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situations. A first reading of the draft revised Rules prepared by the Secretariat was completed at the last session. The work is expected to be ready for adoption by the Commission in 2009.

[88] In Canada, consultations are being held by e-mail with stakeholders from our consultation group and will continue. Previous consultations have not revealed major concerns. The Working Group is meeting again from September 15 - 19, 2008.

[89] Canada will be represented by Manon Dostie, Counsel, International Private Law Section, Justice Canada; Shane Spelliscy, Counsel, Trade Law Bureau, Justice Canada; Stephen L. Drymer, Ogilvy Renault, Montreal and Gerry W.J. Ghikas, Borden Ladner Gervais, Vancouver.

[90] *Action required in Canada:* Continue to consult with federal, provincial and territorial governments, private sector, academics, arbitration organizations and other interested parties. Explore provincial and territorial interest for the adoption of provisions on interim measures and preliminary orders in the International Commercial Arbitration Act, or any similar Act incorporating the UNCITRAL Model Law on International Commercial Arbitration in each jurisdiction. Begin informal work on transparency and investor-state in preparation for future work.

d. CIDIP VII- Project on Jurisdiction and Law Applicable to Consumer Contracts (OAS)

[91] The Inter-American Specialised Conference on Private International Law (CIDIP) is considering consumer protection from the perspective of applicable law, court jurisdiction and monetary redress.

[92] Preliminary discussions took place among States and it became apparent that a certain number of States would rather work on a convention than a model law. Canada expressed a preference for the adoption of a model law and drafted a proposal based on the ULCC Uniform Jurisdiction and Choice of Law Rules for Consumer Contracts, 2004. Last July, Canada presented a revised proposal for a model law, which takes into account the comments made by several Member States at a preparatory meeting that was held in Porto Alegre Brazil in December 2006. The Canadian revised proposal remains substantially consistent with the ULCC's Uniform Rules for Consumer Contracts.

[93] Brazil has proposed a convention "on the law applicable to some consumer contracts and consumer transactions", which it also revised following the comments and suggestions received during the December 2006 preparatory meeting. From a Canadian perspective, the main difficulty with the proposal of Brazil is that it may lead to the

application of more than one law to a given consumer contract and thus does not achieve certainty. We also doubt that a convention in this area could be successful since States are usually protective of their jurisdiction where consumers are concerned.

[94] The US had originally proposed a Model Inter-American Law on Availability of Consumer Dispute Resolution and Redress for Consumers, which essentially promoted the creation of consumer protection agencies and the resolution of disputes between consumers and businesses by alternative means. The proposal drew on the work of the OECD on consumer protection. One of the main difficulties with this proposal was that the text appeared to set out principles rather than legislative provisions. The US has since proposed Legislative Guidelines for Inter-American Law on Availability of Consumer Dispute Resolution and Redress for Consumers, which include three draft model laws: Draft Model Law on Government Redress for Consumers Including Across Borders; a Draft Model Law on Small Claims; a Draft Model Rules for Electronic Arbitration of Cross-Border Consumer Claims. This new proposal is substantively consistent with the initial US proposal. Work is ongoing with federal and provincial/territorial experts on developing the Canadian perspective on the US proposal and its relation to the OECD's recommendations on consumer protection.

[95] Discussions are ongoing at the OAS to determine how best to move forward with the preparatory work on consumer protection in advance of CIDIP VII, for which a date is yet to be set. Canada's position is that additional work is needed to ensure that, on the substance, the three proposals are complementary or, at the very least, do not contain significant inconsistencies. Canada is represented by Marie Riendeau, counsel, IPLS, Justice Canada, Karen Pflanzner, counsel, Ministry of Justice, Saskatchewan, André Allard, counsel, Office de la protection du consommateur du Québec and David Clarke, economic analyst, Office of Consumer Affairs, Industry Canada.

[96] *Action required in Canada:* Continue involvement in the preparatory work for the next CIDIP session, including necessary consultations.

e. CIDIP VII – Project on Electronic Registries for Secured Transactions (OAS)

[97] The electronic registries project results from the adoption of the Model Law on Secured Transactions by the CIDIP-VI and comprises three components: uniform registration forms, the development of electronic registry guidelines and the development of an instrument on registry interconnectivity. The first component to be studied by States is uniform registration forms. The OAS has prepared five model forms (registration, continuation, amendment, cancellation, and enforcement), all based on forms from Canada, the United States and Mexico.

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[98] In Canada, a Canadian working group on the electronic registries project has been set up, with experts in secured transactions law and in electronic secured transactions registries. The working group determined that it was not possible to provide comments on the forms without using some policy decision as a point of departure. It was agreed that Canada could usefully propose draft registry guidelines that, if acceptable, would constitute the basis for the forms.

[99] The draft registry guidelines have been finalised and circulated to members of an informal OAS Drafting Group for consideration. The US has also circulated a paper dealing with similar issues. Over the next few months, the Drafting Group will attempt to develop a single set of regulations, based on the Canadian and US proposal and submit a final draft to all OAS States for consideration. The regulations would complement the existing Model Law on Secured Transactions and constitute the basis for future work on this project.

[100] The Drafting Group is composed of both experts and government officials from Canada, the US, Mexico, Brazil, Argentina and representatives from the National Law Centre for Inter-American Free Trade.

[101] *Action required in Canada:* Continue working with Drafting Group members and other OAS Member States to develop regulations under the Model Law.

**f. *Convention on the Use of Electronic Communications in International Contracts*
(UNCITRAL)**

[102] The *2005 Convention on the Use of Electronic Communications in International Contracts* removes obstacles to the use of electronic communications in the formation of contracts between parties located in different States. The Convention applies to business-to-business transactions, as contracts concluded for personal, family or household purposes are excluded. It recognizes the equivalence of paper and electronic communications between parties in the formation and performance of contracts.

[103] In addition to providing a legal framework for parties to international contracts, the *Convention on Electronic Communications* can also be applied to existing international conventions, such as the *UN Convention on Contracts for the International Sale of Goods*. States wishing to do so will ensure that existing conventions are adapted to electronic communications by allowing the *Convention on Electronic Communications* to apply to these texts. Similarly, in Canada, provinces and territories would be in a position to apply the *Convention on Electronic Communications* to conventions that have been implemented in their jurisdiction.

[104] Consultation with representatives of the Canadian Bar Association has indicated that there is a substantial degree of interest in this convention. This year, the Department of Justice is submitting to the Conference pre implementation reports reviewing the *Convention on Electronic Communications* in light of both Canadian civil law and common law, which include recommendations as to the possible accession to the Convention by Canada.

[105] *Action required in Canada:* Determine the interest of provincial and territorial jurisdictions for the adoption of the Convention in Canada and, if warranted, prepare a uniform act to facilitate the implementation of the Convention in Canada.

3. LOW PRIORITIES

a. Draft Protocol on Matters Specific to Space Assets to the *Convention on International Interests in Mobile Equipment (Unidroit)*

[106] The current text of the draft Protocol was a proposal put forward by the Space Working Group, a group of representatives of the aerospace industry, satellite operators and the financial community. A Committee of Governmental Experts was tasked with reviewing the text and making recommendations for changes, with a view to coming up with a proposal that was acceptable both to governments and stakeholders.

[107] At its second session, held in Rome from October 26-28, 2004, the Committee of Governmental Experts referred a number of key issues to intersessional work. Progress with the carrying out of this work in the manner envisaged by the Committee of Governmental Experts having proven to be problematic, the Unidroit Secretariat organized two special government/industry meetings designed to consider the outstanding key issues and the most appropriate means of bringing the planned Protocol to completion.

[108] The last government/industry meeting took place in June 2007 and identified the following issues for further consideration: the criteria to be employed for the identification of space assets for the purposes of their registration in the International Registry (and the closely related issue of the sphere of application of the preliminary draft Protocol), the extent to which the creditor's remedies under the Convention as applied to space assets should be capable of being cut back in respect of those assets performing a public service and, the amendments to the draft Protocol needed to achieve the extension of the Convention to debtor's rights and related rights.

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[109] During the government/industry meeting it was also recognised that further consensus needed to be built around these issues and that this could only be achieved by the preparation of an alternative new draft Protocol, addressing them. At its 61st session, held on November 29, 2007, the Unidroit General Assembly approved the Secretariat's proposal that a Steering Committee be established to build consensus around the issues identified at the last government/industry meeting in 2007.

[110] The Steering Committee held a first meeting in May 2008 and is preparing an alternative new draft Protocol, which is expected to be circulated to governmental experts in the fall of 2008. It is expected that the next meeting of the Committee of Governmental Experts will be held in the spring of 2009.

[111] The Department will develop a strategy to consult stakeholders and other federal government departments throughout the process to ensure that the alternative new draft Protocol addresses their concerns and meets their particular needs. Comments received will be used to establish the Canadian position for the next meeting of Governmental Experts.

[112] *Action required in Canada:* Ongoing consultations on the alternative new draft Protocol to develop the Canadian position for the next meeting of Governmental Experts.

**b. *Convention on International Bills of Exchange and International Promissory Notes*
(UNCITRAL)**

[113] This Convention, which was finalised in 1988, is not yet in force. Canada, which actively participated in its drafting, the Russian Federation and the United States have signed it; Gabon, Honduras, Mexico, Guinea and Liberia have acceded to it. The Convention will enter into force after ten ratifications or accessions. Canada signed the Convention on December 7, 1989. In order to implement it in Canada, federal legislation would be required.

[114] The UNCITRAL Secretariat has prepared a draft Protocol that would bring the Convention into force among NAFTA countries, with provision for additional State parties as required. The objective of this Protocol would be to encourage other States to ratify the Convention and to provide the benefit a uniform set of rules for at least one group of States without having to wait for ten ratifications.

[115] The Convention is the result of nearly 20 years of work by UNCITRAL to devise a unifying law for international bills and notes. It will create a new international regime based on a compromise between the civil and common law traditions. It addresses and regulates a number of complex and difficult issues such as the rights of a holder of a bill

or note; forged endorsements; fraud, theft; guarantors; presentment for payment and non-acceptance; notice of dishonour and discharge. When the Convention comes into force, it will therefore introduce more predictability for financial institutions and businesses that use these methods of payment for international transactions.

[116] *Action required in Canada:* None at this time.

c. *Convention on International Financial Leasing and Convention on International Factoring (Unidroit)*

[117] These Conventions, which are also known as the Ottawa Conventions since they were finalised in Ottawa in 1988, have been in force since May 1, 1995. The *Leasing Convention* is in force in nine States and the *Factoring Convention* is in force in six States. They provide uniform international rules to facilitate the financing of international commercial transactions. The Uniform Law Conference has prepared draft uniform legislation that may be adopted by interested jurisdictions.

[118] Canada is not yet party to either of the Conventions. In 1991, however, the Department of Justice consulted with the provinces, territories and interested private sector groups and experts on the desirability of Canada becoming a party to the Conventions. The responses received indicated that there was some support for Canada becoming party to both Conventions. Today, because of changes in the leasing industry and in light of the coming into force of the Conventions, further consultations might be undertaken to determine current interest in Canada's becoming party to them.

[119] *Action required in Canada:* Confirm the views of the leasing industry and of the provinces and territories to determine Canada's interest in joining these Conventions.

d. *Model Law on International Commercial Conciliation (UNCITRAL) – ULCC Uniform Act on International Commercial Mediation*

[120] In June 2002, UNCITRAL adopted the Model Law on International Commercial Conciliation drafted under the auspices of UNCITRAL Working Group II - International Arbitration and Conciliation. The Canadian delegation at the negotiation comprised Manon Dostie (Department of Justice Canada), Professor Guy Lefebvre (civil law expert) and Robert Cosman (common law expert).

[121] In August 2004, the ULCC approved a Working Group to draft a uniform act to enact the UNCITRAL Model Law on International Commercial Conciliation. The Working Group was composed of many federal, provincial and private practice experts. The Uniform Act on International Commercial Conciliation was adopted in 2005 by the

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ULCC, and is now recommended for adoption by jurisdictions. Nova Scotia has adopted it as the *Commercial Mediation Act* (2005 SNS, C. 36).

[122] *Action required in Canada:* Implement the uniform act.

B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS

1. HIGH PRIORITIES

a. *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Conference)*

[123] This Convention is in force across Canada. It also applies in 56 other States. It is aimed at facilitating the service of documents through Central Authorities established in each State party. Other means of service, such as postal service, are also available provided no objection to their use has been made.

[124] In Canada, Central Authorities have been designated in each province and territory. At the federal level, the Criminal, Security and Treaty Law Division of the Department of Foreign Affairs and International Trade serves as the Central Authority and is monitoring the application of the Convention with the input of provincial and territorial Central Authorities. The courts' rules of practice in all provinces and territories, as well as at the federal level, have been amended to comply with the Convention.

[125] The Permanent Bureau of the Hague Conference on Private International Law published a Practical Handbook on the operation of the Convention which is available on the Conference's website.

[126] The Hague Conference will organize a Special Commission from February 2-12, 2009 on the operation of four Hague Conventions on judicial cooperation, i.e. the Convention on Service Abroad, Evidence, Legalisation and Access to Justice. The Department of Justice Canada is preparing for Canada's participation in the Special Commission.

[127] The Department of Justice Canada has coordinated an exchange of information among provincial and territorial Central Authorities with regard to how the Convention is applied in their respective jurisdictions and on issues they encounter in its application so as to harmonize Canadian practice under the Convention. This exchange of information is ongoing and will also assist in preparing for the Special Commission.

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[128] *Action required in Canada:* Continue to provide information and respond to requests regarding the application of the Convention. Coordinate the exchange of information among Canadian Central Authorities. Prepare for Canada's participation in the Hague Special Commission in 2009.

b. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Conference)

[129] This Convention, which does not yet apply to Canada, is in force in 93 States. It is aimed at replacing the process of legalisation of documents with the simpler method of the "apostille", i.e., a certificate issued in the originating country by a competent authority. At the request of the Secretary General of the Hague Conference, the Advisory Group on Private International Law recommended that consultation on the suitability of this convention for Canada, which was suspended in 1993, be reinitiated given the anticipated benefits for private parties, particularly in the context of child adoption processes.

[130] In October 2003, the Hague Conference convened a Special Commission on the operation of the Hague Conventions on Service Abroad, Taking of Evidence Abroad and Legalisation. At that time, Canada sought agreement to include a federal state clause by way of protocol to the Legalisation and the Taking of Evidence Conventions. The Special Commission was of the opinion that there was insufficient priority for this to be the subject of a protocol on its own and that, if there were to be a protocol on other issues, such a clause might be considered then.

[131] Following the Special Commission, a sub-group of the Advisory Group on Private International Law composed of John Gregory and Vincent Pelletier, as well as officials from the Department of Foreign Affairs and IPLS, worked out a proposal for implementation and identified scenarios to address possible difficulties and solutions.

[132] In July 2008, the federal Minister of Justice began consultations with his provincial and territorial counterparts, inviting them to consider implementation of the Convention in their respective jurisdictions.

[133] The Hague Conference will organize a Special Commission from February 2-12, 2009 on the operation of four Hague Convention on judicial cooperation, i.e. the Conventions on Service Abroad, Evidence, Legalisation and Access to Justice. The Department of Justice Canada is preparing for Canada's participation in the Special Commission.

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[134] *Action required in Canada:* Follow-up with provinces and territories and prepare for Canada's participation in the Special Commission in 2009.

c. *Convention on Choice of Court Agreements (Hague Conference)*

[135] On June 30, 2005, the Hague Conference on Private International Law closed its 20th Diplomatic Session and completed its work on the *Convention on Choice of Court Agreements*. The final instrument sets rules for when a court must take jurisdiction or refuse to do so where commercial parties have entered into an exclusive choice of court agreement. The Convention also provides for the recognition and enforcement of resulting judgments, with an option for States party to agree on a reciprocal basis to recognize judgments based on a choice of court agreement that was not exclusive.

[136] Based on the draft submitted to the Diplomatic Conference, the key issues for Canada at the session were:

- 1) retaining an exclusion for matters related to asbestos or raw materials, either specifically, or via a provision retaining the application of mandatory rules of the forum, to cover the exclusive jurisdiction reserved by British Columbia and Quebec;
- 2) retaining the power of a recognizing court to reduce a damage award in certain circumstances;
- 3) ensuring appropriate treatment of maritime law, competition law and intellectual property so that there is no federal obstacle to Canadian acceptance of the Convention; and
- 4) ensuring that our courts retain the power to transfer cases.

[137] The resulting text appears to meet Canada's concerns and is generally in line with Canadian law. In addition to the matters excluded from the scope of the Convention under Article 2, a State may make a declaration under Article 21 to exclude other specific matters from its scope. This would cover asbestos or raw materials as well as any federal matters that Canada might wish to exclude. In addition, there is no prohibition on reservations so that Canada would be in a position to reserve on issues within the limits of treaty law. The authority of Canadian courts to transfer cases between courts or judicial districts remains, although in some circumstances a transfer may remove the case from the scope of the Convention with possible consequences for recognition and enforcement of the resulting judgment. The power to reduce an award of damages also remains in the Convention. While the language has changed from the original draft, the substance is intended to be the same.

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[138] Overall, the Convention appears to be a positive development. Although it is quite limited in scope and allows States party to create broad exceptions, the frequency of choice of court agreements in commercial matters could make the Convention a useful tool for commercial parties doing business across borders. The final text of the Convention is available at: www.hcch.net.

[139] Two reports reviewing the Convention in light of Canadian civil and common law were presented to the ULCC in 2007. The Conference tasked a Working Group with the preparation of uniform implementing legislation. A draft has been prepared but has not been discussed by a Working Group.

[140] *Action required in Canada:* convene a Working Group to review and finalize a draft implementing act and commentaries.

2. LOW PRIORITIES

a. *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Conference)*

[141] This Convention, which does not yet apply in Canada, is in force in 44 States. Its purpose is to facilitate the transmission and enforcement of letters rogatory by which foreign authorities are requested to obtain evidence for use in ongoing proceedings. This Convention is a complement to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, which is already in force in Canada.

[142] In October 2003, the Hague Conference convened a Special Commission on the operation of the Hague Conventions on Service Abroad, Taking of Evidence Abroad and Legalisation. At that time, Canada sought agreement to include a federal state clause by way of protocol to the legalisation and the taking of evidence conventions. The Special Commission was of the opinion that there was insufficient priority for this to be the subject of a protocol on its own and that if there were to be a Protocol on other issues, then such a clause might be considered.

[143] The Hague Conference will organize a Special Commission from February 2-12, 2009 on the operation of four Hague Conventions on judicial cooperation, i.e. the Conventions on Service Abroad, Evidence, Legalisation and Access to Justice. The Department of Justice Canada is preparing for Canada's participation in the Special Commission.

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[144] In preparation for the Special Commission, the Hague Conference has sent a questionnaire on the Convention to States. Canada's response will be limited to the part of the Questionnaire that is addressed to States not party to the Convention.

[145] *Action required in Canada:* When appropriate, consult on Canada's accession.

b. *Canada-France Convention on Recognition and Enforcement of Judgments (Bilateral)*

[146] The *Canada-France Convention*, the first treaty relating to enforcement of judgments negotiated between Canada and a country with a civil law tradition, was signed on June 10, 1996. Ratification by both countries is required before it can come into force. Its main advantage, similar to that under the *Canada-United Kingdom Convention*, is protecting Canadian interests against the enforcement of judgments rendered in European States parties to the *Brussels* and the *Lugano Conventions* on exorbitant bases of jurisdiction. In addition, the *Canada-France Convention* would allow for the simplified enforcement of Canadian judgments in France, not only in general civil and commercial matters, but also in family matters, including maintenance orders.

[147] Since 1996, France has transferred to the European Union an important part of its jurisdiction over the administration of justice, especially concerning the recognition and enforcement of foreign judgments. This transfer of jurisdiction could constitute an obstacle to the ratification of the Convention by France.

[148] The ULCC adopted a uniform law to implement the Convention in August 1997. Relevant documents were sent to the provinces and territories. In June 1998, Saskatchewan became the first jurisdiction to enact legislation based on the Uniform Act. In December 1999 and August 2000 respectively, Ontario and Manitoba enacted legislation to implement the Convention also based on the Uniform Act.

[149] *Action required in Canada:* Once a response is received from France concerning its capacity to ratify the Convention, take appropriate measures.

c. *Convention on International Access to Justice (Hague Conference)*

[150] The Convention mainly addresses the questions of legal aid and security for costs. It is aimed at eliminating discrimination on grounds of nationality in the operation of legal aid schemes for court proceedings in civil and commercial matters and improving facilities for transmitting requests for legal aid from one State to another.

[151] 24 States are party to this Convention, all of which are European States. Canada did not participate in most of the negotiations leading to this Convention and, when the

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Convention was adopted, a consultation with Canadian jurisdictions in 1984 revealed a lack of interest in it on the part of the provinces and territories.

[152] The Hague Conference will organize a Special Commission from February 2-12, 2009 on the operation of four Hague Conventions on judicial cooperation, i.e. the Conventions on Service Abroad, Evidence, Legalisation and Access to Justice. The Department of Justice Canada is preparing for Canada's participation in the Special Commission.

[153] *Action required in Canada:* Prepare for Canada's participation in the Special Commission in 2009.

C. FAMILY LAW

1. HIGH PRIORITIES

a. *Convention on the International Protection of Adults (Hague Conference)*

[154] This Convention creates global legal solutions to address the problems raised by increased cross-border movement of adults in need of protection. Modelled after the 1996 Convention on the Protection of Children, the 2000 Convention on the Protection of Adults provides for the protection of those adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect the interests of their own person or property. This Convention deals in particular with the determination of incapacity and the institution of a protective regime; the placing of the adult under the protection of a judicial or administrative authority; guardianship, curatorship and analogous institutions; the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult; the placement of the adult in an establishment or other place where protection can be provided; the administration, conservation or disposal of the adult's property; and the authorisation of a specific intervention for the protection of the person or property of the adult.

[155] The ULCC, in collaboration with the Department of Justice, prepared a Uniform Act for the implementation of the 2000 Hague *Convention on the International Protection of Adults*. The Act was adopted by the ULCC in November 2001. Saskatchewan adopted the ULCC Uniform Act in May 2005.

[156] In November 2006, a broad FPT meeting to discuss Central Authority roles and responsibilities under the Convention was held in Ottawa to which public trustees and guardians and ULCC jurisdictional representatives were invited. Ten jurisdictions were

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represented, including the federal government, with participation from public trustees or guardians or ULCC jurisdictional representatives, or both. Federal participation included Justice, the Consular Affairs Bureau and federal Central Authorities for the Abduction and Adoption Conventions. The purpose of the meeting was to assist Canadian jurisdictions who need to evaluate and address resource requirements arising from the Convention in order to facilitate implementation. Participants were invited to consider: the role of central authorities and competent authorities under the Convention; how these roles are applicable to Canadian court services, to public trustees, to public guardians and to other officials; what the implications are for these officials in Convention cases for persons in Canada and in Convention cases involving Canadians abroad; how other jurisdictions have dealt with similar questions; and other aspects of implementation including public education.

[157] The discussions were most helpful and led to a greater understanding of the implications of the Convention's implementation. Unfortunately until recently resources have not allowed the Department of Justice to continue the follow-up needed but follow-up work and drafting an implementation guide have now begun.

[158] *Action required in Canada:* Draft implementation guide. Promote implementation.

b. *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague Conference)*

[159] The 1996 Hague Convention on the Protection of Children creates global legal solutions to address the problems raised by the increase in the trans-border movement of children and adults in need of protection. More specifically, the Convention establishes conflict of law rules to deal with a variety of matters including parental responsibility, as well as its delegation; rights of custody; guardianship, curatorship and analogous institutions; the designation and functions of any person or body having charge of the child's person or property; representing or assisting the child; the placement of the child in a foster family or in institutional care; the supervision by a public authority of the care of a child by any person having charge of the child; and the administration, conservation or disposal of the child's property.

[160] The ULCC, in collaboration with the Department of Justice, prepared a uniform act for the implementation of the 1996 Convention. This act was adopted by the ULCC in November 2001. The Department of Justice is currently working with FPT groups to promote implementation of the Convention, notably with the Coordinating Committee of

Senior Officials-Family Justice (CCSO) Working Group on Parenting and Contact Enforcement and Jurisdiction. The CCSO Working Group is continuing to identify the necessary consequential amendments to legislation as well as the authorities that would be involved in ensuring uniform inter-jurisdictional operation of Convention rules in addition to the proper functioning of the Convention in Canada in actual international cases. The Department of Justice is currently consulting with other federal departments on the Convention, as well as reviewing the need for amendments to the Divorce Act as part of its implementation efforts.

[161] In November 2006, the Hague Conference Special Commission to review the operation of the 1980 Convention on the Civil Aspects of International Child Abduction and the practical implementation of the 1996 Convention for the protection of children recommended that the Permanent Bureau begin work on the preparation of a practical guide to the 1996 Convention to provide advice on the factors to be considered in the process of implementing the Convention into national law and to assist in explaining the practical application of the Convention.

[162] The 1996 Convention is currently in force between fifteen countries. Another nineteen countries, including all countries part of the European Union, have signed the Convention indicating that they will have legislation in place to become parties to the Convention. The United States has also indicated its interest.

[163] *Action required in Canada:* Continue working with FPT partners. Finalize consultations regarding implementation. Active promotion of implementation of the Convention in Canada.

c. Convention on the Civil Aspects of International Child Abduction (Hague Conference)

[164] This Convention, which is the first Hague Convention to be ratified by Canada, is in force across Canada. It provides for an expeditious remedy in order to obtain the return to the State of habitual residence of a child who has been unlawfully removed to, or who is unlawfully retained in, another country in breach of custody rights. Each State party is required to establish a Central Authority to deal with requests for the return of abducted children or for assistance in the exercise of access rights.

[165] In Canada, there is a Central Authority in every province and territory within the Ministry of the Attorney General or the Department of Justice. The federal Central Authority is located in the federal Department of Justice Legal Services Unit at Department of Foreign Affairs. A transportation program facilitates the repatriation of children who

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have been abducted by a parent; the program operates domestically and as well as internationally. The program is co-ordinated by the Royal Canadian Mounted Police (RCMP) Missing Children's Registry in cooperation with national airlines and Via Rail.

[166] A database of judicial decisions taken under the *Hague Convention on the Civil Aspects of Child Abduction* is available at: www.incadat.com. It is hoped that this will facilitate a uniform interpretation of the Convention across all Contracting States. Relevant decisions from Central Authorities will be collected and forwarded to the Permanent Bureau of the Hague Conference.

[167] Since 2005, Latvia, Guatemala, Lithuania, Thailand, Bulgaria, Dominican Republic, Nicaragua, Ukraine, San Marino, Albania and Armenia have acceded to the 1980 Convention. Decisions regarding Canada's acceptance of these recent accessions are expected to be made in the coming months after relevant information is gathered, including from provincial and territorial authorities.

[168] In October/November 2006, Canada participated in a Special Commission on the operation of the 1980 Convention and the status of ratification of the 1996 Convention. The Special Commission considered the following with regard to the 1980 Convention:

- Cooperation between central authorities;
- Preventive measures;
- Voluntary dispute resolution;
- Execution of return and contact orders;
- Interpretation of the key concepts of the 1980 Convention;
- Judicial cooperation and communication.

[169] Certain states proposed amendments to the Convention to ensure increased protection for the children upon return to their state of residence and so that applications for access rights would be treated more efficiently. The Commission refused these proposals at the time because the 1996 Convention may eventually respond to these concerns. The priority will now be the implementation of the 1996 Convention.

[170] The conclusions and recommendations adopted by the Special Commission are available on the Hague Conference's website at: http://www.hcch.net/upload/wop/concl28sc5_e.pdf.

[171] In April 2008, a proposal for a draft Protocol to the Convention was submitted to the Council on General Affairs and Policy of the Hague Conference. The draft Protocol provided for mediation and conciliation measures, the right of the child and parties to be heard, the establishment of protection measures, mutual assistance and the duty to protect

and to inform after the return of the child. The Council decided to reserve for future consideration the feasibility of a Protocol containing auxiliary rules designed to improve the operation of the Convention. As had been the case in 2006, Members were of the view that the 1996 Convention would address many of these issues.

[172] *Action required in Canada*: Follow-up on the Special Commission and continuation of accession process.

d. *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Conference)*

[173] On November 23, 2007, the Hague Conference on Private International Law closed its 21st Diplomatic Session and completed its work on the *Convention on the International Recovery of Child Support and Others Forms of Family Maintenance* and the *Protocol on the Law Applicable to Maintenance Obligations*.

[174] The Convention sets rules to ensure effective international recovery of child support and other forms of family maintenance, in particular by establishing a comprehensive system of co-operation and providing for the establishment, recognition and enforcement of maintenance decision. The Protocol determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity. In Canada, there is no interest in the Protocol at present.

[175] In June 2001, the Hague Conference decided to include drafting a convention on maintenance as a priority. Five Special Commissions and a Diplomatic Conference were held between 2003 and 2007. All documents relevant to those Special Commissions and to the Diplomatic Session are available on the Hague Conference website.

[176] The Canadian delegation to the Special Commissions and to the Diplomatic Session was composed of Mounia Allouch and Marie Riendeau, Counsel with the International Private Law Section of the Department of Justice Canada, Danièle Ménard, Counsel with the Family, Children and Youth Section of the Department of Justice Canada and federal co-chair of the Interjurisdictional Support Sub-Committee, Denise Gervais, civil law expert from Quebec and member of the Coordinating Committee of Senior Officials – Family Justice, and Tracy Morrow, common law expert from Manitoba and the provincial co-chair of the Interjurisdictional Support Sub-Committee.

[177] The key issues for Canada at the Session were:

- retaining the scope of application of the Convention and the functions of the Central Authorities;

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- circumscribing the process for applications directly made by the applicant to the competent authority for the recognition of maintenance decisions;
- maintaining the possibility for the debtor to ask for the establishment of a maintenance decision;
- ensuring the appropriate framework for free and effective access to procedures;
- maintaining the reservations on certain basis for recognition and enforcement of maintenance decisions;
- ensuring that the Convention applies to private agreements and authentic instruments; and
- ensuring an appropriate interpretation clause for the application of the Convention to non-unified legal systems.

[178] The Diplomatic Session made certain recommendations with regard to outstanding issues that were not completed at the Session:

- the Working Group on Forms continue its work on the draft forms to be adopted by a future Special Commission;
- the Administrative Co-operation Working Group continue its work on an interim basis as a forum for discussion of issues of administrative co-operation and consideration be given to the establishment of a standing Central Authority Co-operation Committee;
- the Country Profile Sub-committee of the Administrative Co-operation Working Group continue its work on model country profiles to be adopted at a future Special Commission, and;
- consider the feasibility of developing a Protocol to the Convention to deal with the international recovery of maintenance in respect of vulnerable persons so that such a Protocol would complement and build upon the Hague Convention of 13 January 2000 on the International Protection of Adults.

[179] In Canada, the Coordinating Committee of Senior Officials (Family Justice) has set up a Working Group on Possible Implementation of the Convention that will report on the compatibility of the Convention with Canadian law and provide information on operational implications and implementation options of the Convention in Canada. The report of the Working Group would serve as a basis for provincial and territorial authorities in their consideration as to the desirability of implementing the Convention in their respective jurisdictions.

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[180] *Action required in Canada:* At the domestic level, participate in the Working Group on Possible Implementation of the Convention and at the international level, coordinate Canada's participation in upcoming meetings in The Hague and in Special Commissions that will be convened on the Convention.

2. MEDIUM PRIORITIES

a. *Convention on Intercountry Adoption (Hague Conference)*

[181] The Convention provides rules for an orderly and harmonised process for international adoption encouraging cooperation between countries of origin and receiving countries. It aims to assure a rapid and flexible process, in the best interests of the children concerned. The implementation of the Convention has had a positive impact on Canadian international adoption.

[182] The Convention entered into force in Canada on April 1, 1997 in the five provinces which were the first to enact implementing legislation, i.e. British Columbia, Prince Edward Island, Manitoba, New Brunswick and Saskatchewan. On November 1, 1997, the Convention entered into force for Alberta; on August 1, 1998 for the Yukon; on October 1, 1999 for Nova Scotia; on December 1, 1999 for Ontario; the Northwest Territories on April 1, 2000, Nunavut on September 1, 2001 and Newfoundland and Labrador on December 1, 2003. In April 2004, Quebec adopted implementing legislation and the Act entered into force on February 1, 2006.

[183] The Hague Conference convened a Special Commission from September 17-23, 2005 in order to discuss the practical operation of the Hague Convention. The Special Commission adopted a set of conclusions and recommendations on the practical operation of the Convention, which are available on the Hague Conference's website. In one of its recommendations, the Special Commission requested the Permanent Bureau of the Hague Conference to finalize the draft *Guide to Good Practice under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption: Implementation and Operation of the Convention* based on the comments made at the Special Commission. The purpose of the Guide is to assist States (whether or not already Contracting States) with the practical implementation of the Convention, in a manner which achieves its objects. It is expected that the final version of the Guide will be available on the Hague Conference's website in the coming months.

[184] *Action required in Canada:* Continue follow-up on the recommendations and conclusions adopted at the Special Commission of September 2005, including

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consultations with Central Authorities on the promotion and implementation of the *Guide to Good Practice under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption: Implementation and Operation of the Convention*.

D. PROTECTION OF PROPERTY

1. HIGH PRIORITIES

a. *Convention on the Form of an International Will (Unidroit)*

[185] This Convention applies to 12 States, including Canada, where it has been extended to 8 provinces and territories (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan). To facilitate implementation of the Convention, the ULCC prepared an amendment to the Uniform Wills Act in 1974.

[186] The purpose of the Convention is to establish an international form of will, additional to the forms in use in Contracting States, which is to be recognised as valid in all Contracting States. Article 1 of the Convention stipulates that each Party undertakes to introduce into its law the rules regarding an international will set out in the Annex to the Convention. In choosing the form of an international will, testators know that their will is to be recognised in all Contracting States without reference to the conflict of law rules concerning the validity of wills.

[187] *Action required in Canada:* Consultation with the five other jurisdictions that have yet to implement the Convention.

b. *Convention on the Law Applicable to Trusts and their Recognition (Hague Conference)*

[188] The Convention aims at resolving issues of conflict of laws related to the establishment and management of trusts and problems related to their recognition, especially in countries with a civil law tradition.

[189] This Convention is now in force in 10 States, including five exclusively civil law jurisdictions. It entered into force in Canada on January 1, 1993 and now applies to eight jurisdictions: Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Nova Scotia, Manitoba and Saskatchewan. Nova Scotia is the most recent province to have adopted implementing legislation for the Convention, which applies there as of May 1, 2006.

[190] *Action required in Canada:* Consultation with the jurisdictions that have yet to implement the Convention.

2. MEDIUM PRIORITIES

a. *Convention on the Law Applicable to Successions (Hague Conference)*

[191] This Convention, which has been signed by Argentina, Luxembourg, Switzerland and the Netherlands and which has only been ratified by the Netherlands, is not in force, as three ratifications are necessary. The Convention determines the law applicable to the estates of deceased persons where more than one State is concerned. The Convention's main feature is the principle of unity whereby the entire succession of an estate is governed by one law unless a choice of law has been made.

[192] Canada actively participated in the negotiation of this Convention. Since 1994, consultation regarding possible support in Canada for the implementation of this Convention has been suspended in order to allow further study of the Convention to answer questions raised as to its interpretation.

[193] At the request of the Secretary General of the Hague Conference, the Advisory Group on Private International Law considered the suggestion that Canada ratify the Convention soon, after a new round of consultation. It was felt that consultations should not be undertaken at this point given that the Convention is not in force.

[194] *Action required in Canada:* Consultation on possible Canadian ratification and implementation, when appropriate.

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3. LOW PRIORITIES

**a. *Convention on the Return of Stolen or Illegally Exported Cultural Objects*
(Unidroit)**

[195] This Convention, to which 27 States are party, was finalised under the auspices of Unidroit in June 1995. It sets out rules for the restitution or return of stolen or illegally exported cultural objects, subject to certain limitation periods. The Convention also provides for compensation of *bona fide* purchasers and addresses the issue of the proper jurisdiction in which to bring a claim. An explanatory report on the Convention and its implementation is available on the Unidroit website.

[196] *Action required in Canada:* When requested, assist the Department of Canadian Heritage in the consultations.

CONCLUSION

[197] This report deals only with the activities of the Department of Justice in international private law over the past year and its current priorities. It must be emphasized, however, that the accomplishments of the last year rest on the work carried out over the last 40 years by many Canadians from all levels of government and all sectors. The Department acknowledges with great appreciation the contributions of so many who have given their time and expertise over four decades and who have allowed Canada to take a leading role in many international private law activities at the international level.

[198] Further work remains to be done in terms of implementation of existing international instruments at the provincial, territorial and federal levels. The Department's International Private Law Section will continue its efforts over the coming year.

[199] The Department of Justice proposes to continue focusing on implementation in the medium term. We suggest that particular attention be given to implementing the following conventions:

- (1) *Convention on the Law Applicable to Trusts and their Recognition* (The Hague)
- (2) *Convention Providing a Uniform Law on the Form of an International Will*
(Unidroit)
- (3) *International Interests in Mobile Equipment Convention* and its *Aircraft Protocol*
(Unidroit/ICAO)
- (4) *Conventions on the Limitation Period in the International Sale of Goods*
(UNCITRAL)
- (5) *ICSID Convention* (World Bank)

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- (6) *Convention on the Protection of Adults* (The Hague)
- (7) *Convention on the Protection of Children* (The Hague)
- (8) *Convention Abolishing the Requirement of Legalization for Foreign Public Documents* (The Hague).

Suggestions for additions to this list are welcome. While we propose a collective effort for the implementation of these conventions, we recognise that other instruments may be of particular interest to jurisdictions and we look forward to considering them.

[200] To maintain our emphasis on implementation, we hope to be able to devote greater resources to implementation activities. It is clear that collaboration between the Department of Justice and the ULCC in matters of international private law remains key to achieving this objective and we look forward to continuing international private law work with the Conference.

[201] We would like to reiterate our invitation to members of the ULCC to provide us with comments or questions arising from this report. We would be particularly interested in knowing whether the ordering of our priorities corresponds to the priorities of the provincial and territorial governments. Your comments or questions may be directed to any counsel in the International Private Law Section of the Department (see contact list in Annex A).

ANNEX A

INTERNATIONAL PRIVATE LAW SECTION CONTACTS (2008)

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ANNEX B



Department of Justice
Canada

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OVERVIEW CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES

NOTE: In this chart, 1, 2 and 3 represent the order of priority afforded to each project, 1 being the highest priority.

ORGANIZATIONS:

Hague: Hague Conference on Private International Law

OAS: Organization of American States

UNCITRAL: United Nations Commission on International Trade Law

Unidroit: International Institute for the Unification of Private Law

World Bank

August 2008

Priority Level		International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
1	Negotiation	<ul style="list-style-type: none"> • Security Interests in Intellectual Property (UNCITRAL) • Project on Harmonised Substantive Rules Regarding Indirectly Held Securities (Unidroit) 	<ul style="list-style-type: none"> • Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) • Convention on Service Abroad (Hague) 		
	Implementation	<ul style="list-style-type: none"> • Convention on the Settlement of Investment Disputes (ICSID) - (World Bank) • Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit) • Convention on Securities Held by Intermediaries (Hague) - ULCC Uniform Act • Convention on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL) • Convention on the Assignment of Receivables (UNCITRAL) • Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL) 	<ul style="list-style-type: none"> • Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) • Convention on Choice of Court Agreements (Hague) 	<ul style="list-style-type: none"> • Convention on the International Protection of Adults - (Hague) • Convention on Parental Responsibility and Measures of Protection of Children (Hague) • Convention on the Civil Aspects of International Child Abduction (Hague) • Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague) 	<ul style="list-style-type: none"> • Convention on the Form of an International Will (Unidroit) • Convention on the Law Applicable to Trusts - (Hague)
2	Negotiation	<ul style="list-style-type: none"> • Revision to the Model Law on Procurement of Goods, Construction and Services (UNCITRAL) • UNCITRAL Working Group on Insolvency Law - Treatment of enterprise groups • UNCITRAL Working Group on Arbitration - Revision of UNCITRAL Arbitration Rules • CIDIP VII - Project on jurisdiction and application law for consumer contracts (OAS) • CIDIP VII - Project on electronic registries for secured transactions (OAS) 			
	Implementation	<ul style="list-style-type: none"> • Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Convention on Intercountry Adoption (Hague) 	<ul style="list-style-type: none"> • Convention on the Law Applicable to Successions (Hague)

3	Negotiation	<ul style="list-style-type: none"> • Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit) 	<ul style="list-style-type: none"> • Convention on the Taking of Evidence Abroad (Hague) • Convention on International Access to Justice (Hague) 		
	Implementation	<ul style="list-style-type: none"> • Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL) • Model Law on Cross-border Insolvency (UNCITRAL) • Conventions on International Leasing and on International Factoring (Unidroit) Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL) • Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation 	<ul style="list-style-type: none"> • Canada-France Convention on Recognition and Enforcement of Judgments (Bilateral) 		Convention on Stolen or Illegally Exported Cultural Objects (Unidroit)

ANNEX C



Department of Justice
Canada

Ministère de la Justice
Canada

CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
I	Ongoing Negotiations	Security Interests Intellectual Property (UNCITRAL)			Ensure links are made with the work on security interests at the ULCC
I	Ongoing Negotiations	Project on Harmonised Substantive Rules Regarding Indirectly Held Securities (Unidroit)		Instrument not finalized yet	Consultation on the preliminary draft convention in preparation for the next intergovernmental session
I	Implementation or monitoring	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) - (World Bank)	<ul style="list-style-type: none"> - implementing legislation adopted (but not yet in force) in: Canada (2008). Ontario (1999), British Columbia (2006), Newfoundland (2006), Saskatchewan (2006) and Nunavut (2006) - The ULCC adopted 	<ul style="list-style-type: none"> - In force on October 14, 1966 - 143 States party 	Obtain provincial and territorial support for ratification, including the adoption of legislation implementing the Convention at the provincial and territorial levels

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
			uniform implementing legislation (1998) - Federal implementing legislation was adopted on Marsh 13, 2008		

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
I	Implementation or monitoring	Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)	<ul style="list-style-type: none"> - Implementing legislation adopted in Canada (2005), Alberta (2006), Saskatchewan (2007), Nova Scotia (2004), Ontario (2002), Newfoundland (2006) and Quebec (2007) but not yet in force - The ULCC has adopted uniform implementing legislation 	<ul style="list-style-type: none"> - Convention in force at the international level (April 1, 2004); Aircraft Protocol in force (March 1, 2006) - Canada has signed both instruments in March 2004 	<p>Continue to seek support from provinces and territories in terms of implementation. Working toward ratification.</p> <p>Input from jurisdictions to prepare for declarations</p>
I	Implementation or monitoring	Convention on Securities Held by Intermediaries (Hague) - ULCC	ULCC approved a Working Group to	- Concluded at The	Establish a ULCC Working Group to draft uniform implementing

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
		Uniform Act	prepare uniform implementing legislation as part of the Commercial Law Strategy	Hague on 02-11-13 - Not yet in force	legislation
I	Implementation or monitoring	Conventions on the Limitation Period in the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none"> - The ULCC adopted uniform implementing legislation (1998) - Consultation at federal, provincial and territorial level in 2002 and 2005 - Implementing legislation adopted in Nunavut, but not yet 	<ul style="list-style-type: none"> - In force on August 1st, 1988 - 25 States party 	<p>Consideration by the federal government to adopt an implementing legislation</p> <p>Obtain provincial and territorial support, including by the adoption of implementing legislation such as the ULCC International Sales Conventions Act</p>

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
			in force		
I	Implementation or monitoring	Convention on the Assignment of Receivables in International Trade (UNCITRAL)	-Preliminary implementation study approved by ULCC, August 2005 - ULCC-NCCUSL-Mexican Uniform Law Centre joint project underway	- Not in force - 3 signatures: Luxembourg, Madagascar, U.S. + 1 accession (Liberia) - requires 5 ratifications or accessions	Consult with the private sector, federal, provincial and territorial authorities on implementation Uniform implementing legislation in preparation
I	Implementation or monitoring	Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)		- Adopted and opened for signature in December 1995 - Not yet in force	Development of an implementation act and consider the possibility of developing domestic rules

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
2	Ongoing Negotiations	Revision to the Model Law on Procurement of Goods, Construction and Services (UNCITRAL)		Instrument not finalized yet	Preparation for the next session of negotiations
2	Ongoing Negotiations	UNCITRAL Working Group on Insolvency Law - Treatment of enterprise		Instrument not finalized yet	
2	Ongoing Negotiations	CIDIP-VII – Project on electronic registries for secured transactions (OAS)		Instrument not finalized yet	Preparation for the CIDIP VII session (dates to be confirmed)
2	Ongoing Negotiations	CIDIP-VII – Project on jurisdiction and applicable law for consumer contracts (OAS)		Instrument not finalized yet	Preparation for the CIDIP VII session (dates to be confirmed)

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
2	Implementation or monitoring	Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)		As per signature from January 16 2006 to January 16, 2008	Pre-implementation reports from common law and civil law experts to be submitted at ULCC annual meeting (August 2008) Determine interest in developing uniform implementing legislation.
3	Ongoing Negotiations	Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit)		Instrument not finalized yet	Preparation for the next Session of Governmental Experts (dates to be confirmed)
3	Implementation or monitoring	Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		- Open for signature in 1988 - Not yet in force	Consultation with provinces and territories on Canada becoming a party

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
3	Implementation or monitoring	Model Law on Cross-border Insolvency (UNCITRAL)	Provisions based on the Model Law have been adopted but are not yet in force	Adopted by UNCITRAL in 1997	Provide information when requested Industry Canada is consulting prior to giving force of law to the provisions
3	Implementation or monitoring	Conventions on International Leasing and on International Factoring (Unidroit)	<ul style="list-style-type: none"> - Consultation with provinces, territories and industries in 1991 indicated support for implementation - The ULCC has drafted and adopted implementing legislation 	Entry into force on May 1 st , 1995 for both conventions	Confirm the views of the industry and of the provinces and territories to determine Canada's interest in becoming party to the Conventions.
3	Implementation and monitoring	Model Law on International Commercial Conciliation	N.S. (2005)	Model Law adopted by	Adoption of Uniform Act at federal

International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
		(UNCITRAL) - ULCC Uniform Act on International Commercial Mediation	-Uniform Act adopted by ULCC in August 2005	UNCITRAL in June 2002	level Encourage adoption of Uniform Act by provinces and territories
Instrument already implemented in Canada		Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UNCITRAL)	In force in all Canadian jurisdictions	Adopted by the United Nations in 1958	A recommendation on the scope of Art. II(2) of the Convention will be presented this fall to the UN General Assembly
Instrument already implemented in Canada		Model Law on Electronic Commerce (UNCITRAL)	- ULCC Uniform Act (1999) - implemented in all jurisdictions except N.W.T.	Adopted by UNCITRAL in May 1995	
Instrument already implemented in Canada		Convention on Contracts for the International Sale of Goods (UNCITRAL)	Implemented and in force in all Canadian jurisdictions	- In force in 1988 - Canada ratified in	

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
			1991	
Instrument already implemented in Canada	Model Law on International Commercial Arbitration (UNCITRAL)	Implementing legislation adopted and in force in all Canadian jurisdictions	Adopted by UNCITRAL in 1985	New legislative provisions have been adopted regarding interim measures Consult to determine interest for their adoption

Judicial Cooperation and Enforcement of Judgements

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
1	Review of the operation of the Convention	Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)	<ul style="list-style-type: none"> - In force in all provinces and territories. - Amendments adopted for all rules of court in all jurisdictions and for those of the Federal Court 	<p>A practical handbook on the operation of the Convention is available on the website of the Conference</p> <p>www.hcch.net (2006 version)</p>	Set up a Canadian Delegation and prepare for the Special Commission on the operation of the Convention in February 2009
1	Review of the operation of the Convention	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		In force in 93 States	Set up a Canadian Delegation and prepare for the Special Commission on the operation of the Convention in February 2009
3	Review of the operation of the	Convention on the Taking of Evidence Abroad in Civil and		In force in 43 States	Set up a Canadian Delegation and prepare for the Special Commission

Judicial Cooperation and Enforcement of Judgments

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
	Convention	Commercial Matters (Hague)			on the operation of the Convention in February 2009; Consultation on accession to the Convention when appropriate
3	Review of the operation of the Convention	Convention on international Access to Justice (Hague)		In force in 24 States	Set up a Canadian Delegation and prepare for the Special Commission on the operation of the Convention in February 2009
1	Implementation or monitoring	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		In force in 93 States	Consult provinces and territories on the interest of implementing the Convention
1	Implementation or monitoring	Convention on Choice of Court Agreements (Hague)		Adopted by the Hague Conference on June 30, 2005	Consult with Canadian jurisdictions on implementation Preparation of uniform implementing legislation

Judicial Cooperation and Enforcement of Judgements

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
3	Implementation or monitoring	Canada-France Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)	<ul style="list-style-type: none"> - Implementing legislation adopted but not yet in force in SASK(1998); ONT (1999); MAN (2000) - Uniform Act adopted by the ULCC in 1997 	<ul style="list-style-type: none"> - Convention signed in Ottawa on June 10, 1996 - Not yet in force 	Consultation with France on ratification
Instrument already implemented in Canada		Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)	- In force in all provinces and territories.	A practical handbook on the operation of the Convention is	Provide information when requested

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Ministère de la Justice
Canada

Judicial Cooperation and Enforcement of Judgments

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
		- Amendments adopted for all rules of court in all jurisdictions and for those of the Federal Court	available on the website of the Conference www.hcch.net (2006 version)	

Family Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
I	Implementation or monitoring	Convention on Maintenance Obligations (Hague)		- Instrument adopted in November 2007	Steps for implementation to be determined
I	Implementation or monitoring	Convention on the Civil Aspects of International Child Abduction (Hague)	Implementing legislation adopted in all provinces and territories	- In force for Canada in 1983 - 81 States party	Follow-up of the Hague Special Commission on the operation of the Convention in 2006 Decisions on acceptance of 11 States that recently acceded to the Convention
I	Implementation or monitoring	Convention on the International Protection of Adults - (Hague)	- Uniform implementing legislation was	- Concluded at The Hague on October	Working and consulting with provincial and territorial jurisdictions on implementation

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Family Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
			adopted by ULCC (December 1 st , 2001) - Sask. (2005)	2d, 1999 - Not yet in force - 2 States party	issues
1	Implementation or monitoring	Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and Measures of Protection of Children (Hague)	- Uniform implementing legislation was adopted by ULCC (December 1 st , 2001) - CCSO WG on Parenting and Contact Enforcement and Jurisdiction	- Concluded at The Hague on October 19, 1996 - Not yet in force - 15 States party	Working and consulting with provincial and territorial jurisdictions on implementation issues Follow-up of Hague Special Commission in 2006
2	Implementation or	Convention on Protection of	- Implementing	- In force for	Provide information on the

Family Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
	monitoring	Children and Cooperation in Respect of Intercountry Adoption (Hague)	legislation adopted and in force in all jurisdictions P.E.I. (1994), SASK., B.C., MAN. (1995), N.B. (1996), ALTA (1997), YT, N.S., ONT (1998), N.W.T., Nunavut (1999), Nfld (2003), Qc (2006)	Canada (1994), B.C., MAN., N.B., P.E.I., SASK., ALTA (1997), YT (1998), NS, ONT (1999), NWT (2000), Nunavut (2001), NFLD (2003) and Qc (2006) - 75 States party	Convention where required Follow-up to the Guide to Good Practice on the Implementation and Operation of the Convention.

Protection of Property

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
I	Implementation or monitoring	Convention Providing a Uniform Law on the Form of an International Will (Unidroit)	Implementing legislation adopted in ALTA. (1976), MAN. (1975), NFLD. (1975-1976), ONT. (1977), SASK. (1980-1981), P.E.I. (1994), N.B. (1997), N.S. (2000)	- In force for CAN., MAN., NFLD., ONT., ALTA (1978), SASK. (1982), P.E.I. (1995), NB (1997) and N.S. (2001) - 12 States party	Extension to remaining jurisdictions when implementing legislation is adopted

Protection of Property

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
1	Implementation or monitoring	Convention on the Law Applicable to Trusts and their Recognition - (Hague)	<p>- Implementation legislation adopted:</p> <p>P.E.I. (1988), N.B. (1988), B.C. (1989), NFLD (1990), ALTA (1990), MAN. (1993), SASK. (1994), N.S. (2005)</p> <p>- 1988 Uniform Act by Uniform Law Conference</p>	<p>- In force for CAN, ALTA, B.C., N.B., NFLD, P.E.I. (1993), MAN., SASK (1994)</p> <p>- declaration for N.S. filed on February 17, 2006</p> <p>- in force for N.S. May 1, 2006</p> <p>- 10 States party</p>	Adopt implementing legislation in QUÉ., ONT., Y.T., N.W.T. and Nunavut
2	Implementation or monitoring	Convention on the Law Applicable to Successions to the Estates of		- Concluded at the Hague on August	Consult with provinces and territories when appropriate

Protection of Property

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
		Deceased Persons (Hague)		1 st , 1989 and not yet in force - 1 State Party (Netherlands)	
3	Implementation or monitoring	Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit)		- Entered into force on July 1 st , 1998 - 29 States party	Consultation with provinces and territories on Canada becoming a party when appropriate

ANNEX D

PROVISIONAL SCHEDULE FOR INTERNATIONAL PRIVATE LAW MEETINGS

September 2008 – December 2009

Meeting		Travel Dates	Place
1.	Unidroit Diplomatic conference on the draft Convention on Harmonizing Substantive Rules regarding Securities held with an Intermediary	September 1-13, 2008	Geneva
2.	UNCITRAL Working Group I – Procurement	September 8-12, 2008	Vienna
3.	UNCITRAL Working Group II – Arbitration	September 15-19, 2008	Vienna
4.	Hague Conference - 115 th anniversary	September 18, 2008	The Hague
5.	UNCITRAL Working Group VI – Security Interests	October 20-24, 2008	Vienna
6.	Unidroit extra-ordinary session of the General Assembly for the adoption of a Model Law on Commercial Leasing	November 10-13, 2008	Rome
7.	UNCITRAL Working Group V - Insolvency Law	November 17-21, 2008	Vienna
8.	UNCITRAL Working Group I - Procurement	February 2-6, 2009	New York
9.	Hague Conference - Special Commission on the practical operation of the Access to Justice, Apostille, Service and Evidence Hague Conventions	February 2-12, 2009	The Hague
10.	UNCITRAL Working Group II - Arbitration	February 9-13, 2009	New York
11.	UNCITRAL Working Group IV - Electronic Commerce	Spring 2009 (tbc)	Vienna
12.	Unidroit - Committee of governmental experts for the preparation of a draft protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets	Spring 2009	Rome
13.	UNCITRAL Working Group VI - Security Interests	April 27 to May 1, 2009	New York
14.	UNCITRAL Working Group V - Insolvency	May 18-22, 2009	New York
15.	UNCITRAL 42 nd Session of the Commission	June 29 to July 17, 2009	Vienna
16.	UNCITRAL Working Group I - Procurement	September 7-11, 2009 (tbc)	Vienna
17.	UNCITRAL Working Group II – Arbitration	September 14-18, 2009 (tbc)	Vienna
18.	UNCITRAL Working Group IV - Electronic	September 28 to	Vienna

Protection of Property

Meeting		Travel Dates	Place
	Commerce	October 2, 2009 (tbc)	
19.	UNCITRAL Working Group V - Insolvency Law	October 5-9, 2009 (tbc)	Vienna
20.	UNCITRAL Working Group VI – Security Interests	December 7-11, 2009 (tbc)	Vienna