

**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  
2011**

**Winnipeg, Manitoba  
August 7-11, 2011**



<b>INTRODUCTION.....</b>	<b>1</b>
<b>I. NATIONAL ACTORS .....</b>	<b>2</b>
<b>A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW .....</b>	<b>2</b>
<b>B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION .....</b>	<b>3</b>
1. Uniform Law Conference of Canada .....	3
2. Civil Justice Committee .....	3
<b>C. PRIVATE SECTOR AND LAW FACULTIES.....</b>	<b>3</b>
<b>II. INTERNATIONAL ORGANIZATIONS AND RELATIONS.....</b>	<b>4</b>
A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW .....	4
B. UNCITRAL.....	5
C. UNIDROIT .....	6
D. WORLD BANK.....	6
E. COMMONWEALTH.....	7
F. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF AMERICAN STATES (OAS) .....	7
G. BILATERAL RELATIONS.....	8
<b>III. PRIORITIES OF THE DEPARTMENT OF JUSTICE IN INTERNATIONAL PRIVATE LAW .....</b>	<b>8</b>
<b>A. INTERNATIONAL COMMERCIAL LAW .....</b>	<b>8</b>
1. HIGH PRIORITIES.....	8
a. Online Dispute Resolution (UNCITRAL) .....	8
b. Model Law on Public Procurement (UNCITRAL).....	9
c. Transparency in treaty-based investor-State arbitration (UNCITRAL).....	10
d. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (World Bank).....	10
e. Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit/ICAO).....	11
f. Convention on the Law Applicable to Securities Held by Intermediaries (Hague) – ULCC Uniform Act .....	13
g. Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL) .....	13
h. Convention on the Use of Electronic Communications in International Contracts (UNCITRAL).....	14
2. MEDIUM PRIORITIES .....	15
a. Preliminary Draft Protocol on Matters Specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit).....	15
b. Centre of main interests and directors’ responsibilities and liabilities in insolvency and pre-insolvency cases (UNCITRAL).....	16
c. Registration of security rights in movable assets (UNCITRAL) .....	17
d. Model Law on International Commercial Conciliation (UNCITRAL) – ULCC Uniform Act on International Commercial Mediation .....	17
e. Revision of UNCITRAL Arbitration Rules (UNCITRAL) .....	18
3. LOW PRIORITIES.....	19
a. CIDIP VII- Project on Jurisdiction and Law Applicable to Consumer Contracts (OAS) .....	19

## UNIFORM LAW CONFERENCE OF CANADA

b.	Convention on the Assignment of Receivables in International Trade (UNCITRAL) .....	20
c.	Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL) .....	21
d.	Convention on Substantive Rules for Intermediated Securities (Unidroit).....	22
<b>B.</b>	<b>JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS.</b>	<b>22</b>
1.	<b>HIGH PRIORITIES</b> .....	<b>22</b>
a.	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Conference).....	22
b.	Convention on Choice of Court Agreements (Hague Conference).....	23
2.	<b>LOW PRIORITIES</b> .....	<b>24</b>
a.	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Conference).....	24
b.	Convention between the Government of Canada and the Government of the French Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral) .....	24
<b>C.</b>	<b>FAMILY LAW</b> .....	<b>25</b>
1.	<b>HIGH PRIORITIES</b> .....	<b>25</b>
a.	Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Conference).....	25
b.	Convention on the International Protection of Adults (Hague Conference) .....	26
c.	Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague Conference).....	27
d.	Convention on the Civil Aspects of International Child Abduction (Hague Conference).....	28
2.	<b>MEDIUM PRIORITIES</b> .....	<b>30</b>
a.	Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Conference).....	30
<b>D.</b>	<b>PROTECTION OF PROPERTY</b> .....	<b>31</b>
1.	<b>HIGH PRIORITIES</b> .....	<b>31</b>
a.	Convention Providing a Uniform Law on the Form of an International Will (Unidroit) .....	31
b.	Convention on the Law Applicable to Trusts and on their Recognition (Hague Conference).....	31
2.	<b>LOW PRIORITIES</b> .....	<b>32</b>
a.	Convention on the Law Applicable to Successions to the Estates of Deceased Persons (Hague Conference) .....	32
b.	Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit).....	32
	<b>CONCLUSION</b> .....	<b>33</b>
<b>ANNEX A - INTERNATIONAL PRIVATE LAW SECTION CONTACTS</b>		
<b>ANNEX B - 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</b>		
<b>ANNEX C - OVERVIEW CHART OF PRIVATE INTERNATIONAL LAW PRIORITIES</b>		
<b>ANNEX D - CHART OF PRIVATE INTERNATIONAL LAW PRIORITIES</b>		

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

**ANNEX E - WORK PLANS OF INTERNATIONAL ORGANIZATIONS**

**ANNEX F - PROVISIONAL LIST OF INTERNATIONAL MEETINGS**



## Report of the Department of Justice Canada

August 2011

### INTRODUCTION

[1] This report sets out the status of implementation of certain 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 2010-2011, implementation activity continued in Canada. Again this year, efforts were devoted to the possible implementation in Canada of the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, among others. In addition, through the Uniform Law Conference of Canada (ULCC), the Department of Justice and other federal, provincial and territorial (FPT) 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*.

[3] The year new international instruments have been finalised: UNCITRAL's Model Law on Public Procurement and the Judicial Materials on the UNCITRAL Model Law on Cross-Border Insolvency.

[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 through ULCC projects and by working on proposals for adoption by governments. These efforts are reflected in this report.

[5] The first part of this report deals with the various Canadian actors in international private law. In the course of its activities, the International Private Law Section of the Department of Justice (IPLS) 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 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 conventions, protocols and models laws in the area of international private law adopted by the Hague Conference on Private International Law, UNCITRAL, Unidroit and the Organisation of America States is set out in Annex B.

## UNIFORM LAW CONFERENCE OF CANADA

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

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

[8] Projects are 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, interest for Canada and the interest of stakeholders; 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 IPLS's activities in the field of international private law. Information on the status of existing instruments is found in Annex D.

[10] A summary of the work programmes of the Hague Conference, UNCITRAL and Unidroit is included in Annex E. A provisional list of international meetings for the coming year is provided in Annex F.

## **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 closely to their interests.

### **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 (DFAIT). 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 has met twice, in October 2010 and May 2011. The Group is generally referred to as the "Advisory Group" in this text.

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

**B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION**

[13] In addition to federal-provincial 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 and to the Civil Justice Committee.

**1. Uniform Law Conference of Canada**

[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 its participation in 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. This report has been prepared for presentation at the August 7-11, 2011 ULCC meeting.

**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 its 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.

## UNIFORM LAW CONFERENCE OF CANADA

**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 72 Members, including Canada since 1968. 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](http://www.hcch.net). In this text reference is made to “the Hague Conference”.

[18] The Conference’s work programme is reviewed each year at a meeting of the Council on General Affairs and Policy. At this year’s meeting, held April 5-7, 2011, the Council approved a work programme 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, issues arising from international surrogacy arrangements, recognition of foreign civil protection orders and the possible resumption of the Judgment Project. The conclusions of the Council’s meeting are available on the Hague Conference website. An outline of the work programme is found in Annex E to this report.

[19] Over the last year, Canada participated in the following activities of the Conference: the first part of the Sixth Meeting of the Special Commission to review the practical operation of the *Hague Convention on the Civil Aspects of International Child Abduction* and the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children* (June 1-10, 2011), the Working Party on Mediation in the Context of the Malta Process and the meeting of the Council on General Affairs and Policy of the Conference. At this latter meeting, the Council decided to add to the Agenda of the Conference the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, and it instructed the Permanent Bureau to prepare a short note on the subject to assist the Council in deciding whether further work on this subject is warranted.

[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 89/05/01); the *Convention on the Civil*

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

*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 (UNCITRAL), 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 and 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](http://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 44<sup>th</sup> Session held from June 27 to July 8, 2011, the Commission finalized and adopted a revised version of the UNCITRAL Model Law on Public Procurement and Judicial Materials on the UNCITRAL Model Law on Cross-Border Insolvency. These subjects are discussed later in this report. The Commission decided to undertake work in the area of electronic commerce dealing with the recognition and legal treatment of electronic transferable records. See Annex E for a summary list of UNCITRAL's work programme. Further information on UNCITRAL's work programme is available on its website.

[24] 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* (1980, in force for Canada 92/05/01).

[25] Canada has also enacted domestic legislation implementing the UNCITRAL Model Law on International Commercial Arbitration (1985). Legislation drawing on the

## UNIFORM LAW CONFERENCE OF CANADA

UNCITRAL Model Law on Cross-Border Insolvency (1997) has been adopted by the federal government and legislation drawing on the *UNCITRAL Model Law on Electronic Commerce* has been adopted by the federal government, the provinces and the 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 located in Rome. There are 63 Member States, including Canada since 1968. Unidroit's mandate differs from that of the Hague Conference as it aims to harmonize and co-ordinate the private law of its Member States, rather than their private international law rules. Further information on Unidroit including instruments adopted by the Institute, status of ratifications and adoption can be found at: [www.unidroit.org](http://www.unidroit.org).

[27] Kathryn Sabo, General Counsel, IPLS, has been a member of the Governing Council of Unidroit since January 1, 2009. 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.

[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 programme includes ongoing work on a Protocol relating to Space Assets and other protocols to the *Convention on International Interests in Mobile Equipment*, netting of financial instruments, principles and rules capable of enhancing trading in securities in emerging markets and third party liability for Global Navigation System Services (GNSS). See Annex E for a summary of Unidroit's work programme. Details are also available on its website.

[29] Canada is party to only one of the twelve Unidroit conventions, the *Convention Providing a Uniform Law on the Form of an International Will* (1973) (in force for Canada since 7/8/02/09). Not all jurisdictions have implemented this instrument. Canada has also signed the *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol*.

**D. WORLD BANK**

[30] The World Bank's role in the field of international private law stems in part from the creation of the International Centre for the Settlement of Investment Disputes (ICSID) under

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

the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada signed this Convention in December 2006. Further information on the World Bank and the *ICSID Convention* can be found at: [www.worldbank.org](http://www.worldbank.org).

#### E. COMMONWEALTH

[31] When member states of the organisation have an interest, the Commonwealth Secretariat supports work on the development of private international law instruments. In that context, Canada has been involved since 2005 in work aimed at draft model legislation on the recognition and enforcement of foreign judgments. While Commonwealth Law Ministers have approved the project, there have been no developments over the last year.

[32] This year Ministers gave the Secretariat the mandate to develop a principles-based scheme to improve co-operation among Commonwealth States in international civil and commercial matters, modelled on the Harare Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth. The scope of the proposed scheme is not entirely clear but may cover:

service of court documents, including modern telecommunications methods;

taking evidence abroad, also including modern telecommunications methods; and

publication of information about procedures and rules in international civil and commercial transactions and disputes.

It might also have common definitions, model processes, forms and rules. Again, Justice Canada will monitor developments and assist where possible.

#### F. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF AMERICAN STATES (OAS)

[33] The Organization of American States, with 35 member States, provides a forum for political, economic, social and cultural cooperation in the Americas, through its Inter-American Juridical Committee, which serves as an advisory body to the OAS. The Committee recommends the convening of specialized legal conferences, such as the Inter-American 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](http://www.oas.org).

## UNIFORM LAW CONFERENCE OF CANADA

[34] Canada is not party to any of the 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. Two topics were selected for CIDIP VII: one on consumer protection, and the other on secured transactions and electronic registries. The Model Registry Regulations under the Model Inter-American Law on Secured Transactions were adopted at a Diplomatic Conference held from October 7-9, 2009, in Washington.

### **G. BILATERAL RELATIONS**

[35] 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.

[36] 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.

[37] 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. Online Dispute Resolution (UNCITRAL)**

[38] In 2010, the Commission agreed that a Working Group should be established to undertake work in the field of online dispute resolution (ODR) relating to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions. So far, the Working Group met twice and reviewed draft procedural rules for online-dispute resolution. In addition to these rules the Working Group has considered whether to develop other sets of rules such as model provisions for

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

the recognition and enforcement of ODR decisions and best practices for ODR decision makers.

[39] Given the wide ramifications of the project and the potential number of interested parties, the Department of Justice initiated consultations with stakeholders, including by presenting UNCITRAL's ODR project at a colloquium on consumer protection. Comments on the project are generally positive, but concerns are also expressed in relation to consumer rights and whether accepting ODR proceedings should imply waiver of consumer entitlements under applicable consumer protection legislation.

[40] The work of the Working Group continues and future developments should provide clearer indications as to the scope of the rules the Working Group intends to prepare both in terms of type of rules and content.

[41] *Action required in Canada:* Continue consultations with stakeholders.

**b. Model Law on Public Procurement (UNCITRAL)**

[42] In 2004 UNCITRAL mandated a Working Group in the area of procurement. The purpose of the work was to review the UNCITRAL Model Law on Procurement of Goods, Construction and Services from two perspectives: first, the use of electronic commerce in public procurement and, second, exploring new practices in order to enhance transparency and efficiency in public procurement. This process culminated by the adoption of the Model Law on Public Procurement by the Commission on July 1, 2011.

[43] The new Model Law is intended to enable government purchasers to take advantage of modern commercial techniques, such as e-procurement and framework agreements, and to enhance integrity in public procurement. It also extends the scope of the Model Law to defence procurement.

[44] The Model Law is aimed at assisting governments in formulating modern procurement laws. Although developing countries were the main users of the 1994 text, the new Model Law stands as the most up-to-date best practices and as such should be used by any state wishing to modernize its procurement system.

[45] The work on the preparation of the Model Law was undertaken by UNCITRAL Working Group I from 2004 to 2010. Canada was represented by Mireille-France LeBlanc and Dominique D'Allaire, IPLS, Eleanor Andres, Manitoba Justice, Margaret A. MacDonald, Ministry of Natural Resources Ontario, Marie-Andrée Gauthier, Ministère

## UNIFORM LAW CONFERENCE OF CANADA

des Relations internationales du Québec, and Jean-François Lord, Ministère des Relations internationales du Québec.

[46] *Action required in Canada:* Bring the new text to the attention of provincial and territorial governments.

**c. Transparency in treaty-based investor-State arbitration (UNCITRAL)**

[47] In 2008, UNCITRAL agreed that the topic of transparency in treaty-based investor-State arbitration would be the next topic to be examined by the Working Group on Arbitration and Conciliation. It was also agreed that it would be up to the Working Group to determine the form of this future instrument and that the form could include the preparation of instruments such as model clauses, specific rules or guidelines, an annex to the UNCITRAL Arbitration Rules, separate arbitration rules or optional clauses for adoption in specific treaties.

[48] Canada is represented by Manon Dostie, Senior Counsel, International Private Law Section, Justice Canada and Shane Spelliscy, Counsel, Trade Law Bureau, Department of Foreign Affairs and International Trade at the negotiations.

[49] Much of the first meeting in October 2010 was a brainstorming session with the objective of drawing up a complete list of issues that would need to be addressed by the Working Group. The issues included: disclosure of arbitral proceedings; production of procedural and other documents; amicus curiae; public hearing; publication of awards; possible carve outs (for example, confidential information); registry; effect of the instrument, and form of the instrument.

[50] The second meeting in February 2011 focussed on discussing the issues previously identified by the Working Group and various options were developed. The Working Group also discussed at length the possible forms and scope of application of the legal standard on transparency regarding future investment treaties and the applicability of a legal standard on transparency regarding existing investment treaties.

[51] *Action required in Canada:* Prepare for the next Working Group session.

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

[52] 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

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

enforceable in any country party to the Convention as if they were final court judgements of that country.

[53] 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. ICSID arbitration clauses could also be included in specific agreements between foreign investors and a state or province.

[54] The vast majority of our trading partners have ratified the *ICSID Convention*; 147 States are party to the Convention. The federal government has been actively promoting the Convention in recent years in order to encourage provinces and territories which have not yet passed legislation to do so promptly.

[55] In 1999, 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 similar legislation: Saskatchewan, British Columbia, Newfoundland and Labrador and Nunavut. Federal legislation was adopted in 2008. In 2009, the Northwest Territories followed suit.

[56] The adoption of these bills represents an important development toward the ratification of the *ICSID Convention* which is expected to take place in the near future.

[57] *Action required in Canada:* encourage the remaining provinces and territories to pass legislation and ratification of the convention.

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

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

[59] The Convention entered into force internationally on March 1, 2006. 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

## UNIFORM LAW CONFERENCE OF CANADA

and Aircraft Protocol in March 2004. The Convention has been adopted in 46 States and the Protocol in 40 States including the United States (2006), Mexico (2007) and the European Union (2009).

[60] 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, Nova Scotia, Alberta, Newfoundland and Labrador, Quebec, Saskatchewan, the Northwest Territories, British Columbia and Nunavut.

[61] 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 is general consensus on the proposed declarations at this time.

[62] There have been several developments since federal implementing legislation was adopted in 2005. In order to make all necessary declarations allowing Canadian stakeholders to fully benefit from the Convention and Protocol, amendments could be required to insolvency statutes (i.e., *Bankruptcy and Insolvency Act*, *Companies' Creditors Arrangement Act*, *Winding-Up and Restructuring Act*). A number of amendments could also be required to the federal implementing legislation to ensure that the *Special Economic Measures Act*, the *United Nations Act*, and the *Criminal Code* supersede some of its provisions. Changes to the regulations and employee directions that govern Transport Canada's Civil Aircraft Register could be required as well.

[63] Some proposed legislative amendments could conflict with other important priorities in insolvency (e.g., the protection of pensions in bankruptcy). However, ratifying the Convention and Protocol without making all necessary declarations to allow Canadian stakeholders to fully benefit from these instruments may be less attractive. Ratification could therefore be delayed for some time.

[64] *Action required in Canada:* Continue to work with the Department of Transport Canada towards ratification. Continue to encourage provinces and territories that have not yet done so to consider adopting implementing legislation.

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

**f. *Convention on the Law Applicable to Securities Held by Intermediaries (Hague Conference)***

[65] 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.

[66] A pre-implementation report was prepared by Me Michel Deschamps of McCarthy Tétrault for this year's ULCC meeting. The Report includes an overview of the Convention, a comparison between the Convention and Canadian law and an analysis of available declarations in the Canadian context. This Report will serve as a very useful resource to the ULCC Working Group tasked with preparing implementing legislation for this Convention.

[67] The United States signed the Convention in 2006 and has been preparing for ratification. Mauritius and Switzerland ratified the Convention in 2009.

[68] *Action required in Canada:* Form a ULCC working group to prepare uniform implementing legislation and commentaries for presentation and adoption at the ULCC.

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

[69] 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.

[70] 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. The Working Group is 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 toward a harmonized approach to implementing the Convention across the Americas.

## UNIFORM LAW CONFERENCE OF CANADA

[71] *Action required in Canada:* Complete uniform implementing legislation as well as parallel domestic legislation for 2012.

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

[72] 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.

[73] 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 adapt existing conventions to electronic communications by allowing the *Convention on Electronic Communications* to apply to these texts. Similarly, Canadian provinces and territories would be in a position to apply the *Convention on Electronic Communications* to conventions that have been implemented in their jurisdiction.

[74] Consultations with representatives of the CBA in 2005 have revealed some interest in this Convention. In August 2008, the Department of Justice submitted to the ULCC pre-implementation reports reviewing the *Convention on Electronic Communications* in light of both Canadian civil law and common law. Given the diverging views on the relevance of pursuing work on a uniform implementation legislation for the Convention, it was resolved that the Civil Section Steering Committee would continue monitoring developments in the area of electronic commerce in international contracts and, if appropriate, make recommendations to the New Projects Committee.

[75] In 2009, a report on recent progress regarding the Convention was presented to the ULCC. Further to discussions, it was resolved that the report be considered and, if appropriate, a working group be established and directed to report back to the Conference in 2010. Thereafter, a uniform act and commentaries on the implementation of the Convention were considered by the ULCC in 2010.

[76] *Action required in Canada:* Providing comments on best practices for implementing international conventions in Canadian law with the view of streamlining the approach for ULCC projects and following up implementation of the Convention.

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

**2. MEDIUM PRIORITIES**

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

[77] Unidroit's Space Working Group, a group of representatives of the aerospace industry, satellite operators and the financial community, prepared an initial draft Protocol. A Committee of Governmental Experts (Committee) reviewed the text at sessions in 2003 and 2004. Key issues, including the criteria to be used in identifying space assets, default remedies in relation to components and limitation of remedies with respect to space assets used for public services were identified but not resolved, such that no further formal work was done until two special government/industry meetings were held in 2006 and 2007. A Steering Committee was established in November 2007 to build consensus around the key issues identified during the two government/industry meetings. The Steering Committee prepared an alternative new draft Protocol (new draft Protocol) addressing some of these issues.

[78] A new draft Protocol was circulated and discussed at the third and fourth session of the Committee of Governmental Experts from 2009 to 2011. In preparation for these sessions, the Department consulted with industry stakeholders and other federal departments to establish the Canadian position.

[79] Progress has been made on key policy issues: there is agreement on how to address the limitation of remedies in the case of space assets used for a public service; there is agreement on a definition of "space assets"; it was decided that for registration purposes, space assets would be identified by the name of their manufacturer, serial number and model designation.

[80] A few key issues remain: whether the right of insurers to revenue salvage should be safeguarded in relation to subsequently registering creditors; whether restrictions should be imposed on the creation of an international interest or a rights assignment; the extent to which the exercise of default remedies should be limited in relation to controlled goods; and the procedure to be followed for designation of the Supervisory Authority of the future international registry.

[81] A diplomatic conference to finalize and adopt the Space Protocol has been scheduled from February 27 to March 9, 2012 and will be hosted by the Government of the Federal Republic of Germany in Berlin. Consultation meetings with stakeholders, federal departments and other delegations on the remaining key policy issues are ongoing.

## UNIFORM LAW CONFERENCE OF CANADA

[82] *Action required in Canada:* Consultations on the draft Protocol including the remaining key policy issues, to develop the Canadian position for the diplomatic conference.

**b. Centre of main interests and directors' responsibilities and liabilities in insolvency and pre-insolvency cases (UNCITRAL)**

[83] At its 43rd session in June and July 2010, the Commission endorsed Working Group V's recommendations and referred the following two new insolvency topics to the Working Group: the concept of the centre of main interests (COMI) and the liability of directors and officers in insolvency. It also asked the Working Group to consider a text developed by the Secretariat in consultation with insolvency experts: Judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency.

[84] At its 39th session in December 2010, Working Group V agreed that clarifying the concept of COMI to provide greater uniformity and predictability would be useful for practitioners and courts. It discussed a list of indicative factors to be considered in determining COMI.

[85] The Working Group requested that the Secretariat prepare a study on COMI of enterprise groups for its consideration at a future session, including (i) discussion during its previous work on part three of the Legislative Guide, (ii) existing practice with enterprise groups and (iii) suggestions on how far future work might go.

[86] The Working Group decided that guidance on the topic of directors' responsibilities and liabilities in insolvency and pre-insolvency cases would be appropriate and would be descriptive rather than normative or prescriptive. As regards the intersection of insolvency and company law, it was noted that directors' liabilities in general are an issue of corporate governance and therefore, are outside the Working Group's mandate.

[87] The Working Group determined that directors' duties would arise when the company was or would imminently become factually insolvent, though the duties could be enforced only in the context of a formal insolvency proceeding. It was agreed that striking the right balance between promoting appropriate behaviour and avoiding premature insolvency would be a key element of the guidance to be drafted.

[88] The Canadian delegation includes Mireille LeBlanc, International Private Law Section, Justice Canada, Karen Richard, Corporate and Insolvency Law Policy and Internal Trade, Industry Canada, Sheila Robin, Regulatory Affairs and Parliamentary Review, Industry Canada, Terry Czechowskyj, Canadian Bar Association and Justice

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

Geoffrey B. Morawetz, Insolvency Institute of Canada. Consultations with Canadian stakeholders have been ongoing.

[89] The judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency were finalized and adopted at the Commission's 44rd session in June and July 2011. The text discusses the Model Law from a judge's perspective. It offers general guidance on the issues a particular judge might need to consider, based on the intentions of those who developed the Model Law and the experiences of those who have used it in practice.

[90] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from October 31 to November 4, 2011.

**c. Registration of security rights in movable assets (UNCITRAL)**

[91] In 2007, UNCITRAL completed its Legislative Guide on Secured Transactions. In 2010, it completed the Supplement on Security Rights in Intellectual Property. Continuing its work in the area of secured transactions, last year the Commission entrusted a Working Group with the preparation of a text that is to address in detail the legal framework for the establishment and operation of a registry of security rights in movable assets based on the security interests regime envisaged in the 2007 Legislative Guide, a regime largely consistent with Canadian law. There have been two Working Group sessions to date on the subject and the text is expected to be submitted to the Commission for adoption at its 45th session in 2012.

[92] The Canadian delegation on this project includes Kathryn Sabo, International Private Law Section, Justice Canada, Me Michel Deschamps, McCarthy Tétrault, and Professors Roderick Macdonald and Catherine Walsh, Faculty of Law, McGill University.

[93] *Action required in Canada:* Continue providing input on the text, including recommendations and commentary, to ensure consistency with the Legislative Guide.

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

[94] 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 comprised Manon Dostie, IPLS, Department of Justice Canada, Professor Guy Lefebvre, civil law expert and Robert Cosman common law expert.

## UNIFORM LAW CONFERENCE OF CANADA

[95] 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. To date, both Nova Scotia and Ontario have adopted the uniform act.

[96] *Action required in Canada:* Continue to promote adoption of the ULCC's Uniform Act on International Commercial Mediation.

**e. Revision of UNCITRAL Arbitration Rules (UNCITRAL)**

[97] In July 2010, the 43rd session of UNCITRAL adopted a revised version of the 1976 UNCITRAL Arbitration Rules.

[98] The revision of the Rules is intended to modernize the 1976 Rules. The most notable modifications include the following:

- **Article 2** provides rules for notice and calculation of periods of time which take into account electronic means of communications.
- **Article 6** provides a framework for parties to designate an appointing authority as soon as possible during the arbitration and improves the provisions for challenging and replacing arbitrators.
- **Article 11** includes a model "statement of independence" for arbitrators.
- **Article 16** is a new rule which codifies the practice excluding liability of arbitrators, appointing authority or any person appointed by the arbitral tribunal for any act or omission in connection with the arbitration unless they committed "intentional wrongdoing" but only to the extent permitted under the applicable law.
- **Article 17** includes the requirement for arbitrators to conduct the arbitration in such manner as to avoid unnecessary delay and expense.
- **Article 41** is also a new rule which states that fees and expenses of the arbitrators must be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. It includes an obligation by the arbitral tribunal to inform the parties how the fees and costs will be calculated and includes a mechanism for the review of such fees.

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

[99] Canada was represented by Manon Dostie, Senior Counsel, IPLS, Department of Justice; Shane Spelliscy, Counsel, Trade Law Bureau, Department of Justice; Stephen L. Drymer, Ogilvy Renault, Montreal and Gerry W.J. Ghikas, Borden Ladner Gervais, Vancouver.

[100] *Action required in Canada:* Disseminate information about the new UNCITRAL Arbitral Rules.

### 3. LOW PRIORITIES

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

[101] 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.

[102] There are currently two proposals on this topic: Draft Legislative Guidelines and Model Laws on Monetary Redress presented by the United States, which includes a cooperative framework for a state-sponsored initiative to help resolve cross-border e-commerce consumer disputes using online dispute resolution (“ODR Initiative”) and a model law on chargebacks; and the Joint Proposal by Brazil, Argentina and Paraguay for a Draft Inter-American Convention on the Law Applicable to Some International Consumer Contracts and Transactions, which includes three optional protocols dealing with definitions, the application of the Draft Convention and minimum rules on international jurisdiction.

[103] In 2005, Canada submitted a Draft Proposal for a Model Law on Jurisdiction and Applicable Law for Consumer Protection, which was substantially consistent with the Conference’s Uniform Rules for Consumer Contracts. In October 2010, Canada withdrew this proposal from the CIDIP VII negotiations. This decision was made after a careful review of the situation and was based mainly on the absence of expressed support for the Canadian proposal, developments in private international law rules on consumer contracts and the state of negotiations, which had reached an impasse. Canada expressed its willingness to continue to participate in the CIDIP VII process but noted that the modalities of its participation will be subject to the progress of the negotiations at the OAS and the availability of resources. Since May 2010, there has been no movement in the negotiations on the consumer protection project.

## UNIFORM LAW CONFERENCE OF CANADA

[104] *Action required in Canada:* If negotiations resume on the consumer protection project, evaluate Canada's interest in continuing to participate in CIDIP VII and the modalities of such participation.

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

[105] 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.

[106] 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.

[107] 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 United States National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Mexican Uniform Law Centre. At the 2006 annual meeting, the adoption of the draft uniform act was postponed to allow the joint project to proceed. The Uniform Act was adopted by the Conference in 2007.

[108] The Convention has been signed by the United States, Luxembourg 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. There have been no developments since then.

[109] *Action required in Canada:* Monitor developments toward ratification in the United States and other countries. Encourage the provinces and territories to consider adopting implementing legislation.

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

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

[110] 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 21 States party to the *Amended Limitation Convention*, including, in both cases, our NAFTA trade partners. Canada is not party to these Conventions.

[111] 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.

[112] 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.

[113] 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 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.

[114] In 1995, the Advisory Group 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*.

[115] 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.

## UNIFORM LAW CONFERENCE OF CANADA

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

**d. *Convention on Substantive Rules for Intermediated Securities (Unidroit)***

[117] The *Unidroit Convention on Substantive Rules for Intermediated Securities* (“the Geneva Securities Convention”) was finalized and adopted during a Diplomatic Conference held in Geneva in October 2009. The Convention creates clear and consistent rules for the taking of securities as collateral, especially securities held indirectly through intermediaries in multi-tiered holding patterns and evidenced by book entries in the investor’s account. It 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.

[118] Four meetings of governmental experts (May 2005, March 2006, November 2006 and March 2007) and two diplomatic sessions (September 2008 and October 2009) were held on this project. At the last session of the Diplomatic Conference, States agreed that given the complexities of the subject-matter, the preparation of an official commentary on the text of the Convention should continue in consultation with States. The draft Official Commentary was distributed to States for comments and should be finalized this year.

[119] *Action required in Canada:* Consult stakeholders to determine if there is interest in Canada to implement this Convention.

## **B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS**

### **1. HIGH PRIORITIES**

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

[120] This Convention, which does not yet apply to Canada, is in force in 101 States. It aims 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.

[121] The Special Commission of February 2009, in which Canada participated, highlighted the fact that the Legalisation Convention is one of the most successful Hague Conference conventions, with 18.3 million apostilles issued in the last five years, in the 37 Contracting States that provided statistics. Among the issues addressed during the Special Commission were the requirements of the Convention for an apostille to be valid

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

as well as recent technological developments in the context of the Convention, in particular with regard to the electronic apostille. The conclusions and recommendations of the Special Commission are available on the Conference's website.

[122] Provinces and territories have indicated support for implementation of the Convention in Canada.

[123] *Action required in Canada:* Continue to work to resolve implementation issues and follow-up provinces and territories regarding implementing the Convention in their jurisdiction.

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

[124] The *2005 Hague Convention on Choice of Court Agreements* 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.

[125] Of note from a Canadian perspective, the Convention:

- 1) provides a mechanism to exclude certain subject matters that a State can specify;
- 2) allows a court recognizing a foreign judgment to reduce the foreign award in certain circumstances;
- 3) excludes maritime law, competition law and intellectual property from its primary scope; and
- 4) ensures that courts in Canada retain the power to transfer cases.

[126] 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 text of the Convention is available at: [www.hcch.net](http://www.hcch.net).

[127] Two reports reviewing the Convention in light of Canadian civil and common law were presented to the ULCC in 2007 and remain useful sources for jurisdictions considering implementing it. A uniform act was adopted in 2010.

## UNIFORM LAW CONFERENCE OF CANADA

[128] *Action required in Canada:* Coordinate federal implementation studies and promote implementation in provinces and territories.

## 2. LOW PRIORITIES

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

[129] This Convention is in force in 64 States, including Canada. It is aimed at facilitating the service of documents through Central Authorities established in each Contracting State. 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 Diplomatic Law Division of the DFAIT serves as the Central Authority and is monitoring the application of the Convention with the input of provincial and territorial Central Authorities. The rules of practice of the federal, provincial and territorial courts have been amended to comply with the Convention.

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

[132] In 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. Canada participated in the Special Commission which addressed many issues that States raised in their response to a questionnaire on the operation of the Convention on Service Abroad. The questionnaire and the response of Canada and of other States as well as the conclusions and recommendations of the Special Commission are available on the Conference's website.

[133] *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 so as to harmonize Canadian practice.

### b. *Convention between the Government of Canada and the Government of the French Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)*

[134] The *Canada-France Convention*, the first treaty relating to enforcement of judgments negotiated between Canada and a country with a civil law tradition, was

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

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 party 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.

[135] 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.

[136] 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.

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

## C. FAMILY LAW

### 1. HIGH PRIORITIES

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

[138] The 2007 *Convention on Maintenance Obligations* (“Convention”) establishes a complete maintenance recovery co-operation system and sets out rules for establishing, recognizing and enforcing maintenance decisions. The 2007 *Protocol on the Law Applicable to Maintenance Obligations* (“Protocol”) determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity.

[139] The text of the Convention and Protocol along with explanatory reports and practical documents are available on the Hague Conference’s website.

[140] To date, the European Union, the United States, Ukraine, Norway, Bosnia and Herzegovina and Burkina Faso have signed the Convention. United States officials are currently working on the implementation of the Convention. On April 6, 2011, the

## UNIFORM LAW CONFERENCE OF CANADA

European Union signed the Convention on behalf of its Member States and Norway ratified the Convention. According to Article 60 of the Convention, two States must become party to (ratify, accept or approve) the Convention before it will enter into force.

[141] In Canada, the Coordinating Committee of Senior Officials-Family Justice (CCSO-FJ) Working Group continued its analysis of the Maintenance Convention's compatibility with Canadian laws and its assessment of operational implications involved with its implementation. A sub-group of the Working Group comprised of FPT legal experts was tasked in December 2010 to examine the interplay between provincial law and the *Divorce Act* and examine different scenarios as implementation at both the federal and provincial levels raises new challenges.

[142] The provincial common law analysis is well underway. The civil law analysis is expected at a later date. Reports and discussions of the Working Group and Sub-working Group will contribute to overall thinking with respect to implementation of this Convention in Canada.

[143] *Action required in Canada:* Continue participating in the FPT Working Group and Sub-working Group on the implementation of the Convention in Canada.

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

[144] The 2000 *Convention on the International Protection of Adults* creates global legal solutions to address the problems raised by increased transborder movement of adults in need of protection. 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.

[145] In October 2005, DOJ made a presentation on the Convention to the Biennial Conference of the National Association of Public Trustees and Guardians in Regina, Saskatchewan. Following that meeting, a small, informal group of public trustees from BC, Ontario, Saskatchewan and the Northwest Territories met by conference call with DOJ to work on promoting the Convention. At the February 2006 meeting of Deputy Ministers of Justice, the Convention was briefly presented as an information item. Since then, only limited work has been done because of limited resources at the federal level.

[146] 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 now also applies to Switzerland, Finland and Estonia. The following States, all members of the European Union, have signed the Convention: The Netherlands, Greece, Ireland, Luxemburg, Poland, Italy, Cyprus and Czech Republic. It

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

should be noted that the subject matter of the Convention does not fall within the competence of the EU. Therefore, EU States are free to decide individually whether or not to adopt the Convention.

[147] *Action required in Canada:* To promote the adoption of the Convention in Canada.

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

[148] 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, or the provision of care by kafala or an analogous institution; 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.

[149] 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 has commissioned a pre-implementation study of the Convention in regard to the law of a common law jurisdiction to assist provincial and territorial officials in their analysis of the implications of implementing the Convention. The Department is also considering commissioning a similar study in regard to Québec law.

[150] The Department of Justice is also currently consulting with other federal departments on the Convention, as well as reviewing the need for amendments to the *Divorce Act* as part of its implementation efforts.

[151] The 1996 Convention is currently in force between 33 countries. The substantial increase in the number of States party since the last Annual Report is due mainly to the

## UNIFORM LAW CONFERENCE OF CANADA

ratification of the Convention by several States of the European Union. In October 2010, the United States signed the Convention.

[152] Canada participated in the first part of the Sixth Meeting of the Special Commission to review the practical operation of the 1996 Convention and the 1980 *Convention on the Civil Aspects of International Child Abduction* that took place at The Hague from June 1-10, 2011. The Canadian delegation comprised: Marie Riendeau, Counsel, International Private Law Section, Department of Justice, Head of Delegation; Sandra Zed Finless, Senior Counsel, Department of Justice, Office of the Federal Central Authority for the 1980 Convention; Lise Lafrenière Henrie, Senior Counsel, Family, Children and Youth Section, Department of Justice; Janet Sigurdson, Crown Counsel, Manitoba Justice, Central Authority for the 1980 Convention for the Province of Manitoba; France Rémillard, ministère de la Justice du Québec, Central Authority for the province of Québec for the 1980 Convention; Anne Bourdeau, Deputy Director, Children's Issues, Case Support and Children's Issues Division, Department of Foreign Affairs and International Trade; Lillian Thomsen, Director General, Canadian Foreign Service Institute, Department of Foreign Affairs and International Trade; Honourable Jacques Chamberland, Québec Court of Appeal; and Honourable Robyn Diamond, Manitoba Court of Queen's Bench.

[153] The Special Commission reviewed the draft Practical Handbook on the operation of the 1996 Convention and recommended that the Permanent Bureau, in consultation with experts, make amendments in light of the comments provided. The Practical Handbook will be published following these revisions.

[154] The second part of the Special Commission will take place at The Hague from January 24 to February 1, 2012.

[155] *Action required in Canada:* Continue working with FPT partners. Finalize consultations regarding implementation. Actively promote implementation of the Convention in Canada. Prepare for the second part of the Sixth Meeting of the Special Commission that will take place from January 24 to February 1, 2012.

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

[156] The *Convention on the Civil Aspects of International Child Abduction* is the first Hague Convention to be ratified by Canada. It is in force in all the Canadian jurisdictions. The Convention 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

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

return of abducted children or for assistance in the exercise of access rights. There are currently 86 States party to the Convention.

[157] 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 coordinated by the National Missing Children Services in cooperation with national airlines and Via Rail.

[158] A database of judicial decisions taken under the Convention is available at: [www.incadat.com](http://www.incadat.com). It is hoped that this will facilitate a uniform interpretation of the Convention across all Contracting States. Relevant Canadian judicial decisions on the interpretation of the Convention are regularly collected by the Department of Justice, summarised and forwarded to the Permanent Bureau of the Hague Conference to be added to the database.

[159] Canada has yet to make decisions on the acceptance of the accessions to the Convention by the following 13 States: Nicaragua, Guatemala, Thailand, Dominican Republic, Ukraine, San Marino, Albania, Armenia, Seychelles, Morocco, Singapore, Gabon and Andorra. The gathering of information regarding these States continues in cooperation with the Federal Central Authority and the Consular Operations Bureau (Department of Foreign Affairs and International Trade). Communication with the provinces and territories on the possible acceptance of these accessions will follow.

[160] The main topics discussed during the first part of the Special Commission in regards to the 1980 Convention were: the operation of the Convention and cooperation between the Central Authorities; the treatment of allegations of domestic violence in return proceedings; judicial networking and direct judicial communications, including the draft General Principles for judicial communications in the context of the International Hague Network of Judges; the draft Guide to Good Practice on mediation under the 1980 Convention; and the Principles for the Establishment of Mediation Structures in the context of the Malta Process.

[161] The Conclusions and Recommendations of the Sixth Meeting of the Special Commission are available on Hague Conference's website. Of particular interest to Canada, the Special Commission welcomed the 2011 decision of the Council on General Affairs and Policy of the Hague Conference "*to add to the Agenda of the Conference the*

## UNIFORM LAW CONFERENCE OF CANADA

*topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, and ... [to instruct] the Permanent Bureau to prepare a short note on the subject to assist the Council in deciding whether further work on this subject is warranted.*” The Special Commission recommended that account should be taken of the possible use of such orders in the context of the 1980 Convention as a means of facilitating the safe return of the child and, where relevant, of the accompanying parent to the requesting State.

[162] The main topic of discussion for the second part of the Special Commission will be the desirability and the feasibility of a protocol to the 1980 Convention as a means of addressing concerns in the application of the Convention. To facilitate discussions, Member States and States party to the 1980 Convention have been asked to respond to a questionnaire prepared by the Permanent Bureau of the Hague Conference. Canada and more than 20 other States have so far provided responses to the questionnaire. These responses are posted on the Conference’s website.

[163] The other topics that will be discussed in the second part of the Special Commission are international family relocation, the future of the Malta Process and the role of the Permanent Bureau in monitoring and supporting the 1980 and the 1996 Conventions.

[164] *Action required in Canada:* Continue the acceptance of accessions process. Prepare for the second part of the Sixth Meeting of the Special Commission that will take place from January 24 to February 1, 2012.

## 2. MEDIUM PRIORITIES

### a. *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Conference)*

[165] *The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* 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 its application has been extended to all the provinces and territories.

[166] In June 2010, Canada participated in the Third Meeting of the Special Commission to review the practical operation of the Intercountry Adoption Convention.

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

The Conclusions and Recommendations adopted at the Special Commission are available on the Hague Conference's website. We are hopeful that the Permanent Bureau will soon be setting up a working group to examine the issue of costs associated to intercountry adoption as part of the follow-up to the Special Commission.

[167] *Action required in Canada:* Continue to follow-up on the conclusions and recommendations adopted at the June 2010 meeting of the Special Commission.

## D. PROTECTION OF PROPERTY

### 1. HIGH PRIORITIES

#### **a. *Convention Providing a Uniform Law on the Form of an International Will (Unidroit)***

[168] This Convention applies to 11 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.

[169] 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.

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

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

[171] The Convention provides rules to determine the law applicable to foreign trusts. It also requires the recognition of these trusts by those States party to the Convention including by civil law countries which do not provide for trusts in their law.

[172] This Convention is now in force in 12 States, the majority of which are 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,

## UNIFORM LAW CONFERENCE OF CANADA

Newfoundland and Labrador, Nova Scotia, Manitoba and Saskatchewan. Application of the Convention was most recently extended to Nova Scotia on May 1, 2006.

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

## 2. LOW PRIORITIES

### a. *Convention on the Law Applicable to Successions to the Estates of Deceased Persons (Hague Conference)*

[174] This Convention is not yet in force as three ratifications are necessary and it has only been ratified by one State, the Netherlands. The Convention has been signed by Argentina, Luxembourg, Switzerland and the Netherlands. 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.

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

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

[176] This Convention, to which 32 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.

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

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

**CONCLUSION**

[178] This report deals with the activities of the Department of Justice in international private law over the past year and its current priorities. While the focus is on developments that took place in that last year, the report also gives an overview of the status of international instruments in Canada. It must be emphasized 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 thus allowing Canada to take a leading role in many international private law activities at the international level.

[179] Further work remains to be done in terms of implementation of existing international instruments at the provincial, territorial and federal levels. Over the coming year, the Department's International Private Law Section will continue to promote implementation and dedicate time to implementation activities. This work, however, will be more limited because of reduced resources overall and an increased demand for resources for negotiations.

[180] 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 Abolishing the Requirement of Legalisation for Foreign Public Documents* (The Hague)
- (2) *Convention on Choice of Court Agreements* (The Hague).
- (3) *Convention on the Law Applicable to Trusts and on their Recognition* (The Hague)
- (4) *Convention on the Protection of Adults* (The Hague)
- (5) *Convention on the Protection of Children* (The Hague)
- (6) *Convention Providing a Uniform Law on the Form of an International Will* (Unidroit)
- (7) *ICSID Convention* (World Bank)
- (8) *International Interests in Mobile Equipment Convention and its Aircraft Protocol* (Unidroit/ICAO)

[181] Your views on additions to or deletions from this list are welcome.

[182] In terms of both implementation of existing international instruments and developing new ones, collaboration between the Department of Justice and the ULCC is essential and fruitful. We look forward to continuing our international private law work with the Conference.

## UNIFORM LAW CONFERENCE OF CANADA

[183] 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 is 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 (2011)**

Kathryn Sabo General Counsel	613-957-4967 kathryn.sabo@justice.gc.ca
Manon Dostie Senior Counsel	613-957-7882 manon.dostie@justice.gc.ca
Dominique D’Allaire Counsel	613-954-0198 dominique.dallaire@justice.gc.ca
Mireille-France LeBlanc Counsel	613- 957-1374 mireille-france.leblanc@justice.gc.ca
Marie Riendeau Counsel	613-941-9185 marie.riendeau@justice.gc.ca
Valérie Simard Counsel	613-957-4888 valerie.simard@justice.gc.ca



**Annex B****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 Intercountry 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
- 2005 - Convention of 30 June 2005 on Choice of Court Agreements
- 2006 - Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary
- 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
- 2011 - UNCITRAL Model Law on Public Procurement

## **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)
- 2009 - Convention on Substantive Rules for Intermediated Securities (Geneva)

### **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 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**

- 2002 - Model Inter-American Specialized Uniform Through Bill of Lading for the International Carriage of Goods by Road
- 2006 - Model Inter-American Law on Secured Transactions
- 2009 - Model Registry Regulations (for 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

May 2011



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"> <li>• Legal standards for online dispute resolution (UNCITRAL)</li> <li>• Revision of the Model Law on Public Procurement (UNCITRAL)</li> <li>• Legal standards on transparency in treaty-based investor-State arbitration (UNCITRAL)</li> </ul>			
	Implementation	<ul style="list-style-type: none"> <li>• Convention on the Settlement of Investment Disputes (ICSID) - (World Bank)</li> <li>• Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)</li> <li>• Convention on Securities Held by Intermediaries (Hague) -ULCC Uniform Act</li> <li>• Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)</li> <li>• Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)</li> <li>• Convention on Choice of Court Agreements (Hague)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague)</li> <li>• Convention on the International Protection of Adults - (Hague)</li> <li>• Convention on Parental Responsibility and Measures of Protection of Children (Hague)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention providing an Uniform Law on the Form of an International Will (Unidroit)</li> <li>• Convention on the Law Applicable to Trusts - (Hague)</li> </ul>
	Monitoring			<ul style="list-style-type: none"> <li>• Convention on the Civil Aspects of International Child Abduction (Hague)</li> </ul>	
2	Negotiation	<ul style="list-style-type: none"> <li>• Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit)</li> <li>• Centre of main interests and directors' responsibilities and liabilities in insolvency and pre-insolvency cases (UNCITRAL)</li> <li>• Registration of security rights in movable assets (UNCITRAL)</li> </ul>	<ul style="list-style-type: none"> <li>• Judgments Project (Hague)</li> </ul>		

	<b>Implementation</b>	<ul style="list-style-type: none"> <li>• Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL)</li> <li>• Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation</li> </ul>			
<b>2</b>	<b>Monitoring</b>			<ul style="list-style-type: none"> <li>• Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (Hague)</li> </ul>	
<b>3</b>	<b>Negotiation</b>	<ul style="list-style-type: none"> <li>• CIDIP VII - Project on jurisdiction and applicable law for consumer contracts (OAS)</li> </ul>			
	<b>Implementation</b>	<ul style="list-style-type: none"> <li>• Convention on the Assignment of Receivables (UNCITRAL)</li> <li>• Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL)</li> </ul>			<ul style="list-style-type: none"> <li>• Convention on the Law Applicable to Successions to the Estates of Deceased Persons (Hague)</li> <li>• Convention on Stolen or Illegally Exported Cultural Objects (Unidroit)</li> </ul>
	<b>Monitoring</b>	<ul style="list-style-type: none"> <li>• Convention on Substantive Rules regarding Intermediated Securities (Unidroit)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)</li> </ul>		

# **CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES**



# International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Implementation Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) - (World Bank)	- ULCC uniform act (1998) - Implementing legislation adopted but not yet in force in Canada (2008), Ontario (1999), British Columbia, Newfoundland and Labrador, Nunavut, Saskatchewan (2006) and the Northwest Territories (2009)	- Entered into force on October 14, 1966 - 147 States party - Signed by Canada on December 15, 2006	- Continue to seek support from provinces and territories in terms of implementation - Ratification
1	Implementation Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)	- ULCC uniform act (2002) - Implementing legislation adopted but not yet in force in Canada (2005), Ontario (2002), Nova Scotia (2004), Alberta, Newfoundland and Labrador (2006), Quebec, Saskatchewan (2007), and the Northwest Territories (2009), British Columbia and Nunavut (2011)	- Convention entered into force on March 1, 2006 and has 46 States Party - Aircraft Protocol entered into force on March 1, 2006, and has 40 States Party - Signed by Canada in March 2004	- Continue to seek support from provinces and territories in terms of implementation - Complete federal work needed for ratification
1	Implementation Convention on Securities Held by Intermediaries (Hague)	- Present pre-implementation report to the ULCC; Establish a Working Group to prepare a uniform legislation and commentary	- Not in force - 3 ratifications – accessions required to enter into force - 3 signatures, 2 ratifications	- Establish ULCC Working Group to prepare uniform implementing legislation and commentary
1	Implementation Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)	- ULCC uniform act in preparation	- Entered into force on January 1, 2000 - 8 States party	- Development of uniform act
1	Implementation Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)	- ULCC uniform act in preparation	- Not in force - 3 ratifications -accessions required to enter into force - 2 States party	- Development of uniform act
2	Implementation Convention on the Assignment of Receivables in International Trade (UNCITRAL)	- ULCC uniform Act (2007)	- Not in force - 5 ratifications - accessions required to enter into force - 1 State party - 3 signatures	- Monitor developments on ratification; - Consult with the private sector, federal, provincial and territorial authorities on implementation
3	Implementation Model Law on Cross-border Insolvency (UNCITRAL)	- Provisions based on the Model Law in federal insolvency laws	- Adopted in 1997 - List of States that have enacted Model Law is available at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html</a>	- Provide information when requested

# International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
3	Implementation	Conventions on International Leasing and on International Factoring (Unidroit)	- ULCC uniform act (1995)	- Entered into force on May 1 <sup>st</sup> , 1995 - 7 States party to Convention on International Factoring - 10 States party to Convention on International Financial Leasing	- Consult with governments and industry on interest
3	Implementation	Model Law on International Commercial Conciliation (UNCITRAL)	- ULCC uniform act (2005) - Implementing legislation adopted in Nova Scotia (2005) and Ontario (2010)	- Adopted in 2002 - List of States having enacted the Model Law is at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation_status.html</a>	- Encourage adoption of uniform act in remaining jurisdictions
3	Implementation	Conventions on the Limitation Period in the International Sale of Goods (UNCITRAL)	- ULCC uniform act (1998) - Implementing legislation adopted but not yet in force in Nunavut (2006)	- Entered into force on August 1 <sup>st</sup> , 1988 - 28 States party to the Convention; - 21 States party to the Convention as amended by the Protocol	- Consideration by the federal government to adopt implementing legislation - Follow-up on consultations with provinces and territories - Consider simpler approach to implementation
Monitoring		Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		- Not in force - 10 ratifications – accessions required to enter into force - 5 States party - Signed by Canada on December 7, 1989	- None at this time
Monitoring		Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UN)	- Entered into force in Canada on August 10, 1986 - In force in all Canadian jurisdictions	- Entered into force on June 7, 1959 - 146 States party	- Publicize United Nations General Assembly resolution on interpretation of Convention to accommodate electronic communications

# International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Monitoring	Model Law on Electronic Commerce (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1999)</li> <li>- Enacted by Canada, Manitoba, Nova Scotia, Ontario, Saskatchewan and Yukon (2000), Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Québec (2001), Nunavut (2004), Northwest Territories (2011)</li> </ul>	<ul style="list-style-type: none"> <li>- Adopted in 1996</li> <li>- List of States having enacted the Model Law at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html</a></li> </ul>	
Monitoring	Convention on Contracts for the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on May 1, 1992</li> <li>- Application extended to Canadian jurisdictions: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Yukon (1992), Nunavut (2003)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on January 1, 1988</li> <li>- 76 States party</li> </ul>	
Monitoring	Model Law on International Commercial Arbitration (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1987)</li> <li>- Enacted by Canada, New Brunswick, Québec (1986), Manitoba (1987), Northwest Territories, Prince Edward Island (1989), Nova Scotia, Ontario (1990), Newfoundland and Labrador (1992), Saskatchewan (1996), British Columbia (1997), Alberta (2002), Yukon (2003)</li> </ul>	<ul style="list-style-type: none"> <li>- Adopted in 1985</li> <li>- List of States having enacted the Model Law at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html</a></li> </ul>	<ul style="list-style-type: none"> <li>- Consult to determine interest in the 2006 modifications to the Model Law</li> </ul>

# Judicial Cooperation and Enforcement of Judgments

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Implementation	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		<ul style="list-style-type: none"> <li>- Entered into force on January 24, 1965</li> <li>- 101 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to work to resolve implementation issues and follow-up with provinces and territories regarding implementing the Convention in their jurisdiction</li> </ul>
Implementation	Convention on Choice of Court Agreements (Hague)	<ul style="list-style-type: none"> <li>- ULCC uniform act adopted in 2010</li> </ul>	<ul style="list-style-type: none"> <li>- Not in force</li> <li>- 2 ratifications – accessions required to enter into force</li> <li>- 1 State party</li> <li>- 2 signatures</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with Canadian jurisdictions on implementation</li> </ul>
Monitoring	Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on May 1, 1989</li> <li>- Application extended to all Canadian jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on February 10, 1969</li> <li>- 64 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to provide information and respond to requests regarding the application of the Convention</li> <li>- Coordinate the exchange of information among Canadian Central Authorities</li> </ul>
Monitoring	Canada-France Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1997)</li> <li>- Implementing legislation adopted in Saskatchewan (1998), Ontario (1999) and Manitoba (2000)</li> </ul>	<ul style="list-style-type: none"> <li>- Not in force</li> <li>- Convention signed on June 10, 1996</li> </ul>	<ul style="list-style-type: none"> <li>- Consultation with France on ratification</li> </ul>

# Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Implementation	Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague)	- CCSO – Family Justice Working Group and Sub-Working Group on implementation in Canada	- Not in force - 2 ratifications – accessions required to enter into force - 6 signatures, 1 ratification	- Work on federal implementation issues - Participate in CCSO – Family Justice Working Group and sub-Working Group on implementation in Canada
Implementation	Convention on the International Protection of Adults - (Hague)	- ULCC uniform act (2001) - Implementing legislation adopted in Saskatchewan (2005)	- Entered into force on January 1, 2009 - 6 States party	- Examine and assess the legislative and operational requirements to implement the Convention in Canada
Implementation	Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and Measures of Protection of Children (Hague)	- ULCC uniform act (2001) CCSO – Family Justice Working Group on implications of implementation	- Entered into force on January 1, 2002 - 33 States party	- Work on federal implementation issues - Participate in CCSO Family Justice WG on potential implementation in Canada - Prepare for second part of Hague Special Commission (2012)
Monitoring	Convention on the Civil Aspects of International Child Abduction (Hague)	- Entered into force in Canada on December 1, 1983 - Application extended to Canadian jurisdictions: British Columbia, Manitoba, New Brunswick, Ontario (1983), Newfoundland and Labrador, Nova Scotia (1984), Québec, Yukon (1985), - Prince Edward Island, Saskatchewan (1986), - Alberta (1987), Northwest Territories (1988), Nunavut (2001)	- Entered into force on December 1, 1983 - 86 States party	- Prepare for second part of Hague Special Commission (2012) - Decisions on acceptance of 13 States that acceded to the Convention
Monitoring	Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague)	- ULCC uniform Act (1996) - Entered into force in Canada on April 1, 1997 - Application extended to Canadian jurisdictions: Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, Saskatchewan (1997), Yukon (1998), Nova Scotia, Ontario (1999), Northwest Territories (2000), Nunavut (2001), Newfoundland and Labrador (2003), Québec (2006)	- Entered into force on May 1, 1995 - 83 States party	- Provide information on the Convention where required - Continue follow-up on the recommendations and conclusions adopted at the Special Commission of June 2010

# Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Implementation Convention Providing a Uniform Law on the Form of an International Will (Unidroit)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on February 9, 1978</li> <li>- Application extended to Canadian jurisdictions: Alberta, Manitoba, Newfoundland and Labrador, Ontario (1978), Saskatchewan (1982), Prince Edward Island (1995), New Brunswick (1997), Nova Scotia (2001)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on February 9, 1978</li> <li>- 11 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with jurisdictions that have not yet implemented the Convention</li> </ul>
1	Implementation Convention on the Law Applicable to Trusts and on their Recognition (Hague)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on January 1, 1993</li> <li>- Application extended to Canadian jurisdictions: Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Prince Edward Island (1993), Manitoba, Saskatchewan (1994), Nova Scotia (2006)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on January 1, 1992</li> <li>- 12 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with the jurisdictions that have not implement the Convention</li> </ul>
3	Implementation Convention on the Law Applicable to Successions to the Estates of Deceased Persons (Hague)		<ul style="list-style-type: none"> <li>- Not in force</li> <li>- 3 ratifications – accessions required to enter into force</li> <li>- 1 State Party</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with provinces and territories when appropriate</li> </ul>
3	Implementation Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit)		<ul style="list-style-type: none"> <li>- Entered into force on July 1<sup>st</sup>, 1998</li> <li>- 32 States party</li> </ul>	<ul style="list-style-type: none"> <li>- When requested, assist the Department of Canadian Heritage in the consultations</li> </ul>

**Annex E****WORK PLANS OF INTERNATIONAL ORGANIZATIONS****1. Hague Conference on Private International Law**

- cross-border mediation in family matters;
- Sixth Meeting of the Special Commission to review the practical operation of the *Convention of 25 October 1980 on the Civil Aspects of the International Child Abduction and the 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*; and
- choice of law in international contracts.

**2. United Nations Commission on International Trade Law (UNCITRAL):**

- public procurement (Working Group I);
- transparency in treaty-based investor-state arbitration (Working Group II);
- online dispute resolution in the business to business and business to consumer contexts (Working Group III);
- electronic commerce and in particular electronic transferable records (Working Group IV);
- centre of main interests and liability of directors and officers in insolvency (Working Group V); and
- registries for security interests (Working Group VI).

**3. International Institute for the Unification of Private Law (Unidroit):**

- preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets and other industry-specific protocols;
- principles and rules for enhancing trading in securities in emerging markets;
- third party liability for global navigation satellite system (GNSS) services; and
- netting of financial instruments.



**Annex F****PROVISIONAL SCHEDULE FOR INTERNATIONAL PRIVATE LAW MEETINGS**

September 2011 – December 2012

<b>Meeting</b>		<b>Travel Dates</b>	<b>Place</b>
1.	UNCITRAL Working Group II – Arbitration and Conciliation	October 3–7, 2011	Vienna
2.	UNCITRAL Working Group IV – Electronic Commerce	October 10–14, 2011	Vienna
3.	UNCITRAL Working Group V – Insolvency Law	October 31– November 4, 2011	Vienna
4.	UNCITRAL Working Group III – Online Dispute Resolution	November 14–18, 2011	Vienna
5.	Unidroit – Second Meeting of the Committee on Emerging Markets Issues	Fall 2011 (tbc)	Rome
6.	UNCITRAL Working Group VI – Security Interests	December 12–16, 2011	Vienna
7.	Hague Conference, Special Commission on The 1980 Child Abduction Convention and The 1996 Convention on the Protection of Children	January 24– February 2, 2012	The Hague
8.	UNCITRAL Working Group II – Arbitration and Conciliation	February 7–11, 2012 (tbc)	New York (tbc)
9.	UNCITRAL Working Group IV – Electronic Commerce	February 14–18, 2012 (tbc)	New York (tbc)
10.	Unidroit – Diplomatic Conference for Draft Space Protocol	February 27– March 9, 2012	Berlin
11.	Hague Council on General Affairs and Policy	April 2012	The Hague
12.	UNCITRAL Working	April 16–20, 2012 (tbc)	New York

Meeting		Travel Dates	Place
	Group I – Procurement		(tbc)
13.	UNCITRAL Working Group V – Insolvency Law	April 16–20, 2012 (tbc)	New York (tbc)
14.	UNCITRAL Working Group VI – Security Interests	May 14–18, 2012 (tbc)	New York (tbc)
15.	UNCITRAL Working Group III – Online Dispute Resolution	May 28–June 1, 2012 (tbc)	New York (tbc)
16.	UNCITRAL 45 <sup>th</sup> Session	June 18–July 6, 2012 (tbc)	New York (tbc)
17.	UNCITRAL Working Group II – Arbitration and Conciliation	October 1–5, 2012 (tbc)	Vienna
18.	UNCITRAL Working Group I – Procurement	October 29 – November 2, 2012 (tbc)	Vienna
19.	UNCITRAL Working Group VI – Security Interests	November 5–9, 2012 (tbc)	Vienna
20.	UNCITRAL Working Group V – Insolvency Law	November 26–30, 2012 (tbc)	Vienna
21.	UNCITRAL Working Group IV – Electronic Commerce	December 3–7, 2012 (tbc)	Vienna
22.	UNCITRAL Working Group III – Online Dispute Resolution	December 10-14, 2012 (tbc)	Vienna