

Draft Guide for Provinces and Territories¹ that Wish to Implement an International Private Law Treaty

Introductory Note

This document is a reference guide that has been prepared for study by the Uniform Law Conference of Canada. It is accompanied by a supporting PowerPoint document that gives more information and, in particular, more examples and counter-examples.

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The legislator has two principal ways of incorporating obligations imposed by international treaties into domestic law: either it can give the treaty² the force of law, or it can reformulate the treaty's obligations and directly enact them into the jurisdiction's domestic law, giving them the scope that the legislator judges necessary.

The following are examples of these two approaches. In the left-hand column, the legislator has chosen to give force of law to the treaty while, in the right-hand column, the legislator has reformulated the treaty's obligations.

<p style="text-align: center;"><i>An Act Respecting the United Nations Convention on Contracts for the International Sale of Goods</i></p> <p>1. The United Nations Convention on Contracts for the International Sale of Goods, <u>reproduced as a schedule to this Act, has force of law [in province X]</u> and has effect from the date determined under its provisions.</p> <p>The Minister shall publish that date in the</p>	<p style="text-align: center;"><i>An Act Respecting the Civil Aspects of International and Interprovincial Child Abduction</i></p> <p>WHEREAS the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 aims to protect children internationally from the harmful effects of their wrongful removal or retention;</p>
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¹ All references to a “legislator” in this paper include the legislator of a territory, and all references to a “province” include “territory”.

² “Treaty” is defined in the *Vienna Convention on the Law of Treaties* as “...an international agreement concluded between States in written form and governed by international law, ... whatever its particular designation”.

<p>[province's official Gazette].</p> <p>2. The Minister of Justice is responsible for the implementation of this Act.</p> <p>...</p> <p style="text-align: center;">SCHEDULE</p> <p style="text-align: center;">UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS</p> <p>THE STATES PARTIES TO THIS CONVENTION,</p> <p>BEARING IN MIND...</p> <p>HAVE AGREED as follows:</p>	<p>...</p> <p>Whereas [province X] subscribes to the principles and rules set forth in the Convention and it is expedient to apply them to the largest possible number of cases;</p> <p>...</p> <p style="text-align: center;">CHAPTER I</p> <p style="text-align: center;">INTERPRETATION AND APPLICATION</p> <p>1. <u>The object of this Act is to secure the prompt return to the place of their habitual residence of children removed to or retained in [province X] or a designated State, as the case may be, in breach of custody rights.</u></p> <p>A further object of this Act is to ensure that the rights of custody and access under the law of a designated State are effectively respected in [province X] and the rights of custody and access under the law of [province X] are effectively respected in a designated State.</p> <p>2. For the purposes of this Act,</p> <p>(1) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;</p> <p>(2) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence;</p> <p>(3) "designated State" means a State, a province or a territory designated under section 41.</p> <p>3. The removal or the retention of a child is to be considered wrongful, within the meaning of this Act, where it is in breach of rights of custody attributed to one or several persons or bodies under the law of [province X] or of the</p>
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designated State in which the child was habitually resident immediately before the removal or retention and where, at the time of removal or retention, those rights were actually exercised by one or several persons or bodies or would have been so exercised but for the removal or retention.

The rights of custody mentioned in the first paragraph may arise in particular by operation of law, or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of [province X] or of the designated State.

...

CHAPTER II CENTRAL AUTHORITIES

7. The Minister of Justice shall co-operate with the Central Authorities of the designated States and promote cooperation amongst the competent authorities in [the province] to achieve the objects of this Act.

...

CHAPTER III RETURN OF THE CHILD

DIVISION I APPLICATION TO THE CENTRAL AUTHORITY

...

DIVISION II JUDICIAL PROCEEDINGS

...

CHAPTER IV RIGHTS OF ACCESS

	...
	CHAPTER V MISCELLANEOUS PROVISIONS
	...
	CHAPTER VI FINAL PROVISIONS
	...
	REPEAL SCHEDULE

Once this fundamental choice is made between the technique of giving the treaty the force of law and the technique of reformulating and enacting the treaty's obligations into domestic law,³ the procedure that the legislator will have to follow to implement the treaty in its territory will include more or less all of the steps set out below.

The drafting of a statute, even one that only gives force of law to a treaty – and prevalence over domestic law, in the case of conflict – is no mere mechanical exercise, of course. The drafter must determine, in the context, how best to communicate the legislator's intention. To give just one example, statutes very commonly begin with a definitions section, but that might not be necessary at all in a given case: there might be no need for (in Gérard Cornu's terms) "terminological definitions,"⁴ either because the defined term is well understood, or because (again in Cornu's terms) a "real" definition would eliminate ambiguity, or again because a definition could be made unnecessary by a substantive statement of the law, as in the following example concerning the word "Convention":

1. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, made on 29 May 1993 at The Hague and set out in the schedule to this Act, has force of law in [the province]. The Convention takes effect on 1 February 2006.

³ It will be seen on pages 11-13 that other, hybrid, methods exist.

⁴ A terminological definition defines a term rather than a concept, while a real definition defines a concept. The *Criminal Code* definition of "steal" is terminological ("steal" means to commit theft), while its definition of "first degree murder" is real ("Murder is first degree murder when it is planned and deliberate"). Note that while terminological definitions are in the classic form of definitions ("X" means...), real definitions are not drafted that way. Gérard Cornu, « Les définitions dans la loi », in *Langage du droit et traduction : Essais de jurilinguistique*, J.-C. Gémar (éd.), Éditeur officiel du Québec, 1982, p. 20.

Matters to take into consideration

1. Logical organization
2. Style
3. Content of section
4. Title
5. Preamble
6. Definitions and rules of interpretation
7. Precedence of one text over another
8. Force of law
9. Federal-provincial relations
10. Reservations and declarations
11. The responsible authority
12. Regulations
13. The Minister responsible for administering the Act
14. Consequential amendments
15. Transitional or temporary provisions
16. Coming into force

The following guide should be taken as a reminder, for the drafter, about the fundamental elements that are ordinarily found in a treaty implementation Act. None of them is absolutely necessary in such an Act, and the order in which they are treated here is not carved in stone.

Some of the headings below are the subject of discussion and even recommendations in the *Uniform Drafting Conventions* of the Uniform Law Conference of Canada. Those recommendations are applicable to all legislative texts, including ones that implement treaties. Those recommendations are set out below and are followed by comments in some cases, as well as by examples that illustrate how the drafting principles at issue can be implemented.

1. Logical organization

“The organization of an Act should be logical.”⁵

As G.C. Thornton wrote, “It would be difficult to exaggerate the role which orderliness can play in making the complex seem uncomplicated or if not uncomplicated then at least much less difficult to understand than otherwise might be the case...[I]f the material is dealt with in a

⁵ Section 1 of the *Uniform Drafting Conventions* (“Conventions”).

planned manner and in logical sequence, and chronological sequence where appropriate, the writing will flow and be more readable and thus more readily comprehensible.”⁶

A treaty implementation Act, like any other Act, will benefit from being developed in a logical fashion. For example, by giving the reader all the information necessary right from the beginning to identify the treaty being implemented, it will not be necessary to refer to it later, and it will be even less necessary to have a terminological definition for it.

2. Style

“An Act should be written simply, clearly and concisely, with the required degree of precision, and as much as possible in ordinary language.”⁷

The language of the law is based on ordinary language, and cannot exist independently of it. Technical words or expressions are to be used only when the context requires a degree of precision that ordinary language cannot convey. A neutral style is called for: sober, uncluttered, without emphasis, turgidity or flourishes; drafted like that, the Act will never go out of style.

3. Content of section

“A section should deal with a single idea or with a group of closely related ideas.”⁸

The section is the fundamental unit of a legislative text. It must not be forgotten that [translation] “an Act is not written section by section. It is divided into sections.”⁹ The intellectual content of the text is affected by the concepts that it seeks to communicate; the text is divided into numbered sections only so that the rules can be found faster. Each section is one element of a coherent whole.

4. Title

“The title should succinctly indicate the Act’s subject-matter.”¹⁰

The title must give a neutral reflection of the text’s content, using the text’s terminology. It must be as brief and straightforward as possible but also complete and precise. It will be used to

⁶ *Legislative Drafting*, 4th ed. (Butterworths: 1996), 55-56.

⁷ Conventions, section 2.

⁸ Conventions, subsection 22(1).

⁹ Gérard Cornu, *Linguistique juridique*, Ed. Montchrestien, 3^e éd., Paris, 2005

¹⁰ Conventions, section 17.

designate the Act among all the other Acts in the legislative corpus. It must not give any false impressions or induce any errors.

Examples

An Act to implement the Convention on the Rights of the Child

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An Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

5. Preamble

“The use of preambles is not recommended.”¹¹

“If a statement of purpose is required, it should be structured as a section rather than as a preamble.”¹²

“If a preamble is to be included, it follows the title.”¹³

Examples

3. The purpose of this Act is to implement the provisions of the Convention and the Aircraft Protocol with respect to aircraft objects.

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2. The purpose of this Act is to facilitate the use of mediation to resolve commercial disputes.

*

Article 1

La présente loi règle la procédure d'accueil des enfants conformément à la Convention.

¹¹ Conventions, section 18.

¹² Conventions, section 19.

¹³ Conventions, section 7.

Elle prévoit des mesures de protection des enfants dont la résidence habituelle se trouvait à l'étranger et qui sont accueillis, en vue de leur adoption, par des personnes résidant habituellement [dans la province X].

6. Definitions and rules of interpretation

“Definitions should be set out in the first section of the Act, unless they apply only to a particular Part, section or group of sections. In that case, they should be placed at the beginning of the passage in question.”¹⁴

“Provisions that deal with the interpretation or application of the Act should follow the definitions.”¹⁵

“Definitions should be used sparingly and only for the following purposes:

- (a) to establish that a term is not being used in a usual meaning, or is being used in only one of several usual meanings;
- (b) to avoid excessive repetition;
- (c) to allow the use of an abbreviation;
- (d) to signal the use of an unusual or novel term.

The drafter should not prepare the definitions until the main substantive provisions of the Act have been settled.

A definition should not have any substantive content.

Statements of the application of the Act should be made in substantive provisions rather than definitions.

A definition should not give an artificial or unnatural sense to the term defined.

“Means” and “includes” have different uses.

A defined term should never be used in the same Act in a different sense.”¹⁶

¹⁴ Conventions, section 8.

¹⁵ Conventions, section 9.

¹⁶ Conventions, section 21.

Examples

1. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, made on 29 May 1993 at The Hague and set out in the schedule to this Act, has force of law in [the province]. The Convention takes effect on 1 February 2006.

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10. For the purposes of the Convention, any reference in a legislative provision to the concept of domicile must be understood as a reference to the concept of habitual residence.

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2. ...

(3) In interpreting the Convention and the Aircraft Protocol, recourse may be had to

(a) the *Official Commentary on the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment*, as approved for distribution by the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT); and

(b) the *Consolidated Text of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* set out in Schedule 3.

7. Precedence of one text over another

A rule may provide that one provision or text prevails over another either because they conflict with each other or because their scope is not the same, even if they overlap to some extent (which explains why the words “to the extent of any inconsistency” are added).

While a provision that provides for this hierarchy between provisions or texts is easy to draft (“The provisions of this Act prevail over the provisions of any other Act to the extent of any inconsistency”), it can have a considerable substantive impact. That is one reason why drafters and instructing officers should be cautious about such provisions. Another reason is that, logically, every effort should be made to avoid inconsistency in the first place, first of all to avoid imposing on the reader the burden of determining to what extent a rule is inconsistent with another – not always an easy task – and, secondly, to provide a clearer idea of which law applies. Finally, the proliferation of rules of this sort often creates difficulties for subsequent Acts dealing with the same subject area, as the examples below demonstrate.

Examples

United Nations Foreign Arbitral Awards Convention Act, 1986, c. 21

5. In the event of any inconsistency between the provisions of this Act, or the Convention, and the provisions of any other law, the provisions of this Act and the Convention prevail to the extent of the inconsistency.

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Settlement of International Investment Disputes Act, 2008, c. 8

3. Despite section 5 of the *United Nations Foreign Arbitral Awards Convention Act*, in the event of an inconsistency between that Act — or the *Commercial Arbitration Act* — and this Act or the Convention, this Act or the Convention, as the case may be, prevails to the extent of the inconsistency.

*

International Interests in Mobile Equipment (aircraft equipment) Act, 2005, c. 3

6. If a provision of this Act, including a provision given force of law by section 4, is inconsistent with any other law, the provision prevails over the other law to the extent of the inconsistency.

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Commercial Mediation Act, N.S, 2005, c. 36

3. Where there is a conflict between this Act and any other enactment that requires or authorizes mediation, the other enactment prevails.

8. Force of law

If the legislator chooses to use the technique of giving force of law to a treaty (rather than reformulating its obligations in an Act), then the provision that gives force of law to the treaty should be drafted in the simplest and clearest terms. Giving force of law to a treaty means that the text of the treaty is incorporated into the legislator's domestic law, whether it is just one article of the treaty that is being given force of law or the entire treaty.¹⁷

Example

¹⁷ Force of law is not to be confused with coming into force, dealt with in section 16.

5. The Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25 October 1980, has force of law [in province X].

An Act that implements obligations of an international treaty can also, without explicitly giving force of law to the treaty or reformulating its obligations in domestic law, rely on the text of the treaty itself and adjust its internal law to allow the treaty obligations to be implemented. However, it is difficult in these cases not to conclude that the treaty has been incorporated into internal law, especially when it is provided that the text of the treaty prevails over other internal Acts (see section 3 of the federal Act, below), which brings about the same legal effects as the technique of giving force of law, as shown in the following example. Given that the legislator's goal is to communicate the law to the reader as effectively as possible, this technique that is part-way between giving a treaty force of law and reformulating obligations in domestic law is not recommended, because of the lack of certainty that it entails: it provides that the treaty prevails and it incorporates the treaty into domestic law, but it does not say that the treaty has become the law of Canada.

Example

Convention	Uniform Act	Provincial Act	Federal Act
<p style="text-align: center;">CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES</p> <p style="text-align: center;">(Schedule to the federal Act)</p> <p style="text-align: center;">...</p> <p style="text-align: center;">Article 1</p> <p>(1) There is hereby established the International Centre</p>	<p style="text-align: center;">SETTLEMENT OF INTERNATIONAL INVESTMENT DISPUTES ACT</p> <p>Definitions</p> <p>1. (1) In this Act</p> <p>...</p> <p>(2) Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.</p>	<p>Definitions</p> <p>1. (1) In this Act,</p> <p>...</p> <p>Meaning of words and expressions</p> <p>(2) Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.</p> <p>2. (1) This Act shall be interpreted in good faith in</p>	<p>2. The following definitions apply in this Act.</p> <p>...</p> <p>“Convention” means the Convention on the Settlement of Investment Disputes ..., <u>the text of which is set out in the schedule.</u></p> <p>3. Despite section 5 of the <i>United Nations Foreign Arbitral Awards Convention Act</i>, in the event of an</p>

<p>for Settlement of Investment Disputes (hereinafter called the Centre).</p> <p>(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.</p> <p>...</p> <p style="text-align: center;">CHAPTER III</p> <p style="text-align: center;">CONCILIATION</p> <p style="text-align: center;">Section 1</p> <p style="text-align: center;">Request for Conciliation</p> <p style="text-align: center;">Article 28</p> <p>(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.</p> <p>...</p> <p style="text-align: center;">CHAPTER IV</p>	<p>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>(2) <u>In the event of any inconsistency between this Act and any other Act of the legislature of [name of province or territory], this Act prevails to the extent of the inconsistency.</u></p> <p>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.</p> <p>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</p>	<p>accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose.</p> <p>(2) <u>In the event of any inconsistency between this Act and any other Act of the Legislature of [...], this Act prevails to the extent of the inconsistency.</u></p> <p>3. The purpose of this Act is to implement the provisions of the Convention concerning the jurisdiction and powers of the Superior Court of Justice with respect to the recognition and enforcement of awards.</p> <p>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>inconsistency between that Act — or the <i>Commercial Arbitration Act</i> — and this Act or the Convention, <u>this Act or the Convention, as the case may be, prevails</u> to the extent of the inconsistency.</p> <p>4. This Act applies to awards rendered, arbitration agreements entered into and conciliation proceedings commenced under the Convention before or after the coming into force of this Act.</p> <p>5. (1) The International Centre for Settlement of Investment Disputes established under the Convention has the capacity of a natural person and the privileges and immunities set out in articles 19, 20 and 23 and paragraph (1) of article 24 of the Convention.</p> <p>...</p>
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<p>ARBITRATION</p> <p>...</p> <p>CHAPTER X</p> <p>FINAL PROVISIONS</p> <p>...</p> <p>Article 69</p> <p>Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.</p>	<p>entered into or rendered, as the case may be, before the coming into force of this Act.</p>		
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9. Federal-provincial relations

Federal-provincial relations that ensure the proper coordination in Canada between provincial authorities, who have the sole competence under the Constitution to legislate in certain fields, and federal authorities, who have the sole competence at the international level to enter into treaties – even treaties that deal with fields within the competence of the provinces – can generally be dealt with administratively. There is no need to provide for these relations in the Act: doing so will be of no benefit to the reader.

In private international law, most treaties provide specifically for the steps to be taken in federal states in which matters of private law are the responsibility of constituent parts of the federation.

Example

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in

this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) ...

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.¹⁸

An Act that implements a treaty in a province can be made to come into force on the happening of a future event, for example on the declaration, made internationally – and therefore by the federal government – that the treaty is binding on Canada and that the province in question has brought it into force in its territory. It is therefore not necessary for the Act to provide that the treaty has force of law in the province subject to a federal declaration that the treaty binds Canada; the province can simply make the Act come into force by means of an order in council, which – like all the province’s legislative instruments – is required to be published in an official publication.

If the treaty provides for the possibility of a declaration by Canada concerning a province, or if the implementation Act is already in force, the declaration should be published in the province’s official publication. The same holds for any amendments to the declaration.

Therefore, provisions like the following should be avoided:

3. The Convention comes into force in [the province] on the day on which the Government of Canada declares, on the request of the Minister of Justice under section 2, that the Convention applies in [the province].

10. Reservations and declarations

Among the reservations and declarations authorized by a treaty, some may have the effect only of limiting the application of the treaty to identified provinces, while others may modify the substantive legal scope of the treaty. The former are dealt with administratively, while the latter are reflected in the provincial implementation Act.

¹⁸ United Nations Convention on Contracts for the International Sale of Goods.

Example

<p style="text-align: center;">UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS</p> <p>Article 1</p> <p>(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:</p> <p>(a) when the States are Contracting States; or</p> <p>(b) when the rules of private international law lead to the application of the law of a Contracting State.</p> <p>...</p> <p>Article 95</p> <p>Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.</p>	<p style="text-align: center;"><i>International Sale of Goods Act, S.B.C. 1990, c. 20</i></p> <p>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 British Columbia.</p> <p style="text-align: center;"><i>International Sale of Goods Act, R.S.B.C. 1996, c. 236</i></p> <p>3. On the coming into force of the Convention in accordance with Article 99 of the Convention, the Convention applies in British Columbia.</p>
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11. Responsible authority

A treaty sometimes requires member States to designate a responsible authority for the administration of the treaty. Given the division of powers within Canada, the province may indicate the authority, either in the implementation Act or in the regulations.

Example

2. The Minister of Health and Social Services is the Central Authority for [the province] for the purposes of the Convention.

The Minister shall perform the duties of the Central Authority, unless such duties, insofar as they are not exclusive to the Central Authority, are assigned by law to other authorities or bodies.

12. Regulations

In the exercise of its sovereignty, the legislator may delegate to an authority the power to make subordinate legislation for the purposes of the implementation Act.

Examples

18. The Lieutenant Governor in Council may make any regulations that are necessary to carry out the intent and purpose of this Act.

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35. The Government may, by regulation, prescribe transitional measures for the purposes of this Act.

Such a regulation must be made not later than 1 February 2007 and may, if it so provides, be applicable from a date not prior to 1 February 2006.

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42. The Government may make any expedient regulation for the administration of this Act.

Such a regulation shall come into force ten days after its publication in the [provincial Gazette] or on any later date indicated therein.

13. Minister responsible for the administration of the Act

In accordance with the principle of ministerial responsibility, the implementation Act should establish which minister is responsible for the administration of the Act. That minister will then be responsible to the legislature.

Example

11. The Minister of Health and Social Services is responsible for the administration of this Act.

14. Consequential amendments

“Provisions repealing or amending other Acts should precede the commencement provision.”¹⁹

Other Acts may need to be amended to accommodate the new law.

Example

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations, chapter 12 of the statutes of 1984, in force on 1 March 1985, is repealed, except section 47, effective from the coming into force of chapter A-23.01 of the Revised Statutes.

15. Transitional and temporary provisions

“Transitional or temporary provisions should follow the subject-matter to which they relate.

If they relate to the Act as a whole, they should follow the regulation-making powers.”²⁰

Examples

32. Permanent certifications issued under Division VII of Chapter IV of the *Youth Protection Act* remain valid until 1 September 2007.

33. An adoption process in respect of a child domiciled outside [the province] undertaken by an adopter and authorized by the Minister in writing before the coming into force of section 14 may be continued by the adopter.²¹

¹⁹ Conventions, section 12.

²⁰ Conventions, section 11.

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43. (4) The Hague-Visby Rules do not apply in respect of contracts entered into after the coming into force of section 45. [Section 45 provides that the Hamburg Rules have the force of law in Canada in respect of contracts for the carriage of goods by water.]²²

16. Coming into force

“The provision dealing with the coming into force of the Act should be its last section.”²³

It is the coming-into-force provision that gives a legislative text its effect. Once a treaty implementation Act has been made or has received royal assent, the Act is a valid law but is of no effect if it is not in force. Therefore, validity and coming into force must not be confused. It is the coming into force of the Act that allows the treaty to have force of law in the province.

Royal assent to an implementation Act by a province is normally timed to coincide with the coming into force of the treaty for that jurisdiction by virtue of a declaration deposited by Canada with the treaty depositary. Adoption of the legislation by the province is normally a condition precedent to the deposit of the declaration. In principle, the preparation of the declaration is the subject of consultations between the federal government and the province.

An Act can come into force without any express provision if there is another Act of general application that provides a default rule for coming into force (for example, the day of royal assent, or 30 days after that day). Coming into force can be on a fixed date or on a date determined by a calculation; an Act can even be brought into force in stages, with different provisions being brought into force at different times.

Examples

10. This Act comes into force on a day to be fixed by order of the Governor in Council.

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9. (1) This Act, except the schedule, comes into force on the day it receives royal assent.

²¹ *An Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, R.S.Q., c. M-35.1.3.

²² *Marine Liability Act*, S.C. 2001, c. 6.

²³ Conventions, section 13.

(2) The schedule comes into force on a day fixed by proclamation.

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PUBLICATION

7. The Minister of Justice shall cause a notice of the day the Convention [on the recognition and enforcement of foreign arbitral awards] comes into force and of the day it ceases to be in force to be published in the *Canada Gazette* within sixty days after its coming into force or ceasing to be in force, and a notice so published shall be judicially noticed.