

UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

**UNIFORM LEGISLATION FOR THE IMPLEMENTATION OF
INTERNATIONAL CONVENTIONS**

Presented by Kathryn Sabo

Justice Canada

Please note that the ideas and conclusions expressed in this document, as well as any proposed legislative terminology and any comment or recommendation, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily represent the views of the Conference or of its participants.

Winnipeg, Manitoba

August 2011

UNIFORM LAW CONFERENCE OF CANADA

**UNIFORM LEGISLATION FOR THE IMPLEMENTATION OF
INTERNATIONAL CONVENTIONS****August 2011**

[1] At the Annual Meeting of the Conference in August 2010, the Conference decided to establish a Working Group to examine the possibilities for uniform legislation for the implementation of international conventions and to report back this year.

[2] Over the past year Justice Canada officials have carried out preliminary work with a view to facilitating the work of a Working Group. Part of the preliminary work includes a review of English and French versions of existing uniform acts and an initial consideration of possible recommendations for a uniform approach. That work has been largely completed thanks to the efforts of Valerie Simard, Counsel with the International Private Law Section at Justice Canada. The results of her work are attached to this report as annexes 1-3 and should form the basis for discussion in a Working Group to meet over the coming year.

[3] A second part of the preliminary work consists of discussions with federal drafters on approaches to implementation. Those discussions have been initiated but have yet to be completed. One question that has been raised in those discussions is whether the scope of the work should be expanded to include implementation of conventions or treaties beyond the field of private international law. Guidance from the Conference on that question would be useful in advance of discussions in the Working Group.

[4] The Working Group should be able to complete its work for 2012.

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

This Table of Uniform Acts groups together similar or identical provisions of the 16 ULCC Uniform Acts Implementing International Conventions enumerated in the legend below. Each Uniform Act is assigned a number in the legend and is designated by that number in square brackets in the table. For example, Uniform Acts 2, 3, 7, 11, and 15 each have an identical provision on the subject of conflict, section 7:

This Act prevails

7. Where there is a conflict between this Act and any other enactment, this Act prevails.

[2, 3, 7, 11, 15]

Uniform Acts 2, 3, 4, 8, 10, 13 have each have a similar provision on the subject of coming into force, sections 8, 13 or 7. The provisions are not identical; the slight variations are indicated in the bracketed text and separated by slashes.

Coming into force

8., 13., 7. This Act comes into force on [assent/ ____/ the day on which it is assented to/ a day or days to be fixed by (____)].

[2, 3, 4, 8, 10, 13]

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Legend : The following Uniform Acts are designated by the numbers in square brackets in the chart below	
1	Uniform Intercountry Adoption (Hague Convention) Act
2	Uniform International Factoring (Unidroit Convention) Act
3	Uniform International Financial Leasing (Unidroit Convention) Act
4	International Interests in Mobile Equipment Act (Aircraft Equipment)
5	International Protection of Adults (Hague Convention) Implementation Act
6	Parental Responsibility and Measures for the Protection of Children (Hague Convention) Implementation Act
7	Uniform Act Respecting the Convention of the Hague Conference on Private International Law on the Civil Aspects of International Child Abduction
8	Settlement of International Investment Disputes Act
9	International Sales Conventions Act
10	Uniform Assignment of Receivables in International Trade Act
11	International Sale of Goods Act
12	International Trusts Act
13	Uniform Choice of Court Agreements Convention Act
14	Uniform Foreign Arbitral Award Act
15	Reciprocal Recognition and Enforcement of Judgments (Canada - U.K. Convention)
16	Uniform Enforcement of Judgments Conventions Act

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
Definitions	<p>Definitions/ Interpretation 1(1) In this Act, [...]</p> <p>[1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12]</p> <p>1. (2) Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Convention [...].</p> <p>[1, 4, 9, 15]</p>	<p>Interpretation 1. (1) The following definitions apply in this Act. [...] 1.(2) Unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the Convention.</p> <p>[10, 13]</p> <p>1.(3) In interpreting [this Act and] the Convention [...], recourse may be had to [...].</p> <p>[13]</p>	<p>Definitions/ Interpretation 1 (2) Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.</p> <p>[8]</p>	<p>Definition: 1. In this Act, "convention" means a convention existing with a country designated by [regulation] [order] and to which this Act gives force of law.</p> <p>[16]</p>			
Interpretation	<p>Interpretation 2. (1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose.</p> <p>[8, 9]</p> <p>(2) In applying subsection (1) to the Amended Limitation Convention and the Limitation Convention,</p>	<p>Interpretation 1.(3), 2. In interpreting [this Act and] the Convention [...], recourse may be had to [...].</p> <p>[4, 13]</p>					

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	<p>recourse may be had to the following documents, [as published in the Gazette]: [...]</p> <p>[9]</p>						
Request to extend	<p>Request that Convention apply 2. The [Minister of _____] shall request the Government of Canada to declare in accordance with Article [___] of the Convention that the Convention extends to [name of province or territory].</p> <p>[5, 6]</p>	<p>Request for extension of Convention / Request to extend application/ Request to declare 2., 3., 6. The (Minister¹ of [or/ <i>ministry/department</i>]) shall request the Government of Canada to declare [in accordance with Article [___] of the Convention [___]] that the Convention[except ___] extend[s] to [(enacting jurisdiction)/ [name of province or territory]].</p> <p>[1, 2, 3, 4, 9, 11]</p>	<p>Request to ratify Convention 4 The (Minister of ___ or ___) shall request the Government of Canada to submit a declaration to the Ministry for Foreign Affairs of the Kingdom of the Netherlands declaring that the convention extends to the Province except (note any reservation which is allowed and made under the convention).</p> <p>[7]</p>				
Request for reservation	<p>Request for reservation 3. The [Minister of _____], at the time a request is made under section 2, may request of the Convention that the Government of Canada, in accordance with</p>	<p>Application of Convention NOTE: Jurisdictions that wish to make reservations to the Convention should redraft section 2 to make it subject to those sections of the Act that provide for the</p>	<p>Request to ratify Convention 4 The (Minister of ___ or ___) shall request the Government of Canada to submit a declaration to the Ministry for Foreign Affairs of the Kingdom of the Netherlands</p>				

¹ “Minister of” is not always found in brackets.

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	Article[___], make a reservation provided for in [___]of the Convention, in respect of [name of province or territory]. [5, 6]	reservation. RESERVATIONS The following are reservations that jurisdictions may wish to make. If a reservation is made the provision should be incorporated in the draft: [12]	declaring that the convention extends to the Province except (note any reservation which is allowed and made under the convention). ² [7]				
Force of law Coming into force of Convention	Convention is law s.3 (1) Starting on the date the Convention enters into force in respect of (enacting jurisdiction) as determined by the Convention, the Convention is in force in (enacting jurisdiction) and its provisions are law in (enacting jurisdiction). [1]	Force of law 10. (1) The Convention, [...] and the Aircraft Protocol, other than [...],] has/ have the force of law in [name of province or territory]. [4, 5, 6]	Convention in force in Province 2. On, from and after the date the convention enters into force in respect of the Province as determined by the convention, [except (note any reservation which is allowed and made under the convention),] the convention is in force in the Province and the provisions thereof are law in the Province. [7, 15]	Force of law 4. Subject to any declaration that is in force, the Convention has the force of law during the period that it is, by its terms, in force in (name of province or territory). [10, 13] Variable 8 Coming into force of Act and Convention 8. (1) Subject to subsection (2), this Act comes into force on a day fixed by proclamation of the [Lieutenant Governor in Council or Commissioner]. (2) Sections 4, 5 and 7 come into force on the	Application 5. The [...] Convention has the force of law in [name of province or territory]. 6. The [...] Convention and [...] Convention, on their entry into force in accordance with Article 44 of those Conventions, have the force of law in [name of province or territory]. [9]	Convention in Force 3. On the coming into force of the Convention in accordance with Article 99 of the Convention, the Convention, except subparagraph (1)(b) of Article 1 of the Convention, applies in (enacting jurisdiction). [11] Variable 9 Convention in force and given force of law 3. From the date a convention enters into force in respect of [enacting jurisdiction] as determined by the convention, the convention is in force in	Application of Convention 14. The Convention applies in [name of province or territory] on the day on which it enters into force for Canada in accordance with paragraph 2 of Article 68 of the Convention. [8] Variable 10 Convention in force 3. The convention comes into force in (<i>enacting jurisdiction</i>) on the first day of the seventh month after the date the Government of Canada declares, in accordance with the convention, that the

² Note that the French version of this Uniform Act makes reference to reservations in section 1 of the Act and not in section 4.

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
				day on which the Convention enters into force for [name of province or territory], in accordance with Articles 55 and 57 of the Convention. [5, 6]		[enacting jurisdiction] and its provisions are law in [enacting jurisdiction]. [16]	convention extends to (<i>enacting jurisdiction</i>). [2, 3]
Coming into force (of Act)	Coming into force 8., 13., 7. This Act comes into force on [assent/ ____/ the day on which it is assented to/ a day or days to be fixed by (____)]. [2, 3, 4, 8, 10, 13] <i>(note: Section 7 of uniform act # 10 provides two options)</i>	Coming into force of Act and Convention 8. (1) Subject to subsection (2), this Act comes into force on a day fixed by proclamation of the [Lieutenant Governor in Council or Commissioner]. (2) Sections 4, 5 and 7 come into force on the day on which the Convention enters into force for [name of province or territory], in accordance with Articles 55 and 57 of the Convention. [5, 6]	Coming into force 7. The provisions of this Act come into force on a day or days to be fixed by (______). [13]	Proclamation/ Commencement 12., 5. (Proclamation section) [NOTE: This Act should be brought into force only when Canada has acceded to the Convention on behalf of the enacting jurisdiction.] [1, 12, 16]			
Conflict	Application where conflict 3(2) The law of (enacting jurisdiction) applies, subject to the regulations, to an adoption to which the Convention applies but, where there is a conflict between the law of	Convention prevails over domestic law 5. The law of [name of province or territory] applies in respect of a matter to which this Act applies but where there is a conflict between that law and the Convention, the	This Act prevails 7. Where there is a conflict between this Act and any other enactment, this Act prevails. [2, 3, 7, 11, 15]	Inconsistency/ Interpretation 3., 2(2)., 9. In the event of any inconsistency between this Act and any other [law/ Act of the legislation of [name of province or territory], this Act prevails to the extent of the	Inconsistent laws 5. If a provision of this Act or a provision of the Convention that is [in force/ given force of law by section 6,] is inconsistent with any other Act, the provision prevails over the other Act to the extent of the	Prevalence of this act 5. Where there is a conflict between this Act and any other act on recognition and enforcement of foreign judgments, this Act prevails [.] [subject to the following exceptions:].	

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	(enacting jurisdiction) and the Convention, the Convention prevails. [1]	Convention prevails. [5, 6]		inconsistency. [4, 8, 9]	inconsistency. [10, 13]	[16]	
Central Authority	Central Authority 4. The (Minister of or) [is/ shall be] the Central Authority for [(enacting jurisdiction)/ the Province] for the purpose of the Convention. [1, 7]	Designation of authorities 6. (1) The [Minister of _____] is the Central Authority for [name of province or territory] for the purpose of paragraph 2 of Article 28 of the Convention and may request the Government of Canada.: [...] [5, 6]					
Responsible Minister	Responsible Minister 5. The [Minister of _____] is the Minister responsible for the administration of this Act. [5]						
Publication of date	Publication of date/ Publication 9., 4. The [(Minister of or)/ (ministry/department)] shall [cause] publish in the [Gazette/ [Gazette]/(name of publication)] the date the Convention comes	Publication 14. (1) The [Minister of _____/name of regulation-making authority] shall publish in the [Gazette] a notice setting out the day on which the Convention and [...] enter into force in [name of province or	Publication 3. A notice shall be published in (name of publication) of the day on which the Convention comes into force, or a declaration or withdrawal of a declaration takes effect, in (name of province or	Publication of date and courts 4. The (Minister of _____ or _____) shall cause to be published in the Gazette the date the convention comes into force in the Province and the courts	Publication 4. The [responsible minister] shall cause to be published in the [named publication] [16]		

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	<p>into force in [(<i>enacting jurisdiction</i>)/ the province].</p> <p>[1, 2, 3, 5, 6, 7, 8, 9, 11]</p>	<p>territory].</p> <p>(2) The [Minister of _____/name of regulation-making authority] shall publish in the [Gazette] regulations referred to in sub-paragraph 2(d) of Article 17 of the Convention, and any amendments to those regulations.</p> <p>[4]</p>	<p><i>territory</i>).</p> <p>[10, 13]</p>	<p>to which application for registration of a judgment given by a court of the United Kingdom may be made.</p> <p>[15]</p>			
Regulations	<p>Regulations</p> <p>10. The (<i>Lieutenant Governor in Council</i>) may make regulations necessary to carry out the intent and purpose of this Act and, without limiting the generality of the foregoing, may (a) limit or vary the application of the law of (<i>enacting jurisdiction</i>) to an adoption in (<i>enacting jurisdiction</i>) to which the Convention applies; and (b) designate the competent authority for any provision of the Convention.</p> <p>[1]</p>	<p>Regulations</p> <p>5., 6. The Lieutenant Governor in Council may make [any/ such] regulations that are necessary to carry out the intent [and purpose] of this Act</p> <p>[2, 3, 7, 15]</p>	<p>Regulations</p> <p>12. (1) The [name of regulation-making authority] may make any regulations that are necessary to give effect to any of the provisions that have the force of law pursuant to subsection 10(1), including regulations: [...]</p> <p>[4]</p>	<p>Regulations</p> <p>7. The [Lieutenant Governor in Council or Commissioner] may make [to .../ any regulations that are necessary to give effect to this Act.]</p> <p>[5, 6, 16]</p>	<p>Regulations</p> <p>10., 12. The [name of regulation-making authority] may make regulations for carrying out the purposes and provisions of this Act [including: [...]]</p> <p>[8, 9]</p>		

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
Application	<p>Application 6. The convention applies to all contracts within the scope of the convention unless the parties to a contract agree otherwise in accordance with the convention by express provision in the contract.</p> <p>[2]</p>	<p>Application of convention 6.(1) The convention applies to all financial leasing transactions within the scope of the convention unless each of the parties to the supply agreement and each of the parties to the leasing agreement agree to exclude it. (2) Notwithstanding a failure to exclude the convention pursuant to subsection (1), the parties may derogate from or vary the effect of any of its provisions except as stated in Articles 8(3) and 13(3)(b) and (4).</p> <p>[3]</p>	<p>Scope of Act 4. This Act applies in respect of agreements recording consent to arbitration or conciliation proceedings entered into under the Convention, and awards rendered, including those entered into or rendered, as the case may be, before the coming into force of this Act.</p> <p>[8]</p>	<p>Extension of Convention 3. (1) The Convention is extended to trusts declared by judicial decisions including constructive trusts and resulting trusts. (2) Nothing in this Act is to be construed as requiring that recognition or effect be given to a trust declared by judicial decision in another state or a severable aspect of such a trust, if the appropriate court in enacting jurisdiction] is satisfied that there is a substantial reason for refusing to give recognition or effect to the trust or aspect.</p> <p>[12]</p>	<p>Application 7. (1) The [...] Convention applies in respect of any State that is a Contracting Party to that Convention. (2) The [...] applies in respect of any State that is a Contracting Party to that Convention and is not a Contracting Party to the Amended Limitation Convention.</p> <p>[9]</p>		
Binding	<p>Binding on Crown/ Binding on Government 5. This Act is binding on the Crown in right of [name of province] other than a Crown corporation [or other similar entity] of [name of province]</p> <p>OR</p> <p>5. This Act is binding</p>	<p>Binding on Crown/ Binding on Government 9. This Act is binding on the Crown in right of [name of province].</p> <p>OR</p> <p>9. This Act is binding on the Government of [name of province or territory].</p>	<p>Binding on Crown 6. This Act is binding on the Crown in right of (name of province or territory).</p> <p>[10, 13]</p>	<p>Crown bound 4. This Act binds the Crown.</p> <p>[12]</p>			

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	on the Government of the [name of territory] other than an agent or a wholly owned corporation [or other similar entity] of the Government of the [name of territory].] [8]	[4, 9]					
Amending existing laws	Amending existing laws 11. (Some jurisdictions may prefer to amend existing laws instead of exercising the authority in clause 10 (a).) [1]						
Deemed repeal	Deemed repeal 15. This Act is deemed to be repealed on the first day of the month following the expiration of twelve months following the expiration of the day on which a substituted declaration is made, pursuant to paragraph 1 of Article 52 of the Convention and paragraph 1 of Article XXIX of the Aircraft Protocol, that does not provide for the extension of the Convention and the Aircraft Protocol to [name of province or	Repeal 12. The [provincial or territorial Act that adopted the Uniform International Sale of Goods Act] is repealed. [9]					

Table of Uniform Implementation Acts
ULCC Working Group on a Uniform Implementation Act

Provision Subject	Variable 1	Variable 2	Variable 3	Variable 4	Variable 5	Variable 6	Variable 7
	territory]. [4]						
Purpose of the Act	Purpose of Act 4. The purpose of the Act is to implement the provisions of the Convention and the Aircraft Protocol with regard to aircraft equipment. [4]	Purpose of Act 3. The purpose of this Act is to implement the provisions of the Convention concerning the jurisdiction and powers of the [name of court] with respect to the recognition and enforcement of awards. [8]	Purpose 2. The purpose of this Act is to implement the Convention. [10, 13]				

The following Uniform Acts contain other unique provisions:

- International Interests in Mobile Equipment Act (Aircraft Equipment)
- Reciprocal Recognition and Enforcement of Judgments (Canada - U.K. Convention)
- Settlement of International Investment Disputes Act contain other unique provisions.
- Uniform Enforcement of Judgments Conventions Act
- Uniform Intercountry Adoption (Hague Convention) Act

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

This document provides observations on the content of the Uniform Law Conference of Canada (“ULCC”) Uniform Acts implementing international conventions. It also offers recommendations for the ULCC Working Group that will draft a Uniform Implementation Act (“UIA”). These recommendations are based, in part, on the ULCC Uniform Drafting Conventions (“UDCs”). The UDCs contains several drafting principles that should guide the Working Group.

This document should be read with the document entitled “Table of Uniform Implementation Acts”. The observations and recommendations are given for each section subject as divided in the Table.

Definitions

Uniform Drafting Conventions

According to the UDCs, the definition section should be the first section of the Act, unless the definitions only apply to a particular Part, section or group of sections. In that case, they should be place at the beginning of the passage in question.¹ The UDCs provide recommendations on the form of a definition provision and give the following example for a provision containing a series of definitions:

1. In this Act,

"Minister" means the Minister of Agriculture; ("Ministre")

"weed" means dandelion, ragweed or thistle. ("mauvaise herbe")²

Observations - Uniform Acts	Comments and Recommendations for a definitions provision in the UIA
<u>Arrangement</u> - The definitions are set out in the first section of the Uniform Acts examined. - Uniform Act # 7 does not contain definitions.	The definitions should be in the first section of the UIA. ³
<u>Form</u> -In some Uniform Acts, the expression “The following definitions apply in this Act” is used instead of the recommended expression “In this Act”. -In the Uniform Acts that contain only one definition, the definition is located on the same line as the expression “In this Act”.	-The UIA should contain the expression “In this Act” as recommended by the UDCs. ⁴ -The UDCs do not provide instructions on the form of a definition provision containing only one definition.

¹ s. 8 UDCs.

² s. 5 UDCs.

³ s. 8 UDCs.

⁴ s. 5 UDCs.

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

<p><u>Heading</u></p> <p>-In some Acts, the heading “Definitions” is absent and the definitions appear under the heading “Interpretation”.</p> <p>- The definitions are under the heading “Interpretation” in the most recent Uniform Act to be adopted by the ULCC, the <i>Uniform Choice of Court Convention Act</i> (“UCCCA”).</p>	<p>The UDCs offer no guidance on the heading of the definitions section.</p>
<p><u>Content</u></p> <p>In several Uniform Acts, the section under the headings “Definitions” or “Interpretation” is divided in two and sometimes three subsections.</p> <ul style="list-style-type: none"> - The first subsection generally provides the definitions. <ul style="list-style-type: none"> o “Convention” is a defined term in the Uniform Acts examined. - The second subsection specifies that the words and expressions used in the Act have the same meaning as in the Convention. As can be seen on the comparative chart, there are two variations to this subsection. - The force of law provision in Uniform Act # 16 is contained in the definition section. - The UCCCA contains a third subsection providing guidelines on recourse that may be had in interpreting the Act and the Convention. 	<ul style="list-style-type: none"> - The UDCs provide that definitions form part of a section or subsection.⁵ - The Working Group must decide whether guidelines on recourses that may be had in interpreting the Act and the Convention should be provided in a separate section. - The UDCs provide that “A section should deal with a single idea or a group of closely related ideas.”⁶ It may be said that the subsection dealing with recourse to interpretation and the subsection providing the definitions are related by their common objective; to provide means the interpret the Act the Convention it implements. This approach has not been adopted in the majority of the Uniform Acts examined. - “Convention” should be a defined term in the UIA.

Interpretation

Uniform Drafting Conventions

The UDCs provide little guidance on the required content of an “Interpretation” provision. The UDCs provide that “[p]rovisions that deal with the interpretation or application of the Act should follow the definitions.”⁷ The UDCs do not specify whether “following the definitions” means to follow the definitions in a separate section or in a subsection within the definitions section.

⁵ s. 5. UDCs.

⁶ a. 22 UDCs.

⁷ s. 9 UDCs.

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

Observations - Uniform Acts	Comments and Recommendations for an interpretation provision in the UIA
<u>Arrangement</u>	The provisions that deal with interpretation should follow the definitions. ⁸
<u>Form</u> The interpretation section is sometimes divided in subsections.	
<u>Heading and Content</u> -A subsection of the “Interpretation” section of Acts # 8 and 9 provides for good faith interpretation of the Act. - In some Acts, a subsection of the “Interpretation” section lists which recourse may be had in interpreting the Act and the Convention to which it refers. - The UCCCA provides definitions in a subsection under the heading “Interpretation”.	The Working Group must decide whether the provisions dealing with interpretation should be in the same section as the definitions provisions (such as in the UCCCA) or in a separate subsection.

Request to extend

Uniform Drafting Conventions

The UDCs provide no guidance on the required content and form of a “Request to extend” provision.

Observations - ULCC Uniform Acts	Comments and Recommendations for a request to extend provision in the UIA
<u>Arrangement</u> - Some of the Uniform Acts examined do not contain a provision on the request to extend. - The provisions on the request to extend in the Uniform Acts examined are generally located immediately after the definitions section or, where present, the interpretation section. - The provision is the sixth section of the Uniform International Interest in Mobile Equipment Act.	It seems logical that the request to extend section follow the definitions and interpretation section as is the case in most Uniform Acts examined. The Comments to these Uniform Acts to not provide any explanation as to the position of the section within the Acts.
<u>Heading</u>	

⁸ s. 9 UDCs.

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

<ul style="list-style-type: none"> - Request that the Convention apply - Request for extension of Convention - Request to extend application - Request to declare - Request to ratify Convention 	
<p><u>Content</u></p> <p>The provisions on the request to extend in the Uniform Acts examined are not identical but their content is similar. They contain:</p> <ul style="list-style-type: none"> - a space to insert the name of a Minister; - instruction that the named Minister make a request for a declaration from the Government of Canada for the extension of the Convention; and - a space to insert the “name of the province or territory”/ “enacting jurisdiction” to which the Convention is to extend. <p>Additionally, some of the provisions:</p> <ul style="list-style-type: none"> - specify under which article of the Convention the declaration is made; and - note a reservation. 	<p>The Working Group should discuss whether reference to reservations should be made in the request to extend provision of the UIA or in a separate provision on reservations.</p>

Reservation

Uniform Drafting Conventions

The UDCs provide no guidance on the required content and form of a provision on reservations.

Observations - Uniform Acts	Comments and Recommendations for a reservation provision in the UIA
<p><u>Heading</u></p> <ul style="list-style-type: none"> - Request for reservation - Application of Convention - Request to ratify Convention 	<p>The Working Group must decide whether reference to reservations should be made in a separate section of the UIA or within another section.</p>

Force of law

Coming into force of the Convention

*** The “Force of law” and “Coming into force of the Convention” provisions were grouped together in this document and in the chart. Some Uniform Acts contained both provisions under separate headings whereas some integrated the content of both

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

provisions in one section or did not contain a provision on the coming into force of the Convention.

Uniform Drafting Conventions

The UDCs provide no guidance on the required content and form of a “Force of law” provision.

Observations - Uniform Acts	Comments and Recommendations for a force of law provision in the UIA
<p><u>Arrangement</u> The provision is located at the beginning, in the middle or at the end of the Uniform Acts.</p>	<p>The Working Group should discuss the location of the force of law provision within the UIA</p>
<p><u>Heading</u></p> <ul style="list-style-type: none"> - Convention is law - Force of law - Convention in force in Province - Application - Convention in force - Application of Convention - Coming into force - Coming into force of Act and Convention - Convention in force or given force of law <p>The UCCCA uses the “Force of law” heading.</p>	
<p><u>Content</u></p> <ul style="list-style-type: none"> - The provision specifies the jurisdiction in which the Convention has force of law / is in force / is applicable. - The provision sometimes specify that the Convention has force of law or is applicable on the date of entry into force of the Convention. - The provision on the force of law is located in the definition section in Uniform Act # 16 	<p>The Working Group must decide whether the UIA should have separate provisions on the force of law and the coming into force of the Convention.</p>

Coming into force of the Act

Uniform Drafting Conventions

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

The UDCs provide that “[t]he provision dealing with the coming into force of the Act should be its last section.”⁹

Observation - Uniform Acts	Comments and Recommendations for a coming into force provision in the UIA
<u>Arrangement</u> This provision is the last section of the Uniform Acts	The UIA should follow the UDCs and the provision dealing w should be its last section.
<u>Heading</u> - Convention in force - Coming into force - Coming into force of Act and Convention - Proclamation/ Commencement The UCCCA uses the “Coming into force” heading.	
<u>Content</u> - The provision contains a reference to the point in time the act (and the convention) comes into force. - The provision under the heading “Proclamation/Commencement” have no content other then bracketed text specifying that it is the proclamation section.	

Conflict

Uniform Drafting Conventions

The UDCs provide no guidance on the required content and form of a “Conflict” provision.

Observations - Uniform Acts	Comments and Recommendations for a conflict provision in the UIA
<u>Heading</u> - Application where conflict (1 Uniform Act) - Convention prevails over domestic law - This Act prevails - Inconsistency - Interpretation - Inconsistent laws	

⁹ s. 13 UDCs.

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

<p>- Prevalence of this act</p> <p>The UCCCA uses the “Inconsistent laws” heading as does the <i>Uniform Assignment of Receivables in International Trade Act</i> (“UARITA”), another Uniform Act recently adopted by the ULCC.</p>	
<p><u>Content</u></p> <p>- The provision on conflict in several Uniform Acts contains a reference to the enabling jurisdiction.</p> <p>- The provision on conflict in most Uniform Acts contains a statement that the Act prevails where there is conflict between the act and another law. Uniform Acts # 1, 5 and 6 provide that the convention prevails where there is conflict with a law.</p>	

Publication

Uniform Drafting Conventions

The UDCs provide no guidance on the required content and form of a “Publication” provision.

Observations - Uniform Acts	Comments and Recommendations for a publication provision in the UIA
<p><u>Heading</u></p> <ul style="list-style-type: none"> - Publication - Publication of date - Publication of date and courts <p>“Publication” is the most widely used heading. It has been used recently in the UCCCA</p>	
<p><u>Content</u></p> <ul style="list-style-type: none"> - The provision generally specifies which minister shall publish the date the Convention comes into force, however the minister is not specified in more recent Uniform Acts (# 10 and 13). - The provision always requires that the name of the publication be specified. -The provision generally requires that the 	

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

enacting jurisdiction be specified.	
-------------------------------------	--

Regulations

Uniform Drafting Conventions

The UDCs provide the following with regards to the location of provisions conferring regulation-making power:

Regulation-making powers

10. Provisions conferring regulation-making powers should come at the end of the Act, preceding only the transitional or temporary provisions, those repealing or amending other Acts and the commencement provision.

If an Act is divided into Parts, it may be more practical to group the provisions conferring regulation-making powers at the end of the individual Parts to which they relate.¹⁰

The UDCs provide the following with regards to the form and content of the regulation-making power provisions.

Regulation-making powers

29. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

Observations - Uniform Acts	Comments and Recommendations for a regulation provision in the UIA
<u>Arrangement</u>	The regulations provision in the UIA should come at the end of the act, as prescribed by the UDCs.
<u>Heading</u> The regulation provision is found under the heading “Regulations” in all the Uniform Acts containing a provision on the subject.	
<u>Content</u>	The regulations provision should be expressed clearly and be no broader than necessary as prescribed by the UDCs.

Application

Uniform Drafting Conventions

The UDCs provide at section 9 that provisions dealing with the application or interpretation of the Act should follow the definitions. The UDCs is silent with regards to provisions on the application of a convention as opposed to an act.

Observations - Uniform Acts	Comments and Recommendations for a
------------------------------------	---

¹⁰ s. 10 UDCs.

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

	application provision in the UIA
<u>Arrangement</u>	We believe if it is necessary to include such a provision, it should follow the provision on the force of law.
<u>Heading</u> <ul style="list-style-type: none"> - Application - Application of convention - Scope of Act - Extension of Convention <p>- Only four Uniform Acts out of the 16 examined contain an application of the convention provision.</p> <p>- The UCCCA and the UARITA do not contain an application provision.</p>	
<u>Form and Content</u> <ul style="list-style-type: none"> - The provision specifies to what (contracts, transactions, agreements..) the convention (or the act) applies. - The application provision generally starts with the following: “The convention applies ...”. 	

Binding

Uniform Drafting Conventions

The UDCs provide no guidance on this matter.

Observations - Uniform Acts	Comments and Recommendations for a binding provision in the UIA
<u>Heading</u> <ul style="list-style-type: none"> - Binding on Crown - Binding on Crown/ Binding on Government - Crown bound <p>Only six Uniform Acts out of the 16 examined contain such a provision.</p>	

Purpose of the Act

Uniform Drafting Conventions

The UDCs provide the following:

Statement of purpose

Annex 2
Recommendations for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

19. If a statement of purpose is required, it should be structured as a section rather than as a preamble.

Explicit statements of purpose are rarely necessary, since the object of a well-drafted Act should become clear to the person who reads it as a whole. In general, legislation should not contain statements of a non-legislative nature. However, a specific statement of purpose is occasionally required (for example, to give guidance to the courts).

Observations - Uniform Acts	Comments and Recommendations for a purpose of the act provision of the UIA
<p><u>Arrangement</u> The purpose provisions in the Uniform Acts examined are located near the beginning of the acts.</p>	<p>As recommended by the UDCs, the UIA should not contain a purpose provision unless the purpose of the Uniform Act is not clear.</p>
<p><u>Heading</u> - Purpose of Act - Purpose</p> <p>-Only four Uniform Acts out of the 16 examined contain an application provision. The UCCCA and the UARITA contain a purpose provision.</p>	
<p><u>Content</u> The provision provides that the purpose of the act is to implement the convention.</p>	

Other provisions

Some of the Uniform Acts examined also contain provisions dealing with the following:

- Responsible minister (Uniform Act # 4)
- Central Authorities (Uniform Acts # 1, 5, 6, 7)
- Amending existing laws (Uniform Act # 1)
 - According to the UDCs, an amending provision should precede the commencement provision.¹¹
- Repeal (Uniform Act # 4, 9)

¹¹ s. 12 UDCs.

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

This document was created to help the Working Group determine what it should include in the commentaries under each section of the Uniform Implementation Act (“UIA”). The document provides observations on the commentaries included in the most recent Uniform Acts prepared by the ULCC to implement international conventions, the *Uniform Choice of Court Convention Act* (“UCCCA”) and the *Uniform Assignment of Receivables in International Trade Act* (“UARITA”). The commentaries provided in these two Uniform Acts are similar. Observations on the commentaries in the *Uniform International Interest in Mobile Equipment Act (Aircraft Equipment)* (“UIIMEA”) are also provided.

Uniform Choice of Court Convention Act

Title

The comment under the title of the Uniform Acts sets out the object and purpose of the Act. Reference is also made to related conventions and acts implementing them.

Section 1: Definitions

Subsection 1(1)

Subsection 1(1) defines the terms “Convention” and “declaration”.

The comment under the definition of “Convention” states that it is a standard provision in uniform acts implementing international conventions. The comment also explains why the Convention is set out in the schedule of the Act instead of being transposed into legislative provisions.

The comment under the definition of “declaration” provides further information on the declarations that can be made under the Convention.

Subsection 1(2)

Subsection 1(2) provides that “unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the Convention.”

There are no comments under this subsection.

Subsection 1(3)

Subsection 1(3) deals with recourse for interpreting the Act and the Convention.

The comment under subsection 1(3) explains where to find the document mentioned in the subsection, why this document can be used to interpret the Act and the Convention. In

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

addition, the comment specifies that other resources could be used in interpreting the Convention. The comment also recommends the enacting jurisdictions include reference in their Gazette or other appropriate governmental organ to the website where the document can be downloaded.

Section 2: Purpose

No comment is provided under this section.

Section 3: Publication

No comment is provided under this section.

Section 4: Force of law

The comment provides details as to when the Convention is given force of law. The comment also discusses why it is preferable that force of law be given to all the provisions of a Convention contrary to what was done with the UIIMEA.

Section 5: Inconsistent laws

The comment explains why an inconsistent laws provision is important and recommends that enacting jurisdictions amend legislation that might potentially be inconsistent with the Act and the Convention.

Section 6: Binding on Crown

The comment explains in what circumstances the Crown is bound by the Act. It also explains why it may not be necessary to include this section in the Act.

Section 7: Coming into force

The comment explains the need to co-ordinate the entry into force of the Convention at the international level, the coming into force of domestic implementing legislation, and giving the Convention force of law. It also recommends that the implementing legislation state that it comes into force on proclamation or similar means. Finally, the comment reminds enacting jurisdictions that they will need to communicate with Justice Canada officials to coordinate dates.

Uniform Assignment of Receivables in International Trade Act

Title

There is no comment under the title.

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

Section 1: Interpretation

Subsection 1(1)

Subsection 1(1) defines the terms “Convention” and “declaration”.

The comment under the definition of “Convention” is similar to the UCCCA comment for these items.

Subsection 1(2)

Subsection 1(2) provides that “unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the Convention.”

No comment is provided under this section.

Subsection 1(3)

Subsection 1(3) deals with recourse for interpreting the Act and the Convention.

The comment for this item is similar to the comment to subsection 1(3) of the UCCCA

Section 2: Purpose

The comment gives a background of the Working Group’s recommendation to implement the Convention with the Act.

Section 3: Publication

No comment is provided under this section.

Section 4: Force of law

The comment is similar to the comment provided for the same section of the UCCCA.

Section 5: Inconsistent laws

The comment is similar to the comment provided for the same section of the UCCCA.

Section 6: Binding on Crown

The comment is similar to the comment provided for the same section of the UCCCA.

Section 7: Coming into force

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

The comment is similar to the comment provided for the same section of the UCCCA.

Uniform International Interest in Mobile Equipment Act

Title

See observation on the UCCCA comment.

Section 1: Definitions

Subsection 1(1)

The comment under this subsection adds precision as to which Convention and Protocol are given force of law by the Act.

Subsection 1(2)

Subsection 1(2) specifies that the meaning of the words and expressions in the Act have the same meaning as the corresponding words and expressions used in the Convention and the Protocol.

The comment provides that it is standard for a uniform act implementing an international convention to contain such a provision.

Section 2: Interpretation

This comment is similar to the comments for the same item in the UCCCA and the UARITA. The comment discusses how to make the documents referred to in section 2 available to the public (adding the documents as a Schedule to the Act, indicate references to the documents in the legislation, publish the documents in the Gazette).

The comment also specifies that the documents referred to in section 2 are in addition to treaty interpretation principles and provides an explanation of these principles by citing case law.

Section 3: Inconsistency

The comment notes that this is a standard provision for uniform acts implementing international conventions. The comment also cautions that this provision may not be sufficient and that some legislation might need to be amended.

Section 4: Purpose of Act

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

The comment states that it is important to specify the purpose of the Act as it is limited to the implementation of the Convention to aircraft equipment. It explains under what circumstances this provision would need to be amended.

Section 5: Responsible Minister

The comment simply states that it is the enacting jurisdiction who names the minister responsible for the administration of the Act.

Section 6: Request to extend application

The comment explains when the Act would take effect. The comment also explains why some jurisdictions may not need this provision.

Section 7: Article 39 declaration

Section 8: Article 40 declaration

These sections and the comments thereto deal with matters specific to the Convention referred to in UIIMEA and cannot be transposed to UIA.

Section 9: Binding on Crown

No comments are provided.

OR

Section 9: Binding on Government

The comment provides that this provision should not be enacted by jurisdictions not wishing their governments to be bound by the Act.

Section 10: Force of law

The comment specifies that it is necessary to provide when the Convention and Protocol will have force of law for the enacting jurisdiction. The comment also provides recommendations on when the implementing legislation should come into force.

Section 11: Court

This section and the comments thereto deal with matters specific to the Convention referred to in UIIMEA and cannot be transposed to UIA.

Section 12: Regulations

Annex 3
Commentaries for a Uniform Implementation Act
ULCC Working Group on a Uniform Implementation Act

The comment states that regulation may be thought desirable or may be necessary for a government to implement some provisions of the Convention and Protocol.

Section 13: Coming into force

The comment explains when the Act comes into force.

Section 14: Publication

The comment notes that this is a standard provision.

Section 15: Deemed repeal

The comment explains when this provision would not be necessary.