

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
2009**

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

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Report of the Department of Justice Canada

August 2009

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] In 2008-2009, 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 continued their work on important projects, including efforts aimed at implementation of the *UN Convention on Independent Guarantees and Stand-by Letters of Credit* and the *Hague Convention on Choice of Court Agreements*.

[3] Progress has also been made in terms of developing new international instruments with Unidroit completing the *Unidroit Model Law on Leasing* and holding the first Session of the Diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities.

[4] 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. In that vein, on October 14, 2009, the International Private Law Section (IPLS) of the Department of Justice will be hosting a Seminar that will focus on the efforts by the international community to harmonize private law and on Canada's participation over 40 years in the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (Unidroit), the United Nations Commission on International Trade Law (UNCITRAL) and the Organisation of American States (OAS). Canadian experts will discuss current international topics in the areas of commercial law, judicial cooperation and the protection of vulnerable persons. The Seminar will provide an overview of emerging issues internationally and will close with a discussion on topics for future work of interest for Canada. Persons from outside the federal government who would like to attend the Seminar are asked to contact Marie Riendeau, counsel at IPLS, for additional information.

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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. A list of the principal conventions, protocols and model laws in the area of international private law adopted by the Hague Conference on Private International Law, UNCITRAL, Unidroit and the OAS is set out in Annex B.

[7] Finally, the third part of the report presents the activities of the Department of Justice in international private law by the following themes:

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

[8] Projects are also ranked with respect to their level of priority (high, medium, low). 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.

[9] Key projects are displayed in similar order in the Overview Chart of International Private Law Priorities (Annex C) which provides an outline of the activities in the field of international private law. Information on the status of instruments or projects is found in Annex D.

[10] A provisional list of international meetings for the coming year is provided in Annex E.

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. Since the last report, the Group met in Ottawa in December 2008 and in June 2009. 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. In 2008, the Department established the

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Academic Liaison Committee (ALC) aimed at facilitating the exchange of information between Departmental officials and law professors on international private law matters. The first meeting of the ALC took place in Ottawa in December 2008. It allowed for a broad exchange on the mandate of the ALC, the involvement of the Department of Justice in the area of international private law and the priority projects of the Department. It was agreed that future meetings would focus mainly on specific projects thus allowing for more extensive substantive discussions. The date of the next meeting of the ALC has not been determined.

II. INTERNATIONAL ORGANIZATIONS AND RELATIONS

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 including instruments adopted by the Conference, status of ratifications and adoption 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 March 31-April 2, 2009, the Council approved a workplan which 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, the feasibility of developing a protocol to the new Maintenance Obligations Convention to address maintenance for vulnerable persons and the desirability and feasibility of a protocol to the 1980 Child Abduction Convention containing auxiliary rules aimed at improving the operation of the Convention. 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, the Special Commission on the practical operation of the Apostille, Service, Evidence and Access to Justice Conventions (2 - 12 February 2009), the Conference on direct judicial communications on family law matters and the development of judicial networks, jointly organised by the European Commission and the

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Hague Conference (Brussels, 15 - 16 January 2009), the Third Malta Judicial Conference on Cross-Frontier Family Law Issues hosted by the Government of Malta in collaboration with the Hague Conference (24 – 26 March 2009) and the March 31-April 2, 2009 meeting of the Council on General Affairs and Policy of the Conference.

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

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, 8 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 42nd Session held from June 29 to July 17, 2009 in Vienna, the Commission heard reports on ongoing work in various areas, including arbitration, insolvency and secured transactions. These subjects are discussed later in this report. Further information on UNCITRAL's work programme is available on its website.

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[24] At this Session, significant progress was also made on the modernisation of the 1994 UNCITRAL *Model Law on Procurement of Goods, Construction and Services*, which is expected to be completed by 2011.

[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 63 Member States, including Canada since 1968 and Indonesia and Saudi Arabia since January 2009. 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 including instruments adopted by the Institute, status of ratifications and adoption can be found at: www.unidroit.org.

[27] In December 2008, the General Assembly of Unidroit elected the members of its Governing Council to a new 5-year term beginning January 1, 2009. The Council is made up of an ex officio member, the President of the Institute, and 25 elected members from Member States. In practice, the Governing Council is the principal decision-making body of the organization. It sets up the work programme, provides advice on the organization's draft budget and is responsible for the Secretariat's activities. The Honourable Madam Justice Anne-Marie Trahan of the Québec Superior Court served 4 consecutive terms on Unidroit's Governing Council. In the course of her mandate, she was a strong supporter of the Institute's work and an enthusiastic promoter of bilingualism and of the use of both English and French. Last December, Canada's candidate for the election, Kathryn Sabo, General Counsel of the International Private Law Section of the Department of Justice, was elected to the Council as a new member.

[28] 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

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program includes ongoing work on the Unidroit Principles of International Commercial Contracts and additional protocols to the Convention on International Interests in Mobile Equipment. In the area of capital markets, in September 2008, it held the first Session of the Diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities. In November 2008, the Joint Session of the General Assembly and the Committee of governmental experts for the finalisation and adoption of a draft model law on leasing formally adopted the *UNIDROIT Model Law on Leasing*. Details of Unidroit's work programme are available on its website.

[29] In October 2008, the Unidroit Member States were consulted on a draft tentative text for an Agricultural Protocol to the Unidroit *Convention on International Interests in Mobile Equipment*. In Canada, consultations show that there is some interest for this project, especially in the agricultural and mining sectors. However, there are concerns with respect to the draft tentative text and the lack of sufficient information on a number of important issues. As a result, Canada indicated that it cannot support the development of this Protocol at this time. The Unidroit Secretariat will be doing some further research on the interest and feasibility of this proposal.

[30] 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

[31] 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 (1997). Further information on the World Bank and the *ICSID Convention* can be found at: www.worldbank.org.

E. COMMONWEALTH

[32] From May 19 – 21, 2009, the Department of Justice Canada hosted a Commonwealth Seminar on the Recognition and Enforcement of Foreign Judgments.

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The purpose of the Seminar was to discuss a proposed new approach to the recognition and enforcement of foreign judgments that could replace obsolete intra-Commonwealth arrangements.

[33] Work on this subject began in 2005 with the Commonwealth Secretariat reviewing the history of the legislation in the Commonwealth and noting recent developments in some Commonwealth countries, in the European Community and at the Hague Conference on Private International Law. The Saskatchewan 2005 *Enforcement of Foreign Judgments Act* and the ULCC's 2003 *Uniform Enforcement of Foreign Judgments Act* (on which Saskatchewan's statute is based) figured prominently in the Secretariat's review as examples well worth considering.

[34] The Secretariat collected information via a questionnaire sent to Commonwealth countries. Replies to the questionnaire indicated support for modernization of the law, albeit with differences of degree on particular aspects. Canada expressed its support for such an exercise and offered its expertise.

[35] International participants in the Seminar included Professor David McLean and Margaret Bruce, Acting Head of Law Development Section from the Commonwealth Secretariat, as well as representatives from India and Trinidad and Tobago. Representatives from South Africa, Singapore and Nigeria were not able to attend. Canadian participants included Kathryn Sabo, General Counsel IPLS/PLS, Manon Dostie, Senior Counsel IPLS/PLS and 2 provincial law experts: Darcy McGovern, Senior Crown Counsel, Saskatchewan Justice, and Frédérique Sabourin, Counsel, ministère des Relations internationales du Québec. Peter Lown, Director of the Alberta Law Reform Institute (ALRI), participated in preparations.

[36] Canada's objective for the Seminar was to obtain agreement to the extent possible on an approach that tracks the 2003 *Uniform Enforcement of Foreign Judgments Act* to facilitate the recognition and enforcement of Canadian judgments abroad.

[37] The Commonwealth Secretariat will report in due course and States may then mandate the Secretariat to prepare model legislation. The Department will monitor developments and assist where possible.

F. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF AMERICAN STATES

[38] 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

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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 including instruments adopted by the Organization, status of ratifications and adoption can be found at: www.oas.org.

[39] 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. The Diplomatic Conference for the adoption of Model Registry Regulations has been scheduled for October 7-9, 2009, in Washington. In June 2009, the General Assembly of the OAS resolved to convene a working group with a view to finalizing the preparation of the instrument(s) on consumer protection before scheduling the dates for a Diplomatic Conference. Consultations with stakeholders will continue.

G. BILATERAL RELATIONS

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

[41] 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.

[42] 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. UNCITRAL Working Group on Security Interests - Annex to the *UNCITRAL Legislative Guide on Secured Transactions on security rights in intellectual property rights*

[43] In 2007, the Commission entrusted a Working Group with the preparation of an annex to the *UNCITRAL Legislative Guide on Secured Transactions on security rights* (which was finalized and adopted in December 2007) specific to security rights in intellectual property rights. The purpose of the annex is to provide assistance to States with respect to legislative adjustments that might be needed to avoid inconsistencies between secured financing and intellectual property law.

[44] The Working Group comprises experts on secured financing and intellectual property law. It has made significant progress on a number of issues including the creation of a security right in intellectual property, its effectiveness against third parties, the registry system, priority of a security right in intellectual property, the law applicable and enforcement. In October 2008, it referred certain matters pertaining to the impact of insolvency on a security right in intellectual property to the UNCITRAL Working Group on Insolvency Law. The draft Annex is expected to be submitted to the Commission for final approval and adoption at its 43rd session in 2010.

[45] *Action Required in Canada:* Continue Canadian participation in the Working Group; ensure links are made with the work on security interests at the ULCC; consult with intellectual property and secured transactions stakeholders.

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

[46] At Unidroit, 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

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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.

[47] Four meetings of governmental experts were held on this project: May 2005, March 2006, November 2006 and March 2007. The first session of the Diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities (UNIDROIT) was hosted by Switzerland in Geneva from September 1 - 13, 2008. The Diplomatic Conference significantly advanced the draft Convention and resolved outstanding issues regarding good faith acquisition, insolvency and securities settlement systems.

[48] At the Diplomatic Conference, given the complexities of the subject-matter, it was resolved to request the preparation of a draft Official Commentary on the text of the draft Convention that would include the policy choices and relevant matters considered during the session, and to defer the finalisation and adoption of the Convention to the fall of 2009. It was also resolved to invite delegations and observers to submit, in advance of the final session, any request to amend the draft text of the Convention aimed at addressing "*significant problems capable of preventing the Convention from working properly*". The final session of the Diplomatic Conference is scheduled for October 5-9, 2009.

[49] 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 on the current draft text of the Convention and the draft Official Commentary are currently underway to develop Canada's position for the final session of the Diplomatic Conference. They include provincial and territorial authorities, the jurisdictional representatives of the ULCC, members of the Working Group on the Uniform Securities Transfer Act, federal departments and agencies, the private bar and academics.

[50] *Action required in Canada:* Consultation on the draft text of the Convention and the draft Official Commentary in preparation for the final session of the Diplomatic Conference from October 5-9, 2009.

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

[51] 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.

[52] 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.

[53] 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.

[54] 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.

[55] The vast majority of our trading partners have ratified the *ICSID Convention* – 144 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.

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[56] 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.

[57] 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 implementing the Convention: Saskatchewan, British Columbia, Newfoundland and Labrador and Nunavut. On June 4 of this year, the Northwest Territories followed suit. Federal legislation was adopted in March 2008.

[58] 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 all jurisdictions to adopt implementing legislation and to consider whether they wish to be designated constituent subdivisions.

[59] 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 will continue in the coming year, with a view to taking steps for ratification in the near future.

[60] *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 adopt implementing legislation.

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

[61] 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

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registered ships, oil rigs, containers, railway rolling stock, agricultural equipment, mining equipment, space property, and other objects that could be identified in the future.

[62] 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. The Convention has been adopted in 32 States and the Protocol in 29 States including the United States (2006), Mexico (2007) and the European Community (2009)

[63] 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, Quebec and the Northwest Territories.

[64] 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 Canada to make with respect to its jurisdiction, 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 that have not yet done so to consider adopting legislation to implement the instruments.

[65] *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.

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

[66] 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. Regarding the first component, 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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[67] In Canada, a Canadian working group on the electronic registries project was 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.

[68] Draft registry guidelines were finalised and circulated to members of an informal OAS Drafting Group for consideration. The US also circulated a paper dealing with similar issues. The Drafting Group was 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.

[69] The Drafting Group developed joint Mexico/Canada/United States Model Registry Regulations and an accompanying commentary, based on both the Canadian and United States proposal. The Model Registry Regulations provide the legal foundation for implementing and operating the registry regime contemplated by the Model Law in both civil and common law systems.

[70] Both the Model Registry Regulations and commentary were circulated to all OAS States for consideration in the spring. No comments were received and no changes were made to the text before it was approved by the Committee on Juridical and Political Affairs on May 14, 2009. On May 22, 2009, the Permanent Council set the dates for a diplomatic conference from October 7-9, 2009 in Washington, where the Model Registry Regulations and commentary will be presented for final adoption.

[71] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming diplomatic conference scheduled in Washington from October 7-9, 2009.

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

[72] 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.

[73] Three proposals have been submitted on this topic: the Canadian revised Draft Proposal for a Model Law on Jurisdiction and Applicable Law for Consumer Protection,

which is substantially consistent with the Conference's Uniform Rules for Consumer Contracts; the U.S. Draft Legislative Guidelines and Model Laws on Monetary Redress, which are largely inspired by the 2007 OECD *Recommendation on Consumer Dispute Resolution and Redress* which Canada supported; Brazil's Draft Inter-American Convention on the Law Applicable to Some International Consumer Contracts and Transactions, which, from Canada's perspective, raises a number of difficulties including whether the choice of a convention is an appropriate vehicle, the absence of jurisdictional rules, the complexity of the rules on applicable law and the legal uncertainty they may create.

[74] On March 30-31, 2009, a meeting was held in Ottawa between Canadian and Brazilian officials, which allowed for an open dialogue on our respective proposals, with a view to facilitating discussions in the formal CIDIP process. In the last year however, the work on this topic advanced very little at the OAS. On June 2, 2009, the General Assembly resolved to convene a working group made up of government officials and representatives of interested Member States to complete the draft final document or documents on consumer protection. The dates for the diplomatic conference, which will be hosted by Brazil, will be set as soon as possible, preferably in the first half of 2010. Canada is represented by Marie Riendeau, counsel, IPLS, Justice Canada, Karen Pflanzner, counsel, Ministry of Justice, Saskatchewan, Geneviève Duchesne, counsel, Office de la protection du consommateur du Québec and David Clarke, economic analyst, Office of Consumer Affairs, Industry Canada.

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

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

[76] The *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary* was adopted by the Hague Conference in December 2002. 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. Canada actively participated in the negotiations relating to this Convention.

[77] In 2004, the ULCC agreed that the Canadian Securities Administrators' (CSA) Uniform Securities Transfer Act Task Force prepare a uniform implementing statute for

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the Convention. 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.

[78] At its annual meeting in September 2007, the ULCC resolved that a Working Group be established to prepare a uniform implementing amending Act and commentaries for consideration at the 2008 meeting. The Working Group has not yet been formed. Note that the United States and Switzerland signed the Convention on July 5, 2006 and Mauritius on April 28, 2008.

[79] *Action required in Canada:* Form a ULCC working group to prepare uniform implementing legislation and commentaries.

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

[80] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 28 States party to the *Limitation Convention* of 1974, and 20 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico.

[81] 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.

[82] 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.

[83] 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 and territories for enactment. This recommendation was made on the grounds

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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.

[84] 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*.

[85] 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 a further consultation of provincial and territorial Deputy Ministers took place in 2005.

[86] *Action required in Canada:* Follow-up on the consultations with provinces and territories and determine whether a simpler approach to implementation would be appropriate. Consider the adoption of federal implementing legislation, which would apply to contracts for the sales of goods involving the Crown in right of Canada.

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

[87] 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.

[88] 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.

[89] 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

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was postponed to allow the joint project to proceed. The Uniform Act was adopted by the Conference in 2007.

[90] Internationally, the Convention's importance continues to be recognized. It has been signed by the United States, Luxemburg and Madagascar, and was acceded to by Liberia. 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.

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

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

[92] 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.

[93] 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 been developing a draft uniform act and commentaries to implement the Convention as well as 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.

[94] 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. It is currently in the process of consulting the Canadian Manufacturers and Exporters association, the beneficiaries of letters of credit. 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 2010.

[95] *Action required in Canada:* Complete uniform implementing legislation as well as parallel domestic legislation for 2010.

2. MEDIUM PRIORITIES

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

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

[97] The Working Group met for three sessions over the last year, September 8-12, 2008, February 2-6, 2009 and May 26-29, 2009. At the Commission's 42nd session held from June 29-July 17, 2009, a Committee of the Whole made significant progress by completing work on Chapter I of the proposed revised text of the Model Law.

[98] 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 LeBlanc, IPLS, Justice Canada, Raphaëlle Lapierre-Houssian, Foreign Affairs and International Trade Canada, Eleanor Andres, Manitoba Justice, Margaret A. MacDonald, Ministry of Energy Ontario, and Marie-Andrée Gauthier, Justice Québec.

[99] The work is progressing on the following main work topics: (1) electronic reverse auctions; (2) framework agreements; (3) remedies; and (4) competitive dialogue and alternative methods of procurement. Work has already begun to prepare for the next session of the Working Group which is scheduled from December 7-11, 2009.

[100] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from December 7-11, 2009.

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

[101] The subject of corporate groups in insolvency law arose in the context of the development of the UNCITRAL Legislative Guide on Insolvency (Insolvency Guide). The treatment of this topic in the Insolvency Guide was limited to a brief introduction. Therefore, at its 39th session in July 2006, the Commission agreed that the subject of

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corporate groups in insolvency law should be referred to the Working Group on Insolvency Law for consideration 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 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. It also agreed that initial work should be done to compile practical experience with respect to negotiating and using cross-border insolvency protocols. The Working Group was given sufficient flexibility to consider proposals for work on additional aspects of post-commencement financing.

[102] 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.

[103] The Working Group continued its work at its 32nd to 36th sessions, with much of the same issues being discussed as listed above. Overall, work is progressing well. At the Commission's 42nd session in June and July 2009, a Practice Guide on cooperation, communication and coordination in cross-border insolvency proceedings was finalized and adopted. It is a complete, comprehensive and useful document in understanding how different jurisdictions deal with cooperation, communication and coordination in cross-border insolvency proceedings.

[104] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from November 9-13, 2009.

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

[105] At the 46th session in February 2007, the Working Group began the revision of the 30-year old UNCITRAL Arbitration Rules. At the last session in February 2009, the Working Group commenced the second reading of the draft revised Rules prepared by

the Secretariat This revision will continue at the next Working Group meeting scheduled for September 14 - 18, 2009. The Working Group expects to present a revised version of the Rules at the Commission in 2010.

[106] In Canada, consultations with stakeholders will continue via e-mail. Previous consultations have not revealed major concerns. Canada will be represented by Manon Dostie, Counsel, International Private Law Section, Justice Canada; Shane Spellisey, Counsel, Trade Law Bureau, Justice Canada; Stephen L. Drymer, Ogilvy Renault, Montreal and Gerry W.J. Ghikas, Borden Ladner Gervais, Vancouver.

[107] *Action required in Canada:* Continue to consult with federal, provincial and territorial governments, private sector, academics, arbitration organizations and other interested parties. Begin informal work on the topic of transparency in treaty based investor-State arbitration in preparation for future work.

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

[108] 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.

[109] 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.

[110] Consultation with representatives of the Canadian Bar Association has indicated that there is a substantial degree of interest in this convention. In 2008, the Department of Justice submitted to the Conference pre-implementation reports reviewing the *Convention on Electronic Communications* in light of both Canadian civil law and common law, which included recommendations as to the possible accession to the Convention by Canada. Due to opposing views expressed on the relevance of pursuing work on the development of uniform implementation legislation for the Convention, it

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was resolved that the Civil Section Steering Committee continue to monitor developments in the area of Electronic Commerce in International Contracts and, if appropriate, make recommendations to the New Projects Committee. This year, the Conference will be asked again to consider a proposal to develop a uniform act for the implementation of the Convention in Canada.

[111] *Action required in Canada:* Determine the interest and, if warranted, prepare uniform act for 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)*

[112] 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.

[113] 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.

[114] 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.

[115] 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.

[116] The Steering Committee held two meetings since May 2008 and has prepared an alternative new draft Protocol, which was circulated to governments in July. The next meeting of the Committee of Governmental Experts will be held from December 7-11, 2009.

[117] 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.

[118] *Action required in Canada:* 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)**

[119] 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.

[120] 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.

[121] 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

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will therefore introduce more predictability for financial institutions and businesses that use these methods of payment for international transactions.

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

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

[123] 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 ten States and the *Factoring Convention* is in force in seven 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.

[124] 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, further consultations might be undertaken to determine current interest in Canada's becoming party to them.

[125] *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*

[126] 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).

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

[128] *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)*

[129] This Convention is in force across Canada. It also applies in 58 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.

[130] 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.

[131] In view of facilitating and harmonising the States' practice under the Convention, the Permanent Bureau of the Hague Conference on Private International Law published in 2006 a Practical Handbook on the operation of the Convention which is available on the Conference's website.

[132] From February 2-12, 2009, the Hague Conference held a Special Commission on the operation of the Hague Conventions on international judicial and administrative cooperation, i.e. the Conventions on Service Abroad, Evidence, Legalisation and Access to Justice. For the Service Abroad Convention, Canada was represented at the Special Commission by Mounia Allouch, Department of Justice of Canada, Jacqueline Caron, Foreign Affairs and International Trade Canada, Anne-Marie Wilson, Department of Justice of Quebec and John Horn, Ramsay Lampman Rhodes, British Columbia.

[133] The Special Commission addressed many issues that States raised in their response to the Hague Questionnaire on the operation of the Convention. The Commission discussed in particular how Central and competent Authorities could reduce the time needed to respond to a request under the Convention. Recommendations 23 and 24 adopted by the Commission on this issue achieve a good balance between the different approaches that were proposed and are acceptable to Canada. The Questionnaire and the

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response of Canada and other States as well as the conclusions and recommendations of the Commission are available on the Conference's website.

[134] The Department of Justice Canada has also 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.

[135] *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. Follow-up on the February 2009 Special Commission.

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

[136] This Convention, which does not yet apply to Canada, is in force in 97 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.

[137] 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.

[138] Following the Special Commission, a sub-group of the Advisory Group on Private International Law composed of John Gregory, Ministry of the Attorney General, Ontario, and Vincent Pelletier, Justice Québec, 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.

[139] 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.

[140] At the February 2-12, 2009 Special Commission on the operation of the Conventions on international judicial and administrative cooperation, on the portion regarding the Legalisation Convention, Canada was represented by Mounia Allouch, Department of Justice of Canada, Jacqueline Caron and Valerie Tailleux, Foreign Affairs and International Trade Canada, John Gregory, Ministry of the Attorney General, Ontario and Patrick Gingras, ministry of Justice, Quebec.

[141] The Special Commission highlighted the fact that the Legalisation Convention is one of the most successful Hague conventions, with 18.3 million apostilles issued in the last five years, in the 37 States Party that provided statistics. Among the issues addressed during the Commission, the States discussed the requirements of the Convention in order for an apostille to be accepted and also the recent technological developments in the context of the Convention, especially with regard to the electronic apostille. The conclusions and recommendations of the Commission are available on the Conference's website.

[142] Although Canada is not yet a party to the Convention, its participation in the Commission permitted to gather information on how other States implement the Convention. Such information will be useful in the context of the discussions on eventual implementation of the Convention in Canada.

[143] *Action required in Canada:* Follow-up with provinces and territories regarding their interest in implementing the Convention in their jurisdiction. Follow-up on the February 2009 Special Commission in Canada.

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

[144] 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.

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

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- 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.

[146] 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.

[147] 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.

[148] 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, which will be distributed this year. .

[149] *Action required in Canada:* 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)*

[150] This Convention, which does not yet apply in Canada, is in force in 48 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.

[151] 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.

[152] At the February 2009 Special Commission on the operation of Conventions on international judicial and administrative cooperation, several recommendations for future work were adopted including that the Permanent Bureau prepare a new edition of the Practical Handbook on the operation of the Evidence Convention.

[153] *Action required in Canada:* In the absence of interest in Canada for the Evidence Convention, no action is required in Canada at this time.

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

[154] 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.

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[155] 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.

[156] 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.

[157] *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)

[158] 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.

[159] 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 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.

[160] At the February 2009 Special Commission on the operation of Conventions on international judicial and administrative cooperation, several recommendations for future work were adopted including that further consideration be given to the possibility of preparing a feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims.

[161] *Action required in Canada:* In the absence of interest in Canada for the Access to Justice Convention, no action is required at this time.

C. FAMILY LAW

1. HIGH PRIORITIES

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

[162] 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.

[163] The ULCC, in collaboration with the Department of Justice, prepared a Uniform Act for the implementation of the Convention. The Act was adopted by the ULCC in November 2001. Saskatchewan adopted the ULCC Uniform Act in May 2005.

[164] 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. In addition to the federal government, nine jurisdictions were represented 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 Child Abduction and the Intercountry 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.

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[165] 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.

[166] Internationally, there have been significant developments. The Convention came into force on January 1, 2009 as between France, Germany and Scotland (as part of the United Kingdom). It has also come into force in Switzerland on July 1, 2009. The following States, all members of the European Union (EU), have signed the Convention: The Netherlands, Finland, Greece, Ireland, Luxemburg, Poland, Italy, Cyprus and Czech Republic.

[167] *Action required in Canada:* Draft implementation guide. Establish a formal working group to undertake operational planning in view of ratification in Canada.

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)*

[168] 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 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.

[169] 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 Working Group is pursuing its examination of the necessary consequential amendments to legislation to ensure the proper application of the Convention in international situations. The Department of Justice is currently consulting

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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.

[170] In November 2006, the Special Commission to review the operation of the *Abduction Convention* on the practical implementation of the 1996 *Convention on the protection of children* recommended that the Permanent Bureau begin work on the preparation of a practical guide to the 1996 Convention. The purpose of the Guide is to provide advice on the factors to be considered in the process of implementing the Convention and to assist in explaining its practical application. It is expected that a draft will be circulated for comments shortly by the Permanent Bureau to Members and Contracting States, with a target publication date by early 2010.

[171] The 1996 Convention is currently in force between sixteen countries. This number is expected to increase in the near future given that the member States of the European Union are expected to ratify the Convention. The United States has also indicated its interest.

[172] *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)*

[173] 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 Contracting State 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.

[174] 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 and International Trade Canada. A transportation program facilitates the repatriation of children who have been abducted by a parent; the program operates domestically and as well as internationally. The program is co-ordinated by the National Missing Children Services in cooperation with national airlines and Via Rail.

[175] A database of judicial decisions taken under the Convention is available at: www.incadat.com. It is hoped that this will facilitate a uniform interpretation of the Convention across all Contracting States. Relevant Canadian judicial decisions are

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collected by the Department of Justice, summarised and forwarded to the Permanent Bureau of the Hague Conference.

[176] Between 2000 and 2008, Latvia, Guatemala, Lithuania, Thailand, Bulgaria, Dominican Republic, Nicaragua, Ukraine, San Marino, Albania, Armenia and Seychelles have acceded to the 1980 Convention. Decisions regarding Canada's acceptance of these accessions are expected to be made once relevant information is gathered, including from provincial and territorial authorities.

[177] In November 2008, the Hague Conference published the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children*. It is available at: http://www.hcch.net/upload/guidecontact_e.pdf. The Permanent Bureau is currently finalizing work on a guide to good practice on enforcement of return and access orders, which was recommended by the Special Commission on the operation of the 1980 Convention in 2006. The conclusions and recommendations adopted by this Special Commission are available on the Hague Conference's website at: http://www.hcch.net/upload/wop/concl28sc5_e.pdf.

[178] At its meeting on March 31-April 2, 2009, the Council on General Affairs and Policy of the Hague Conference reaffirmed its approval of the Permanent Bureau's proposal to develop a Guide to Good Practice for Mediation in the context of the 1980 Convention, which should be submitted to the Special Commission at its next meeting in 2011. It also authorized the Permanent Bureau to engage in preliminary consultations concerning the desirability and feasibility of a protocol to the 1980 Convention containing auxiliary rules to improve the operation of the Convention. A report on these consultations will also be submitted to the Special Commission in 2011. Finally, as a follow-up to the Third Malta Judicial Conference on Cross-Frontier Family Law Issues held on March 24-26, 2009, the Council also authorized the establishment of a Working Party to develop to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children in situations where the 1980 Convention does not apply.

[179] *Action required in Canada*: Follow-up on the 2006 Special Commission and continuation of acceptance of accessions process.

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

[180] 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*.

[181] 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.

[182] 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.

[183] 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.

[184] A Special Commission has been convened for November 2009 in order to follow-up on recommendations of the Diplomatic Session and to adopt the relevant documents.

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[185] 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.

[186] *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 the Special Commission in November 2009.

2. MEDIUM PRIORITIES

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

[187] The Convention establishes procedural safeguards to ensure that international adoption takes place in the best interests of the child and with respect to his or her fundamental rights. It also establishes a system of cooperation between countries of origin and receiving countries to ensure the respect of those safeguards, and thereby to prevent the abduction, the sale of, or the traffic in children. Finally, it secures the recognition in Contracting States of adoptions made in accordance with the Convention. The Convention entered into force in Canada on April 1, 1997 and has been implemented by all the provinces and territories.

[188] In 2008, the Hague Conference published the *Guide to Good Practice on the Implementation and the Operation of the 1993 Hague Intercountry Adoption Convention*, which had been recommended in 2005 by the Special Commission to review the practical application of the Convention. 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 available at: http://www.hcch.net/index_en.php?act=publications.details&pid=4388.

[189] On June 22-26, 2009, Canada participated in the *Séminaire francophone sur la Convention de 1993* organised by the Hague Conference. The *Séminaire* brought together experts from 16 countries of origin and receiving countries sharing the French language and representatives of intergovernmental and non-governmental organisations, with a view to promoting the Convention and to studying its implementation. The conclusions

and recommendations of the *Séminaire* should be available soon on the Conference's website.

[190] The next Special Commission to review the *Intercountry Adoption Convention* is scheduled for June 2010.

[191] *Action required in Canada:* Continue follow-up on the recommendations and conclusions adopted at the Special Commission of September 2005; prepare for the Special Commission scheduled for June 2010.

D. PROTECTION OF PROPERTY

1. HIGH PRIORITIES

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

[192] This Convention applies to 12 States, including Canada, where it has been extended to 8 provinces (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.

[193] 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.

[194] *Action required in Canada:* At appropriate time, consult with the jurisdictions that have not implemented the Convention.

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

[195] 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.

[196] This Convention is now in force in 12 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,

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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.

[197] *Action required in Canada:* Consult with the jurisdictions that have not implemented the Convention.

2. MEDIUM PRIORITIES

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

[198] 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.

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

[200] At the request of the Secretary General of the Hague Conference, the Advisory Group 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.

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

3. LOW PRIORITIES

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

[202] This Convention, to which 30 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.

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

CONCLUSION

[204] 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 more than 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 and who have allowed Canada to take a leading role in many international private law activities at the international level.

[205] 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.

[206] 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)
- (6) *Convention on the Protection of Adults* (The Hague)

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(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.

[207] 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.

[208] 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 consistent with 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 (2009)

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List of principal international private law conventions, protocols and model laws adopted by the Hague Conference on Private International Law, UNCITRAL, Unidroit and the OAS

Hague Conference on Private International Law (since 1954)

Conventions and protocols

- 1954 - Convention of 1 March 1954 on civil procedure
- 1955 - Convention of 15 June 1955 on the law applicable to international sales of goods
- 1955 - Convention of 15 June 1955 relating to the settlement of the conflicts between the law of nationality and the law of domicile
- 1956 - Convention of 1 June 1956 concerning the recognition of the legal personality of foreign companies, associations and institutions
- 1959 - Convention of 24 October 1956 on the law applicable to maintenance obligations towards children
- 1958 - Convention of 15 April 1958 on the law governing transfer of title in international sales of goods
- 1958 - Convention of 15 April 1958 on the jurisdiction of the selected forum in the case of international sales of goods
- 1959 - Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children
- 1961 - Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
- 1961 - Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions
- 1961 - Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents
- 1965 - Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions
- 1965 - Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
- 1965 - Convention of 25 November 1965 on the Choice of Court
- 1971 - Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
- 1971 - Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
- 1970 - Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
- 1970 - Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
- 1971 - Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
- 1973 - Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons
- 1973 - Convention of 2 October 1973 on the Law Applicable to Products Liability
- 1973 - Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- 1973 - Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
- 1978 - Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes

- 1978 - Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages
- 1978 - Convention of 14 March 1978 on the Law Applicable to Agency
- 1980 - Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
- 1980 - Convention of 25 October 1980 on International Access to Justice
- 1985 - Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
- 1986 - Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods
- 1989 - Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons
- 1993 - Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption
- 1996 - Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
- 2000 - Convention of 13 January 2000 on the International Protection of Adults
- 2002 - Convention of 12 December 2002 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary
- 2005 - Convention of 30 June 2005 on Choice of Court Agreements
- 2007 - Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
- 2007 - Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

UNCITRAL

Conventions

- 1958 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention
- 1974 - Convention on the Limitation Period in the International Sale of Goods
- 1978 - United Nations Convention on the Carriage of Goods by Sea - the "Hamburg Rules"
- 1980 - United Nations Convention on Contracts for the International Sale of Goods (CISG)
- 1988 - United Nations Convention on International Bills of Exchange and International Promissory Notes
- 1991 - United Nations Convention on the Liability of Operators of Transport Terminals in International Trade
- 1995 - United Nations Convention on Independent Guarantees and Stand-by Letters of Credit
- 2001 - United Nations Convention on the Assignment of Receivables in International Trade
- 2005 - United Nations Convention on the Use of Electronic Communications in International Contracts
- 2008 - United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - the "Rotterdam Rules"

Model laws

- 1985 - UNCITRAL Model Law on International Commercial Arbitration (amended in 2006)
- 1992 - UNCITRAL Model Law on International Credit Transfers
- 1993 - UNCITRAL Model Law on Procurement of Goods and Construction
- 1994 - UNCITRAL Model Law on Procurement of Goods, Construction and Services
- 1996 - UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, with additional article 5 bis as adopted in 1998
- 1997 - UNCITRAL Model Law on Cross-Border Insolvency

- 2001 - UNCITRAL Model Law on Electronic Signatures with Guide to Enactment
- 2002 - UNCITRAL Model Law on International Commercial Conciliation

UNIDROIT

Conventions and protocols

- 1964 - Convention relating to a Uniform Law on the International Sale of Goods (The Hague)
- 1964 - Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague)
- 1970 - International Convention on Travel Contracts (Brussels)
- 1973 - Convention providing a Uniform Law on the Form of an International Will (Washington, D.C.)
- 1983 - Convention on Agency in the International Sale of Goods (Geneva)
- 1988 - UNIDROIT Convention on International Financial Leasing (Ottawa)
- 1988 - UNIDROIT Convention on International Factoring (Ottawa)
- 1995 - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome)
- 2001 - Convention on International Interests in Mobile Equipment (Cape Town)
- 2001 - Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town)
- 2007 - Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg)

Model laws

- 2002 - Model Franchise Disclosure Law
- 2008 - UNIDROIT Model Law on Leasing

OAS

Conventions and protocols

- 1975 - Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes and Invoices
- 1975 - Inter-American Convention on Conflict of Laws concerning Checks
- 1975 - Inter-American Convention on International Commercial Arbitration
- 1975 - Inter-American Convention on Letters Rogatory
- 1975 - Inter-American Convention on the taking of evidence abroad
- 1975 - Inter-American Convention on the Legal Regime of Powers of Attorney to be used abroad
- 1979 - Inter-American Convention on Conflicts of Laws concerning Checks
- 1979 - Inter-American Convention on Conflicts of Laws concerning Commercial Companies
- 1979 - Inter-American Convention on Domicile of Natural Persons in Private International Law
- 1979 - Inter-American Convention on Execution of Preventive Measures
- 1979 - Inter-American Convention on General Rules of Private International Law
- 1979 - Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards
- 1979 - Inter-American Convention on Proof of and Information on Foreign Law
- 1979 - Additional Protocol to the Inter-American Convention on Letters Rogatory
- 1984 - Inter-American Convention on Conflict of Laws concerning the Adoption of Minors
- 1984 - Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments

- 1984 - Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law
- 1984 - Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad
- 1989 - Inter-American Convention on Contracts for the International Carriage of Goods by Road
- 1989 - Inter-American Convention on the International Return of Children
- 1989 - Inter-American Convention on Support Obligations
- 1994 - Inter-American Convention on International Traffic in Minors
- 1994 - Inter-American Convention on the Law applicable to International Contracts

Model law

- 2006 - Model Inter-American Law on Secured Transactions

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 2009

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) • Draft Convention on Substantive Rules regarding Intermediated Securities (UNIDROIT) • 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 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 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)
	Monitoring		<ul style="list-style-type: none"> • Convention on Service Abroad (Hague) 	<ul style="list-style-type: none"> • Convention on the Civil Aspects of International Child Abduction (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 			
	Implementation	<ul style="list-style-type: none"> • Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) 			<ul style="list-style-type: none"> • Convention on the Law Applicable to Successions (Hague)

2	Monitoring			<ul style="list-style-type: none"> • Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (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) • UNIDROIT Model Law on Leasing 			
	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) <p>Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation</p>			<ul style="list-style-type: none"> • Convention on Stolen or Illegally Exported Cultural Objects (Unidroit)
	Monitoring				



Department of Justice
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CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES

PROVISIONAL SCHEDULE FOR INTERNATIONAL PRIVATE LAW MEETINGS

September 2009 – December 2010

Meeting	Travel Dates	Place
1. 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	Fall 2009 (tbc)	Rome
2. UNCITRAL Working Group II - Arbitration and Conciliation	September 14-18, 2009 (tbc)	Vienna
3. Unidroit - Diplomatic Session on the Draft Convention on Substantive Rules Regarding Intermediated Securities	October 5-9, 2009	Geneva
4. OAS CIDIP-VII - Diplomatic Conference on Electronic Registries	October 7-9, 2009	Washington
5. IPLS Seminar	October 14, 2009	Ottawa
6. UNCITRAL Working Group IV - Electronic Commerce	October 27-30, 2009 (tbc)	Vienna
7. UNCITRAL Working Group VI - Security Interests	November 2-6, 2009 (tbc)	Vienna
8. UNCITRAL Working Group V - Insolvency Law	November 9-13, 2009 (tbc)	Vienna
9. Hague Conference - Special Commission on the Maintenance Convention	November 10-17, 2009 (tbc)	The Hague
10. UNCITRAL Working Group I - Procurement	December 7-11, 2009 (tbc)	Vienna
11. UNCITRAL Working Group II - Arbitration and Conciliation	February 1-5, 2010 (tbc)	New York
12. UNCITRAL Working Group VI - Security Interests	February 8-12, 2010 (tbc)	New York
13. UNCITRAL Working Group I - Procurement	April 12-16, 2010 (tbc)	New York
14. UNCITRAL Working Group IV - Electronic Commerce	May 17-21, 2010 (tbc)	New York
15. UNCITRAL Working Group V - Insolvency Law	May 19-23, 2010 (tbc)	New York
16. Hague Conference – Special Commission on Intercountry Adoption Commission	June 2010 (tbc)	The Hague
17. UNCITRAL 43 rd Session of the Commission	June 21 to July 9, 2010 (tbc)	New York

Meeting		Travel Dates	Place
18.	UNCITRAL Working Group II - Arbitration and Conciliation	September 22-24, 2010 (tbc)	Vienna
19.	UNCITRAL Working Group VI - Security Interests	September 27-October 1, 2010 (tbc)	Vienna
20.	UNCITRAL Working Group I - Procurement	October 11-15, 2010 (tbc)	Vienna
21.	UNCITRAL Working Group V - Insolvency Law	November 1-5, 2010 (tbc)	Vienna
22.	UNCITRAL Working Group IV - Electronic Commerce	December 6-10, 2010 (tbc)	Vienna
23.	UNCITRAL Working Group III - Transport Law	December 13-17, 2010 (tbc)	Vienna