

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
2016**

**Fredericton NB
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Report of the Department of Justice Canada**August 2016****INTRODUCTION**

[1] This report has been prepared for the August 7-11, 2016 meeting of the Uniform Law Conference of Canada (ULCC). It covers, among other things, the status of implementation of international private law instruments in Canadian jurisdictions; recent developments at the international level, including projects currently under negotiation; and the level of priority of the various activities carried out by the Department of Justice and provincial and territorial governments relating to international private law.

[2] The Department of Justice has devoted resources over the last year to developing the international and national legal framework in international private law. Progress has been made in terms of developing new international instruments and in terms of Canada's implementation of international instruments. For example, this year, the *Cape Town Convention on International Interests in Mobile Equipment* and the *Aircraft Protocol* were extended to New Brunswick, thereby completing the implementation of these instruments in Canada. Unidroit has completed its Legal Guide on Contract Farming, which is relevant for the parties to a contract farming relationship (i.e. producers and agri-food business partners) and discusses legal issues and critical problems that may arise under various practical situations. UNCITRAL has completed a Model Law on Secured Transactions which applies to security rights in movable assets. Another important development is the beginning in June 2016 of formal negotiations for a convention on the recognition and enforcement of foreign judgments at the Hague Conference.

[3] The first part of this report deals with the various Canadian players in international private law. The Constitutional, Administrative and International Law Section of the Department of Justice (CAILS) is the central point for policy development in relation to international private law instruments as well as for the coordination of their implementation in Canada. CAILS's international private law counsel consult regularly with the provinces and territories, as well as with other interested federal departments, the private sector and the members of the Department's Advisory Group on Private International Law (Advisory Group) to establish Canadian priorities and to decide on the position to be taken in the various fora.

[4] The international and regional organizations involved in international private law and the projects in which Canada has participated are briefly described in the second part of the report. A list of the conventions, protocols and model laws in the area of international private

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law adopted by the Hague Conference on Private International Law (Hague Conference), UNCITRAL, Unidroit and the Organization of America States (OAS) is set out in Annex A.

[5] 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; and
- Protection of Property.

[6] Projects are ranked with respect to their level of priority (high, medium, low). To evaluate priority, CAILS, in collaboration with the Advisory Group, considers the following aspects of each project: the benefits for Canada; stakeholders' interests in the project; the overall costs and benefits; and the challenges and difficulties related to implementation. Key projects are displayed in similar order in the Overview Chart of International Private Law Priorities (Annex B) which provides an outline of CAILS' activities in the field of international private law. A Canadian status chart of existing instruments is found in Annex C. A provisional list of international meetings for the coming year is provided in Annex D.

I. NATIONAL ACTORS

[7] As matters dealing with international private law most often fall within provincial jurisdiction, federal-provincial-territorial cooperation is essential to progress being achieved in this area. Consultations with the legal and business community, as well as with other private groups, are useful where the work of the Department of Justice in international private law relates closely to their interests. Contact information for the Department of Justice's private international law counsel is set out in Annex E.

A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

[8] The Advisory Group on Private International Law is now composed of six provincial and territorial representatives (representing British Columbia, the Prairie Provinces, Ontario, Québec, the Atlantic Provinces and the three Territories) and federal representatives from the Department of Justice and the Department of Global Affairs Canada (GAC). The Advisory Group provides the Department of Justice with continuing advice on the provincial and territorial aspects of international private law projects, including the need for additional work to be carried out with respect to specific issues of interest for the provinces and territories. Over the last year, the Group has met twice, in December 2015 and June 2016.

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B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION

[9] In addition to federal-provincial-territorial cooperation through the Advisory Group, the Department of Justice 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 federal-provincial-territorial authorities as well as with the presentation of reports to the ULCC and to the Civil Justice Committee.

1. Uniform Law Conference of Canada

[10] Instituted in 1918 with a view to harmonizing Canadian laws, the Uniform Law Conference of Canada today participates actively in the implementation of international conventions and other international private law instruments such as model laws. From the perspective of the Department of Justice, the ULCC constitutes the key mechanism for facilitating implementation of international private law instruments via the development of uniform implementing legislation. This year again, the Department participated in the ULCC's activities and allocated resources to its work.

2. Civil Justice Committee

[11] The Civil Justice 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 particularly productive.

C. PRIVATE SECTOR AND LAW FACULTIES

[12] The Department of Justice regularly consults the Canadian Bar Association (CBA) and Canadian academics and stakeholders on many projects including the future work programmes of the Hague Conference, UNCITRAL and Unidroit.

II. INTERNATIONAL ORGANIZATIONS AND RELATIONS

A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

[13] The Hague Conference on Private International Law, which held its first session in 1893, has 80 Member States, 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 the administration and supporting research.

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The Hague Conference's website includes a list of finalized instruments, their status and practical information on Conventions. The address is: www.hcch.net.

[14] Over the last year, Canada participated in the activities of the Hague Conference including a Special Commission to prepare a draft Convention on the recognition and enforcement of foreign judgments and the first Experts' Group meeting on the Parentage/Surrogacy Project. The Permanent Bureau continued its study of issues linked to the recognition and enforcement of foreign civil protection orders with the involvement of Member States, including Canada. Canada was involved in discussions on issues involving cohabitation outside marriage, which includes registered partnerships.

[15] This year the Council welcomed the publication of the updated edition of the Practical Handbook on the Operation of the Service Convention and the new edition of the Practical Handbook on the Operation of the Evidence Convention. It approved a work programme for the coming year that includes the subjects mentioned above and other topics such as the use of video-link and other modern technologies in the taking of evidence abroad and the development of a resource tool on the interaction between private international law and intellectual property law.

[16] In the coming year, the Conference will hold a meeting of the Special Commission on the practical operation of the 1961 Apostille Convention, to be held in November 2016 in conjunction with the 10th International Forum on the e-APP. A second meeting of the Special Commission on Judgments will take place in February 2017. The Conference will also convene a meeting of the Special Commission on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions in October 2017.

[17] 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 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. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

[18] UNCITRAL, the core legal body within the UN system in the field of international trade law, aims to further the progressive harmonization and unification of the law of international

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trade. To reach this goal, the Commission uses various instruments: it has prepared or is responsible for 11 conventions, 10 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

[19] 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 has been a member of the Commission since 2001 with the current term ending in 2019.

[20] Over the last year, Canada participated in the following UNCITRAL activities : 25th and 26th sessions of Working Group I (Micro, Small and Medium-sized Enterprises) in October 2015 and April 2016; 63rd and 64th sessions of Working Group II (Arbitration) in September 2015 and February 2016; 33rd session of Working Group III (Online Dispute Resolution) in March 2016; 48th and 49th sessions of Working Group V (Insolvency) in December 2015 and May 2016; 28th and 29th sessions of Working Group VI (Security Interests) in October 2015 and February 2016; and the 49th session of the Commission from June 27 - July 15, 2016.

[21] At its 49th session, the Commission adopted the revised UNCITRAL Notes on Organizing Arbitral Proceedings and the Model Law on Secured Transactions. The Commission also adopted Technical Notes on Online Dispute Resolution. The Commission's current work will continue on: a legislative text on electronic transferable records; simplified incorporation and registration procedures for micro, small and medium-sized enterprises; a model law on the recognition and enforcement of insolvency-related judgments; a convention on the enforcement of commercial conciliated settlement agreements and a guide to enactment for the Model Law on Secured Transactions. Information on UNCITRAL's current work programme is available on its website.

[22] Next year, UNCITRAL will be celebrating its 50th anniversary by organizing a Congress to be held during the Commission's 50th session, from 4 - 6 July 2017. The Congress will consider a broad range of ways to support cross-border commerce, including research topics and legislative development, and will discuss the work of other organizations in international trade law reform and the coordination of these activities. The event will be an important occasion to consider possible topics for future work.

[23] Canada is party to two United Nations conventions relating to international commercial law: the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958,

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in force for Canada 86/08/10) and the *United Nations Convention on Contracts for the International Sale of Goods* (1980, in force for Canada 92/05/01).

[24] Legislation implementing the UNCITRAL Model Law on International Commercial Arbitration (1985) has been enacted in Canada and the ULCC has made recommendations for the adoption of the 2006 revisions to the Model Law. Legislation based on the UNCITRAL Model Law on Cross-Border Insolvency (1997) has been adopted federally and legislation drawing on the UNCITRAL Model Law on Electronic Commerce (1996) has been adopted in all Canadian jurisdictions.

C. UNIDROIT

[25] 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. Since its creation, the Institute has drafted more than 70 studies, model laws and conventions on various private law subjects including sales, international leasing and factoring, transport, security interests, franchising and cultural property. Further information on Unidroit including instruments adopted by the Institute, status of ratifications and adoption can be found at: www.unidroit.org.

[26] 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. This year, in addition to the completion of the Legal Guide on Contract Farming, additional rules and comments to the UNIDROIT Principles of International Commercial Contracts concerning long-term contracts were adopted and the preliminary work on a fourth protocol (on agricultural, mining and construction equipment) to the *Convention on International Interests in Mobile Equipment* was concluded. Based on this preliminary work, the Governing Council has convened a meeting of a Committee of Governmental Experts in early 2017 to commence formal negotiations on the proposed protocol.

[27] The 2014-2016 Work Programme is almost completed. For the triennium 2017-2019, in addition to the proposed protocol on agriculture, mining and construction equipment, the Governing Council has recommended that the following projects be included in the Unidroit Work Program and given priority: 1) the preparation of an international guidance document on agricultural land investment contracts; 2) the preparation of a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets; and, 3)

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the preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law. Additional details on the 2017-2019 Work Programme are available on Unidroit's website.

[28] Canada is party to only two of the thirteen Unidroit conventions and to one protocol: the *Convention Providing a Uniform Law on the Form of an International Will* (1973, in force for Canada since 78/02/09) and the *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol* (2001, in force for Canada since 13/04/01).

D. WORLD BANK

[29] The World Bank's role in the field of international private law stems in part from the creation of the International Centre for the Settlement of Investment Disputes (ICSID) under the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada ratified this Convention in November 2013. It came into force for Canada on December 1, 2013. Further information on the World Bank and the *ICSID Convention* can be found at: www.worldbank.org.

E. COMMONWEALTH

[30] When Member States of the organization have an interest, the Commonwealth Secretariat supports work on the development of private international law instruments. In that context, Canada has supported work that began in 2005 aimed at draft model legislation on the recognition and enforcement of foreign judgments.

F. THE ORGANIZATION OF AMERICAN STATES

[31] The OAS, 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 deals with technical matters and further cooperation in the area of international private law. The last CIDIP was held in 2009. Further information on the OAS including instruments adopted by the Organization, status of ratifications and adoption can be found at: www.oas.org.

[32] 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. The most recent CIDIP adopted the Model Registry Regulations under the Model Inter-American Law on Secured Transactions. CIDIP is not expected to complete work begun in consumer protection.

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G. BILATERAL RELATIONS

[33] Canada is party to bilateral treaties on judicial cooperation (service and taking of evidence abroad) with 25 States. These treaties are available on GAC's website at www.treaty-accord.gc.ca (under the headings "Bilateral" and "Judicial Co-operation (civil and commercial)").

[34] Canada has a bilateral convention with the United Kingdom, 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 Québec.

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

A. INTERNATIONAL COMMERCIAL LAW

1. HIGH PRIORITIES

a. Project on the Enforcement of Settlement Agreements Resulting from International Commercial Conciliation/Mediation (UNCITRAL)

[35] UNCITRAL has undertaken to promote the use of mediation by adopting the UNCITRAL Conciliation Rules (1980) and the Model Law on International Commercial Conciliation (2002). Laws inspired from the Model Law have been adopted in Canada, such as in Ontario and in Nova Scotia. These laws provide accelerated recognition and enforcement of mediated settlement agreements, which takes place by summary applications to courts.

[36] According to some, an obstacle to the greater use of mediation to resolve international disputes is that settlement agreements reached through mediation may be difficult to enforce if a party that agrees to a settlement later fails to comply. In general, settlement agreements reached through mediation are already enforceable as contracts between the parties. However, enforcement under contract law may be burdensome, time-consuming or practically difficult in particular when it involves a foreign court. Thus, if a successful mediation simply results in a second contract that is as difficult to enforce as the underlying contract that gave rise to the dispute, engaging in mediation to address a contractual dispute may be unattractive. Promoting harmonized practices among states on recognition and enforcement of international mediated settlements agreements could contribute to fair, expedited and cost-effective enforcement.

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[37] With this objective in mind and in order to promote the use of conciliation as accepted mode of resolving international commercial disputes, UNCITRAL is currently working on a legislative text on the recognition and enforcement of international mediated settlement agreements. The form of the work has not yet been determined. The work takes into account existing UNCITRAL texts on conciliation.

[38] *Actions to be taken in Canada:* Consult with stakeholders.

b. Contractual Aspects of Cloud Computing Project (UNCITRAL)

[39] Further to a proposal by Canada, UNCITRAL is currently reviewing legal issues in the provision of cloud computing. This project aims to gather information relating to cloud computing and to prepare a document identifying potential risks stemming from current practices in relation to conflict of laws, the lack of a supporting legislative framework, and the possible disparities in domestic laws.

[40] Cloud computing services, in particular legal and practical consequences arising from cloud computing agreements, call for a review of existing contractual practices and laws because of the cross-border transfer of data which regularly takes place in the provision of these services and because of the novelty and growing importance of these computing solutions. This is particularly relevant for small and medium-sized enterprises which may not have the resources to assess legal risks that may arise outside of their domestic jurisdiction. There are currently legal as well as economic risks and opportunities for cloud customers and service providers. These risks may often be addressed in cloud service agreements and the opportunities can often be enhanced or protected by adequate contract practices.

[41] Canada will provide expert advice to UNCITRAL in the preparation of a list of issues that are likely to arise under a cloud computing agreement.

[42] *Action to be taken in Canada:* consult with stakeholders.

2. MEDIUM PRIORITIES

a. Simplified Business Incorporation and Registration Regime for Micro, Small and Medium-sized Enterprises (UNCITRAL)

[43] At its 46th session (2013), the Commission mandated Working Group I to undertake work to reduce the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, in particular, in developing economies. The

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Commission also agreed that such work should start with a focus on the legal questions surrounding the simplification of incorporation procedures.

[44] The Working Group commenced its work in February 2014. It held its fifth session in April 2016. During that session, the Working Group completed its review of a draft model law on a simplified business entity and decided that the final form of the instrument should be a legislative guide and tasked the Secretariat with preparing it for review at its next session (October 3-7, 2016). The Working Group also discussed key principles of business registration and will continue this discussion at its session in the spring of 2017.

[45] *Action required in Canada:* Prepare Canada's participation in meetings of the Working Group and continue consultations with stakeholders.

b. MAC Protocol to the *Convention on International Interests in Mobile Equipment* (Unidroit)

[46] The *Convention on International Interests in Mobile Equipment* provides a framework for the creation of international interests in mobile equipment, priority rules and an international registry in which these interests can be registered. Each type of mobile equipment - aircraft equipment, railway rolling stock or satellites and other space assets - is the subject of a specific protocol under the Convention. In recent years, the creation of a fourth protocol to deal with mining, agriculture and construction equipment (together referred to as "MAC" equipment) has been suggested.

[47] A Study Group tasked with preparing the first draft of the MAC Protocol has met to consider legal issues associated with the subject matter of the Protocol and to prepare a draft text. On the basis of a recommendation from the Study Group, the Unidroit Governing Council decided in May 2016 to submit the draft MAC Protocol text to a Committee of Governmental Experts for formal multilateral treaty negotiations.

[48] The draft text prepared by the Study Group is available on the Unidroit website at www.unidroit.org. This preliminary draft is align as closely as possible with the articles and the structure of the existing protocols.

[49] *Action to be taken in Canada:* Justice Canada will be consulting government and industry representatives on the draft to elicit comments on the preliminary draft MAC Protocol.

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c. Draft Model Law on Electronic Transferable Records (UNCITRAL)

[50] At its 44th session in 2011, the Commission mandated Working Group IV to undertake work in the field of electronic transferable records (ETRs). Among the better-known types of ETRs are the electronic equivalents of bills of lading, warehouse receipts, and bills of exchange.

[51] The Working Group is currently finalizing the draft Model Law. Canada did not actively participate in recent meetings of the Working Group, but Department of Justice officials will continue to monitor progress made on the draft Model Law, which is expected to be completed by summer 2017. The purpose of the draft provisions is to establish functional equivalents to paper-based transferable documents or instruments. In that sense, the work is building on previous work by UNCITRAL, including the 1996 Model Law on Electronic Commerce.

[52] *Action required in Canada:* Monitor the project and consult with stakeholders if necessary.

d. Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) – ULCC Uniform Electronic Communications Convention Implementation Act

[53] The *2005 Convention on Electronic Communications* (ECC) recognizes the equivalence of paper and electronic communications in the conclusion and performance of contracts between parties located in different States. The Convention applies to business-to-business transactions.

[54] In addition to providing substantive rules on the use of electronic communications for parties to international contracts, the Convention can also be applied to existing international conventions, such as the *United Nations Convention on Contracts for the International Sale of Goods* to which Canada is a party. States wishing to do so can have existing conventions interpreted under the ECC with respect to any electronic communications to which they apply. The ECC applies on its face to several UN conventions, and Contracting States can extend it to any others they wish. Canadian provinces and territories could apply the Convention on Electronic Communications to conventions that have been implemented in their jurisdiction. There is a federal state clause in the Convention allowing Canada to consider becoming a party even if the Convention were not implemented in all Canadian jurisdictions.

[55] The Convention entered into force internationally on March 1, 2013 and currently has five States party.

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[56] The ULCC adopted the Uniform Electronic Communications Convention Implementation Act in 2011. On June 8, 2016, Bill 218, the *Burden Reduction Act, 2016* was introduced in the Legislative Assembly of Ontario. That Bill contains provisions to implement the ECC in Ontario.

[57] *Action required in Canada:* Encourage jurisdictions to consider adopting legislation based on the Uniform Act.

e. Model Law on Secured Transactions (UNCITRAL)

[58] UNCITRAL has already prepared a Legislative Guide on Secured Transactions and a Supplement on Security Rights in Intellectual Property. Continuing its work in the area of secured transactions, UNCITRAL adopted the Guide on the Implementation of a Security Rights Registry at its 46th session. This text addresses 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 Legislative Guide, which is broadly consistent with Canadian law.

[59] In 2013, the Commission mandated the Working Group to prepare a simple, short and concise model law on secured transactions based on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions and consistent with the other texts prepared by UNCITRAL on secured transactions, including the Registry Guide and the *UN Convention on the Assignment of Receivables in International Trade*. In 2014, the Commission asked the Working Group to add provisions on security interests in non-intermediated securities to the draft Model Law.

[60] At the 48th session of the Commission in July 2015, part of the draft Model Law dealing with rules relating to the registry system were reviewed and adopted in principle. The Commission also gave the Working Group a mandate to prepare a draft guide to enactment for the Model Law. Over the last year, the Working Group completed the draft Model Law, which was reviewed and adopted by the Commission at its 49th session in 2016. Canada's comments on the draft Model Law for the Commission session are published as part of A/CN.9/887. The draft Model Law and other States' comments are available at www.uncitral.org with documents for the Commission's 49th session.

[61] The Working Group is now expected to complete the draft Guide to Enactment for adoption by the Commission at its 50th session in 2017. The next session of the Working Group will take place in December 2016.

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[62] *Action required in Canada:* Continue providing input on the draft Guide to Enactment to ensure consistency with the Legislative Guide, the Registry Guide and the Model Law.

f. Draft Model Law on the Recognition and Enforcement of Insolvency-related Judgments (UNCITRAL)

[63] Since 2014, UNCITRAL Working Group V on Insolvency Law has had a mandate to develop a model law or model legislative provisions to provide for the recognition and enforcement of insolvency-related judgments. The objectives with this project are to promote cross-border insolvency coordination as well as the effectiveness of court orders in foreign jurisdictions.

[64] So far, the Working Group has considered a number of issues relevant to the development of a legislative text on the recognition and enforcement of insolvency-related judgments, including the types of judgments that might be covered, procedures for recognition and grounds to refuse recognition. The Working Group has recommended that the text be developed as a stand-alone instrument, rather than forming part of the UNCITRAL Model Law on Cross-Border Insolvency. The Model Law, however, provides the context for the new instrument and the two instruments should be complementary.

[65] *Action required in Canada:* Continue to seek input from stakeholders to ensure consistency between the draft Model Law on Recognition and Enforcement of Insolvency-related Judgments and Canadian laws and practices.

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

[66] In 2002, UNCITRAL adopted the Model Law on International Commercial Conciliation. The Model Law addresses procedural aspects of conciliation, including the appointment of conciliators, the commencement and termination of conciliation, the conduct of the conciliation, communications between the conciliator and other parties, confidentiality and the admissibility of evidence in other proceedings as well as post-conciliation issues, such as the enforceability of settlement agreements.

[67] In 2005, the ULCC adopted the Uniform Act on International Commercial Mediation, which enacts the Model Law. To date, both Nova Scotia and Ontario have enacted the Uniform Act.

[68] *Action required in Canada:* Continue to promote adoption of the Uniform Act.

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**h. Model Law on International Commercial Arbitration (1985, amended in 2006)
(UNCITRAL) - Uniform International Commercial Arbitration Act (ULCC)**

[69] The UNCITRAL Model Law on International Commercial Arbitration was adopted in 1985. It provides a framework for all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award. The Model Law reflects worldwide consensus on key aspects of international arbitration practice having been adopted by States of all regions of the world and of the different legal or economic systems.

[70] In 1986, the ULCC developed the Uniform International Commercial Arbitration Act (Uniform ICAA) to enact the UNCITRAL Model Law and to implement the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The Uniform ICAA was subsequently adopted by all Canadian jurisdictions, some with minor adjustments.

[71] In 2006, a revised version of the Model Law on International Commercial Arbitration was adopted by UNCITRAL. It includes a comprehensive legal framework on interim measures and modernizes the form requirement to better conform with current international contract practices. The ULCC Working Group on International Commercial Arbitration concluded its work in 2013 and recommended that the 2006 amendments be adopted by Canadian jurisdictions. The 2013 ULCC Uniform International Commercial Arbitration Act is recommended for adoption by enacting jurisdictions.

[72] *Action required in Canada:* Consider adopting legislation based on the revised Uniform Act.

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

[73] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 30 States party to the Limitation Convention of 1974, and 23 States party to the *Amended Limitation Convention*, including, in both cases, our NAFTA trade partners. Canada is not party to these Conventions.

[74] The Conventions establish a uniform prescription period of four years for commercial litigation. They 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.

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[75] In 1975-76, the ULCC adopted a uniform act to implement the 1974 Limitation Convention. In August 1998, it adopted the Uniform International Sales Conventions Act, which is designed to implement the *United Nations Convention on Contracts for the International Sale of Goods* and the *Conventions on the Limitation Period in the International Sale of Goods*. Nunavut has adopted the *International Sales Conventions Act*, (Nu. 2003, c.9) implementing the Limitation Conventions. In addition, Bill 218, the *Burden Reduction Act, 2016* was introduced in the Legislative Assembly of Ontario on June 8, 2016. It contains provisions to implement the Limitation Conventions in Ontario.

[76] *Action required in Canada*: Consider adopting legislation based on the revised Uniform Act.

3. LOW PRIORITIES

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

[77] 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, in this case aircraft equipment, is the subject of a specific protocol under the Convention.

[78] The Convention entered into force internationally on March 1, 2006 when the Aircraft Protocol entered into force. The Convention and Protocol apply in some 60 States, including Canada's major trading partners such as the United States of America, China and the European Union countries.

[79] The ULCC adopted a uniform implementing act in 2002. All Canadian provinces and territories have adopted legislation to implement the Convention and Aircraft Protocol. Legislation implementing the Convention and Aircraft Protocol is also found at the federal level for matters falling under federal jurisdiction.

[80] Canada ratified the Convention and Protocol in December 2012 and both instruments came into force for Canada on April 1, 2013. At that time, the application of the Convention and Protocol was extended to Ontario, Nova Scotia, Alberta, Newfoundland and Labrador, Québec, Saskatchewan, the Northwest Territories, British Columbia, Nunavut and Manitoba. Extension to Prince Edward Island and Yukon took place on March 28, 2014 with effect on October 1, 2014. Finally, extension to New Brunswick took place on December 23, 2015 with effect on July 1, 2016.

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[81] *Action required in Canada*: Monitor the application of the Convention and Protocol in Canada and take appropriate action as necessary.

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

[82] 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 (investors) of other States party. It is a unique mechanism as awards rendered by ICSID are enforceable in any country party to the Convention as if they were final court judgments of that country.

[83] 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.

[84] The vast majority of our trading partners have ratified the ICSID Convention (there are 153 States party to the Convention). Implementing legislation has been adopted in Ontario (1999), Saskatchewan (2006), British Columbia (2006), Newfoundland and Labrador (2006), Nunavut (2006), the Northwest Territories (2009) and Alberta (2013).

[85] Canada ratified the *ICSID Convention* on November 1, 2013. It came into force for Canada on December 1, 2013.

[86] *Action required in Canada*: Continue to seek provincial and territorial implementation of the Convention.

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

[87] The *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary* was adopted by the Hague Conference in 2006. Its objective is to enable financial market participants in the global market to ascertain readily and unequivocally the law that will govern the proprietary aspects of transfers and pledges of interests in respect of securities held through indirect holding systems. The Convention is thus intended to provide greater certainty and predictability on limited, but crucial, aspects of such transactions. Canada participated in the negotiations relating to this Convention.

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[88] A pre-implementation report prepared by Me Michel Deschamps of McCarthy Tétrault was presented at the ULCC in 2011. The Report included an overview of the Convention, a comparison between the Convention and Canadian law and an analysis of available declarations in the Canadian context. In 2013, a ULCC Working Group concluded that given Canada's economic ties with the United States, it would be desirable to consider if any developments take place in the United States before considering a Canadian ratification. The United States signed the Convention in 2006 and has been preparing for ratification. The US Senate is currently reviewing the Convention for advice and consent on its ratification.

[89] As three instruments of ratification are necessary for the Convention to come into force internationally, and Mauritius and Switzerland have already ratified the Convention, the next ratification will bring the Convention into force.

[90] *Action required in Canada:* Monitor international developments and report to the ULCC as appropriate.

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

[91] The *Convention on the Assignment of Receivables in International Trade* is 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. The Convention was adopted by UNCITRAL in 2001 but has not yet come into force internationally. It requires five ratifications to come into force and currently has three signatures and one ratification.

[92] In 2007, the ULCC adopted the Uniform Assignment of Receivables in International Trade Act, developed in the context of a joint working group of the ULCC, the National Conference of Commissioners on Uniform State Laws (today the Uniform Law Commission) and the Mexican Uniform Law Centre with a view to coordinating implementation of the Convention in all three NAFTA countries.

[93] The United States Senate is currently reviewing the Convention for advice and consent on its ratification.

[94] *Action required in Canada:* Monitor developments towards ratification in the United States and in other countries.

e. *Principles regarding the enforceability of close-out netting provisions (Unidroit)*

[95] In 2010, a project to draft principles regarding the enforceability of close-out netting provisions was proposed to Unidroit and included in the 2011-2013 Work Programme as a

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high priority. In 2011, a Study Group comprised of renowned experts in the law of international financial markets was asked to prepare draft principles for Unidroit. The Study Group met in April 2011, in September 2011 and in March 2012 and then referred the draft to a Committee of Governmental Experts. The Committee considered the draft at a first meeting in October 2012 and finalized the draft text of the Principles at its second and last meeting in March 2013.

[96] The Principles on the Operation of Close-out Netting Provisions and accompanying comments were adopted by the Unidroit Governing Council in May 2013.

[97] The aim of these Principles is to provide detailed guidance to national legislators seeking to revise or introduce national legislation relevant to the functioning of close-out netting, especially in cross-jurisdictional situations. They are designed to improve the enforceability of close-out netting in order to provide a sound basis, in commercial and insolvency law terms, for risk management and mitigation by financial institutions and for the application of regulatory policies in the international context.

[98] *Action required in Canada:* Monitor international developments in this area.

f. Guide on Agricultural Land Investment Contracts (Unidroit)

[99] At its 89th session in 2010, the Unidroit Governing Council considered the issue of private law aspects of agricultural finance because it was felt that there was a need to devote attention to the issue of the extent to which private law can affect investment and financing decisions for agricultural commodities and promote sustainable agricultural investment. The Governing Council recommended that the Secretariat prepare a preliminary research to identify the areas in which Unidroit could make a meaningful contribution, in particular with a view to supplementing the work conducted by other international organizations, such as the Food and Agriculture Organization (FAO).

[100] The most recent stocktaking exercise on the feasibility of a land investment contracts project was conducted after the adoption of the Legal Guide on Contract Farming. The Secretariat's stocktaking exercise indicates that the private law aspects of land investment contracts have not been sufficiently addressed by existing initiatives. Valuable guidance for farmers, communities, investors, governments, and other stakeholders in the field is needed, in particular, the study concludes that the preparation of model provisions for land investment contracts, together with concise explanatory comments, could represent added value for users.

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[101] *Action required in Canada:* Monitor international developments in this area and consult with stakeholders, in particular those involved in international development.

g. Choice of Law in International Contracts (Hague Conference)

[102] In 2009, the Hague Conference set up a Working Group to begin developing a non-binding instrument on choice of law in international commercial contracts. The Working Group met three times and developed principles on choice of law in this area and a document outlining the policy choices made in developing the draft articles of the Principles.

[103] The Hague Principles on the Choice of Law in International Contracts were adopted by a Special Commission of the Hague Conference in November 2012. At the 2013 meeting of the Council on General Affairs of the Conference, the Council requested that a draft Commentary on the Principles be prepared and circulated to all Members and Observers for comments. It also requested that the draft Commentary then be finalized and presented to the Council, together with the Principles, in 2014.

[104] The Principles and draft commentary were presented to the Council on General Affairs in April 2014. The Council discussed 3 issues: the finalisation of the French version of the Principles and Commentary, which still required work; the procedure for final approval by Council; and possible changes to the text of the Commentary. It was agreed to undertake a written approval procedure leading to the endorsement of the Principles and Commentary by Council in the absence of objection. The Principles and Commentary were finalized in March 2015 in accordance with the written approval procedure.

[105] *Action required in Canada:* Provide information as requested.

h. Technical Notes for Online Dispute Resolution (UNCITRAL)

[106] In 2010, the Commission mandated a Working Group 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.

[107] The purpose of the Technical Notes is to foster the development of ODR and to assist ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings. The Technical Notes are intended for use in disputes arising from cross-border low-value sales or service contracts concluded using electronic communications. The final text “Technical Notes on Online Dispute Resolution” was adopted at the UNCITRAL Commission in July 2016.

[108] The text of the Technical Notes is available on the UNCITRAL website.

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B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS

1. HIGH PRIORITIES

a. Judgments Project (Hague Conference)

[109] In 2011, the Council on General Affairs and Policy agreed that an Experts' Group should be established to assess the possible merits of resuming the Judgments Project. In 2012, the Council agreed that work on the Judgments Project should proceed and established a Working Group to prepare proposals on the recognition and enforcement of judgments, including jurisdictional filters, and requested the Experts' Group to further study and discuss the desirability and feasibility of making provisions in relation to jurisdiction.

[110] After some discussion in both groups it was finally agreed to focus first on recognition and enforcement. The Experts Group has thus not met since 2013 but the Working Group met twice in 2014 and twice in 2015.

[111] At its fourth meeting, in February 2015, the Working Group agreed to ask the Council on General Affairs and Policy for more time to complete proposals on recognition and enforcement of judgments and for its mandate to be broadened to include some issues that had been reserved to the Experts' Group such as *lis pendens*. The Council agreed to allow the Working Group to give a final report in 2016 and broadened its mandate to include matters within the Experts' Group mandate without limitation. .

[112] At its fifth meeting in October 2015, the Working Group completed a draft that was submitted to the Council on General Affairs in March 2016 for a decision on convening a Special Commission to begin intergovernmental negotiations. The Council decided that there was a sufficient basis on which to proceed and convened the first meeting of the Special Commission for June 2016.

[113] Canada attended the June Special Commission with a delegation composed of Kathryn Sabo from the federal Department of Justice, Russell Getz from the B.C. Attorney-General, Frédérique Sabourin from Justice Québec, Gregory K. Steele, Q.C., from British Columbia and Geneviève Saumier from McGill University. Professor Saumier was appointed as a Co-Rapporteur for the project. While a number of changes were made to the draft proposed to the Working Group, the result to date appears to meet Canadian concerns. The next meeting of the Special Commission is scheduled for February 2017.

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[114] *Action required in Canada:* Consult in preparation for the February 2017 Special Commission.

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

[115] This Convention, to which Canada is not party, has 112 Contracting States. The Convention facilitates the circulation of public documents among Contracting States. Businesses and individuals often have to present public documents issued in one state to authorities in other states. Examples of such public documents include birth certificates, extracts from public registers, patent certificates, court rulings, notarial attestations of signatures and diplomas issued by public institutions. Foreign authorities usually require some guarantee of the authenticity of those documents. The Convention simplifies document authentication by abolishing the cumbersome authentication process known as consular legalisation and replacing it with the Apostille certificate, a means of authenticating the signatures or seals of public officials on public documents that is accepted by all Contracting States. By simplifying authentication, the Convention reduces transaction costs for individuals and businesses conducting activities in other Contracting States.

[116] The Authentication and Service of Documents Section at GAC authenticates signatures or seals on approximately 151,000 Canadian public documents annually and the provinces and territories authenticate approximately 60,000. These are then legalised in Canada by the diplomatic or consular officials of the country where they will be produced. Accession would make it easier for Canadians to use Canadian public documents in the 112 Contracting States for a multitude of purposes, including conducting business, working, adopting children, getting married, studying and claiming an inheritance.

[117] The Department of Justice and GAC held a consultation meeting with provinces and territories on the Convention and its possible implementation in Canada in Ottawa on February 23 and 24, 2016. This meeting helped define possible implementation options.

[118] *Action required in Canada:* Continue to work to resolve implementation issues. Participate in the meeting of the Special Commission on the Operation of the Convention (Hague, November 2-4, 2016).

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

[119] 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

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and enforcement of resulting judgments, with an option for Contracting States to agree on a reciprocal basis to recognize judgments based on a choice of court agreement that was not exclusive.

[120] On June 11, June 2015, the European Union deposited its instrument of approval of the Convention. The Convention requires only two ratifications to enter into force. Since Mexico ratified it in 2007, the addition of all the EU States with the exception of Denmark was more than sufficient to bring the Convention into force. Pursuant to Article 31(1), the Convention shall “enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession”, which in this case was October 1, 2015. The Convention thus applies between EU States and Mexico. The United States signed the Convention in 2009 and Singapore ratified it in June 2016 so it will come into force for the latter on October 1, 2016.

[121] From a Canadian perspective, it is worth noting that 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.

[122] Although the Convention is quite limited in scope and allows Contracting States 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.

[123] 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 by the ULCC. On June 8, 2016, the Ontario government introduced Bill 218, the *Burden Reduction Act, 2016* which would implement the Convention in Ontario if enacted.

[124] *Action required in Canada:* Coordinate federal work on implementation and work with provinces and territories on options available under the Convention in view of implementation.

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

[125] This Convention is currently in force in 71 States, including Canada. It is aimed at facilitating the service of judicial and extrajudicial documents from one Contracting State to another through Central Authorities. The Convention also allows other methods of service, such as through the post or process servers, where the Contracting State in which service is made did not object to their use.

[126] In Canada, a Central Authority has been designated in each province and territory. At the federal level, the Criminal, Security and Diplomatic Law Division of GAC serves as the Central Authority and is monitoring the application of the Convention with the input from provincial and territorial Central Authorities.

[127] Although the Convention has applied throughout Canada since 1989, and provincial and territorial governments agreed to Canada's accession, there was no coordinated effort to implement it in a uniform manner at that time. Each jurisdiction implemented the Convention by amending its rules of civil procedure.

[128] The Convention sets out mandatory rules for the service of judicial documents in civil or commercial matters from one Contracting State to another. In recent years, the Convention's application has increasingly been the object of litigation in Canada. Unfortunately, in some instances the Convention has been applied in a manner that is inconsistent with Canada's international obligations. The Uniform Rules on Service in a Contracting State to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Uniform Rules), which the ULCC adopted in November 2015 and recommended to jurisdictions for adoption, were developed in response to the recent case law. Provincial and territorial jurisdictions have been asked to consider their implementation.

[129] The provinces and territories originally charged a \$50 service fee for foreign judicial and extrajudicial documents through their Central Authorities. This fee was set in 1988 when Canada joined the Convention. Jurisdictions were consulted on raising the fee to \$100 in 2013-2014. Given the positive feedback, it was decided to increase the fee as proposed starting August 18, 2014.

[130] The new edition of the Handbook on the Operation of the Convention was published by the Hague Conference earlier this year. The Handbook was reviewed by the Permanent Bureau of the Conference and by a drafting committee composed of experts from several Contracting States, including Canada. An electronic version of the Handbook was made available by the Conference to all Canadian Central Authorities. Paper and

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electronic copies of the Handbook may be purchased online through the website of the Conference.

[131] *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. Encourage jurisdictions to adopt the Uniform Rules in their rules of civil procedure.

2. LOW PRIORITIES

a. **Draft Model Law on Recognition and Enforcement of Foreign Judgments (Commonwealth)**

[132] Ministers of the Commonwealth considered a draft Model Law on the Recognition and Enforcement of Foreign Judgments in May 2014. There were some discussions about a text that would be narrower in scope, but this was rejected and the proposed text is largely in line with the Uniform Law Conference of Canada's Uniform Enforcement of Foreign Judgments Act (UEFJA). Ministers further noted that additional discussions were necessary on some provisions of the draft Model Law.

[133] The draft Model Law also draws on the work of the Hague Conference on Private International Law and of law reform agencies in a number of Commonwealth countries. It proposes changes to the current intra-Commonwealth arrangements and could be used by governments as a basis for reform of their legislation in this area. The draft Model Law adopts the simple procedure of registering judgments which requires a filing of the judgment in the court of the state as opposed to an application for recognition and enforcement before the court. The bases on which the foreign court is considered as having jurisdiction are not identical to Canadian law, but are not entirely inconsistent with it. It does not refer to the real and substantial connection between the defendant and the subject matter, but it lists traditional grounds found in common law jurisdictions.

[134] Ministers mandated the Secretariat to take appropriate steps to produce a final draft of the Model Law for consideration at the next meeting of Senior Officials.

[135] *Action required in Canada:* Consult stakeholders as further details of the process are known.

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C. FAMILY LAW

1. HIGH PRIORITIES

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

[136] The 2007 Convention provides the legal framework for cross-border recognition and enforcement, establishment, and modification of maintenance orders and agreements. The 2007 Convention also provides the framework for administrative cooperation by requiring that a Central Authority be designated for each Contracting State and allowing for a Central Authority also to be designated for each territorial unit (i.e. in Canada, province or territory) to which the 2007 Convention has been extended in federal States such as Canada.

[137] Canada participated in the negotiation of the 2007 Convention from 1999 to 2007. The Canadian delegation, composed of federal and provincial/territorial civil and common law experts, was very active in the negotiations (including participating as experts in the drafting committee, the committee responsible for development of forms, and the committee on administrative cooperation and respecting the Country Profile) to ensure the 2007 Convention's compatibility with Canadian law. As an additional measure of Canadian leadership and expertise, an expert from British Columbia recently authored a Caseworkers Handbook that has been published by the Hague Conference on Private International Law for use by all Contracting States to assist with implementation of the 2007 Convention.

[138] The text of the Convention, explanatory report and practical documents are available on the Hague Conference website.

International Status

[139] The Convention entered into force on January 1, 2013. There are 32 parties to the Convention including 27 Member States of the European Union. The U.S. has signed the 2007 Convention and is expected to ratify soon.

Status in Canada

[140] FPT officials are examining the Convention and related implementation questions.

[141] Canada is not a party to any multilateral instrument with respect to the recovery of family maintenance. International recovery of maintenance in Canada is currently achieved by means of reciprocal arrangements that have been established by provinces and territories (PTs) pursuant to Inter-jurisdictional Support Orders (ISO) Acts under which certain

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foreign States have been designated as “reciprocating jurisdictions” or, in the case of Québec, by a designation pursuant to *An Act respecting reciprocal enforcement of maintenance orders*.

[142] Ratification of the 2007 Convention will increase the number of countries with which Canadian jurisdictions have reciprocity, and in some cases, will provide added value to current reciprocity arrangements/designations.

[143] *Action required in Canada:* Continue work on possible implementation of the 2007 Convention.

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

[144] The *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* was adopted in 1996. It creates global legal solutions to address the problems raised by the increase in the trans-border movement of children in need of protection. The Convention establishes private international law rules that apply to 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, or 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. The Convention came into force internationally in January 2002 and is currently in force in 44 countries.

[145] In 2001, the ULCC adopted a uniform act for the implementation of the Convention. The Coordinating Committee of Senior Officials - Family Justice (CCSO-FJ) Working Group on Parenting and Contact Enforcement and Jurisdiction, in collaboration with the Department of Justice is analyzing the implications of implementing the Convention in Canada. In this context, in 2011 and 2012, the Department of Justice commissioned pre-implementation studies of the Convention in regard to the law of a common law jurisdiction and Quebec civil law to assist provincial and territorial officials in their analysis. In addition, as part of its efforts, the Department of Justice is continuing to work with some provincial officials on the analysis of the implications of possible implementation. It is also currently consulting with other federal departments on the Convention, as well as reviewing the need for amendments to the *Divorce Act*.

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[146] In 2014, the Hague Conference published the Practical Handbook on the operation of the 1996 Child Protection Convention. This publication provides practical advice for States that are considering implementing the Convention. It includes the “implementation check list” that was finalized in 2009. The Handbook is available on the Hague Conference’s website at www.hcch.net/upload/handbook34fr.pdf

[147] *Action required in Canada:* Continue working with federal-provincial-territorial partners. Finalize federal consultations regarding implementation. Actively promote implementation of the Convention in Canada.

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

[148] The *Convention on the Civil Aspects of International Child Abduction* is the first Hague Convention to be ratified by Canada and 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 wrongfully removed to, or who is wrongfully retained in, another Contracting State in breach of custody rights. Each State party is required to establish a Central Authority to deal with requests for the return of abducted children or for assistance in the exercise of access rights. There are currently 95 States party to the Convention.

[149] 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 Department of Justice Legal Services Unit at GAC. The Central Authorities work collaboratively with a number of domestic partners, including the Royal Canadian Mounted Police through the National Missing Children Services program.

[150] On October 17, 2014, Canada deposited a declaration of acceptance of the accessions of Albania, Andorra, the Dominican Republic, San Marino, Singapore and Ukraine to the Convention. Consequently, the treaty came into force between Canada and these six States on January 1, 2015. Canada has yet to make decisions on the acceptance of the accessions to the Convention by the following 16 States: Armenia, Bolivia, Gabon, Guatemala, Guinea, Iraq, Kazakhstan, Lesotho, Morocco, Nicaragua, Republic of Korea, Philippines, Russian Federation, Seychelles, Thailand and Zambia. The gathering of information regarding these States continues in cooperation with the Federal Central Authority. Communication with the provinces and territories on the possible acceptance of these accessions will follow.

[151] The Department of Justice participated in the five meetings of the Working Group to develop a guide to good practice on the interpretation and application of Article 13(1)

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(b) of the Convention (June 2014, January 2014, November 2014, January 2016 and July 2016), which was established as a follow-up to the Sixth Meeting of the Special Commission to review the practical operation of the Convention held in June 2011 and January 2012. The final draft of this guide is expected to be presented for discussion at the next meeting of the Special Commission, which is tentatively scheduled for October 2017.

[152] In May 2016, Canada (Department of Justice and GAC) participated in the 4th Malta Conference. This Conference is part of the Malta Process whose main objective is to foster dialogue between States party to the Hague children's Conventions and States of Islamic legal tradition. This 4th Conference provided an opportunity to raise awareness of these conventions and to promote accession. It also allowed for discussions on mediation as a means of resolving cross-border family law disputes.

[153] During the Conference, Canada announced the designation of its Central Contact Point for the Principles for the Establishment of Mediation Structures in the Context of the Malta Process. For incoming cases to Canada, the Central Contact Point is the Unit of Justice Canada acting as the Federal Central Authority for the 1980 Convention and, for outgoing cases, GAC (consular services). For incoming cases, the Central Contact Point will essentially direct applicants to information available via the Inventory of Government-Based Family Justice Services of Justice Canada. So far, 10 States have designated a Central Contact Point (<https://www.hcch.net/en/publications-and-studies/details4/?pid=5360>).

[154] The Declaration adopted at the conclusion of the 4th Malta Conference is available on the site of the Hague Conference at: <https://assets.hcch.net/docs/91ab60a5-1ebe-46ca-91ce-72e6e55c0ae7.pdf>

[155] *Action required in Canada*: Continue the acceptance of accessions process. Continue participation in the Working Group to develop a guide to good practice on the interpretation and application of Article 13(1) (b) of the Convention.

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

[156] 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 for 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

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the abduction, the sale of, or the traffic in children. Finally, it secures the recognition in States party of adoptions made in accordance with the Convention.

[157] There are currently 96 States party to the Convention. It entered into force in Canada on April 1, 1997 and its application has been extended to all the provinces and territories.

[158] In June 2015, Canada participated in the fourth meeting of the Special Commission to review the operation of the Convention. The Canadian Delegation was headed by the Department of Justice (CAILS) and included representatives of the Federal Central Authority and of the Central Authorities for Ontario and Quebec. The first day of the meeting was dedicated to discussions on the impact of the Convention on intercountry adoption laws and practices over the last 20 years – i.e. since the Convention came into force internationally – and on the changing landscape in this area notably as regards the number and the characteristics of children needing an intercountry adoption. The remainder of the meeting focused on operational issues such as: the application of the subsidiarity principle; the assessment of special needs children; the selection, counselling and preparation of prospective adoptive parents; post-adoption matters; the scope of application of the Convention, including the concept of habitual residence; the financial aspects; and preventing and addressing illicit practices. The conclusions and recommendations of the Special Commission and the documents relating to the meeting are available on the website of the Hague Conference at: http://www.hcch.net/index_en.php?act=progress.listing&cat=8.

[159] *Action required in Canada:* Coordinate follow-up work on conclusions and recommendations of the Special Commission, including Canada's participation in work on the financial aspects of intercountry adoption and on preventing and addressing illicit practices.

e. Status of Children Project (Hague Conference)

[160] In 2015, the Council on General Affairs and Policy agreed to set up an Experts' Group to explore the feasibility of advancing work on the private international law rules regarding the legal status of children in cross-border situations, including those born of international surrogacy arrangements. In February 2016, Justice Canada participated in the first meeting of the Experts Group.

[161] The Permanent Bureau of the Hague Conference had been conducting preliminary studies on the private international law issues surrounding status and international surrogacy arrangements since 2010. As part of this work, in 2013, it circulated a questionnaire to Members of the Hague Conference and to interested non-member States

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to which Canada responded. Information about this project, including the studies and the responses to the questionnaire is posted on the Hague Conference's website at: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy/>.

[162] At the conclusion of its discussions in February 2016, the Experts' Group recommended that the exploratory work continue and that the recognition of public documents (birth certificates) and judicial decisions – which may require the examination of rules on indirect jurisdiction and considerations of public policy (*ordre public*) – should be considered first. The report of the meeting is posted on the Conference's website: <https://assets.hcch.net/docs/f92c95b5-4364-4461-bb04-2382e3c0d50d.pdf>

[163] In March 2016, the Council on General Affairs and Policy endorsed the Experts' Group recommendation. A second meeting of this Group is expected to take place at the end of 2016 or beginning of 2017.

[164] *Action required in Canada:* Prepare and consult, as necessary, in preparation for the second meeting of the Experts' Group.

2. MEDIUM PRIORITIES

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

[165] 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 due to a mental incapacity, or an insufficiency or impairment of their faculties. The Convention came into force internationally on January 1, 2009. There are currently nine Contracting States.

[166] The ULCC, in collaboration with Justice Canada, prepared a uniform implementation act for the Convention, which it adopted in 2001. Saskatchewan adopted legislation based on the ULCC Uniform Act in 2005.

[167] *Action required in Canada:* Coordinate with GAC on consular implications and promote implementation in provinces and territories.

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D. PROTECTION OF PROPERTY**1. MEDIUM PRIORITIES****a. *Convention Providing a Uniform Law on the Form of an International Will (Unidroit)***

[168] 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 without reference to the conflict of law rules concerning the validity of wills.

[169] This Convention currently applies to 13 States, including Canada, where it has been extended to nine provinces (Alberta, British Columbia, 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. As the new Uniform Wills Act adopted by the ULCC in 2014 does not contain provisions implementing the Convention, the ULCC tasked a working group to prepare provisions that could be included in the new Act. These provisions will be presented to the ULCC at its August 2016 meeting. Adoption of implementing legislation in those Canadian jurisdictions that have not yet done so would allow a greater number of Canadians to benefit from the Convention.

[170] *Action required in Canada:* Consult with the jurisdictions that have not yet 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 Contracting States including by civil law countries which do not provide for trusts in their law.

[172] This Convention is currently in force in 12 States, the majority of which are civil law jurisdictions. It entered into force for Canada on January 1, 1993 and now applies to eight jurisdictions (Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Nova Scotia, Manitoba and Saskatchewan). On June 8, 2016, the Ontario government introduced Bill 218, the *Burden Reduction Act, 2016* which would implement the Convention in Ontario if enacted. Adoption of implementing legislation in those Canadian jurisdictions that have not yet done so would allow a greater number of Canadians to benefit from the Convention.

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

2. LOW PRIORITIES

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

[174] The *Convention on the Return of Stolen or Illegally Exported Cultural Objects* was finalised in 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. There are currently 37 States party to the Convention.

[175] Model Provisions on State Ownership of Undiscovered Cultural Objects have been developed by a Group of Experts convened by the UNESCO and Unidroit Secretariats. They are intended to be used in drafting new provisions or in adapting existing provisions governing State ownership of such property. Furthermore, the Model Provisions seek to facilitate the restitution of cultural property in case of unlawful removal and the implementation of the Convention.

[176] The Unidroit Secretariat continues its efforts to promote the Convention and the Model Legislative Provisions in partnership with other intergovernmental organizations such as UNESCO. In May 2015, it hosted an international colloquium on the 20 years of the Convention where issues such as the difficulties in private international law, and the international development of case law and practice relating to the restitution of cultural objects were discussed.

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

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CONCLUSION

[178] The purpose of this report is to present to the ULCC an overview of current priorities and activities of the Department of Justice in international private law. While this is the focus of the report, an overview of the status of implementation of instruments in Canada as well as the benefits of adopting these international private law instruments is also presented. As such, we hope this report will be useful for provincial and territorial government officials as a source of information about current projects in international private law and as reference material for implementation activities in their own jurisdictions.

[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 of Justice will continue to promote their implementation and to dedicate time to implementation activities. This work will be subject to the availability of resources and government priorities. As has been the case in recent years, the Department will need to prioritize projects accordingly.

[180] Given the priorities laid out in this report, we suggest that particular attention be given to the implementation of the following conventions:

- *Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* (Hague Conference)
- *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (Hague Conference)
- *Convention on Choice of Court Agreements* (Hague Conference)
- *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* (Hague Conference)
- *ICSID Convention* (World Bank)
- *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (Hague Conference)
- *Convention on the Use of Electronic Communications in International Contracts* (UNCITRAL)
- *Convention Providing a Uniform Law on the Form of an International Will* (Unidroit)

(Conventions are not listed in any order of priority).

[181] Demands in terms of the development of new instruments will increase this year given the number of new topics under negotiations. In that regard as well, the Department of Justice will need to prioritize its activities and to face resource allocation constraints.

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Many of these new projects will require input from experts in specific areas of the law. Practitioners, government experts, as well as stakeholders more generally, are invited to provide comments or analyses on any of the current projects mentioned in this report and in particular on the following projects:

- Project on the Enforcement of Settlement Agreements Resulting from International Commercial Conciliation/Mediation (UNCITRAL)
- Contractual Aspects of Cloud Computing Project (UNCITRAL)
- Protocol MAC to the Convention on International Interests in Mobile Equipment (Unidroit)
- Draft Model Law on the Recognition and Enforcement of Insolvency-related Judgments (UNCITRAL)
- Judgments Project (Hague Conference)
- Status of Children Project (Hague Conference)

[182] For the Department of Justice Canada, the ULCC is the key forum for facilitating the implementation of international private law conventions and model laws developed by the various international private law organizations. There are more than 20 Uniform Acts that implement such conventions and other international instruments that require provincial and territorial legislation in order for Canada to adopt them. The Department of Justice highly values the ULCC's constructive collaboration and support for the Department's work in international private law. This collaboration has been particularly fruitful in assisting with the uniform and effective implementation of international instruments. This collaboration greatly simplifies the implementation process and ensures that Canada's international obligations are met. We look forward to continuing our international private law work with the Conference.

[183] ULCC members are invited 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 CAILS international private law counsel at the Department (see contact list in Annex E).

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, Protocols and other Instruments

- 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
- 2015 - Principles on Choice of Law in International Commercial Contracts

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"
- 2014- United Nations Convention on Transparency in Treaty-based Investor-State Arbitration.

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
- 2016 - UNCITRAL Model Law on Secured Transactions

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)
- 2012 - Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (Berlin)

Model Laws and other Instruments

- 2002 - Model Franchise Disclosure Law
- 2008 - UNIDROIT Model Law on Leasing
- 2010 - UNIDROIT Principles of International Commercial Contracts with 2015 amendments on Long-Term Contracts
- 2011 - UNESCO - UNIDROIT Model legislative provisions on State ownership of undiscovered cultural objects

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 Laws

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

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

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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"> Project on Contractual Aspects of Cloud Computing Services Enforcement of settlement agreements resulting from international commercial conciliation/mediation 	<ul style="list-style-type: none"> Judgments Project (Hague) 	<ul style="list-style-type: none"> Status of Children Project (Hague Conference) 	
	Implementation		<ul style="list-style-type: none"> Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) Convention on Choice of Court Agreements (Hague) Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague) 	<ul style="list-style-type: none"> Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague) Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague) 	
	Monitoring		<ul style="list-style-type: none"> Foreign Civil Protection Orders (Hague) 	<ul style="list-style-type: none"> Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (Hague) Convention on the Civil Aspects of International Child Abduction (Hague) Private international law issues relating to cohabitation outside marriage 	

Priority Level	International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
2	<ul style="list-style-type: none"> • Draft Guide to Enactment to the Model Law on Secured Transactions (UNCITRAL) • Simplified business incorporation and registration regime (UNCITRAL) • Model law or model legislative provisions on recognition and enforcement of insolvency-related judgments • Preliminary Draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (Unidroit) 			
	<ul style="list-style-type: none"> • Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation • Model Law on International Commercial Arbitration (1985, amended in 2006) (UNCITRAL) - Uniform International Commercial Arbitration Act (ULCC) • Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) • Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL) 		<ul style="list-style-type: none"> • Convention on the International Protection of Adults - (Hague) 	<ul style="list-style-type: none"> • Convention providing an Uniform Law on the Form of an International Will (Unidroit) • Convention on the Law Applicable to Trusts - (Hague)
	<ul style="list-style-type: none"> • Electronic transferable records (UNCITRAL) 	<ul style="list-style-type: none"> • Model Law on Recognition and Enforcement of Foreign Judgments (Commonwealth) 		
3	<ul style="list-style-type: none"> • Convention on the Settlement of Investment Disputes (ICSID) - (World Bank) • Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL) • Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit) 			
	<ul style="list-style-type: none"> • Convention on Securities Held by Intermediaries (Hague) -ULCC Uniform Act • Convention on the Assignment of Receivables (UNCITRAL) 			<ul style="list-style-type: none"> • Convention on Stolen or Illegally Exported Cultural Objects (Unidroit)

Priority Level	International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
	<ul style="list-style-type: none">Choice of Law in International Commercial Contracts (Hague)			

CANADIAN STATUS CHART OF INTERNATIONAL PRIVATE LAW INSTRUMENTS*

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
2 - Implementation	Model Law on International Commercial Conciliation (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act (2005) - Implementing legislation adopted in Nova Scotia (2005) and Ontario (2010) 	<ul style="list-style-type: none"> - Model Law adopted in 2002 - Model Law enacted in 16 States 	<ul style="list-style-type: none"> - Adoption of uniform act by interested jurisdictions
	Model Law on International Commercial Arbitration (1985, amended in 2006) (UNCITRAL) - Uniform International Commercial Arbitration Act (ULCC)	<ul style="list-style-type: none"> - ULCC Uniform Act (1987) - 1987 Uniform Act Enacted by all Canadian jurisdictions - 2013 revised Uniform Act is adopted by ULCC (form of arbitration agreements and interim measures) 	<ul style="list-style-type: none"> - Model Law adopted in 1985 - Revisions to Model Law adopted in 2006 (form of arbitration agreements and interim measures) - Some 72 States have implemented the 1985 or the 2006 versions of the Model Law or legislation inspired from these texts 	<ul style="list-style-type: none"> - Adoption of revised uniform act by interested jurisdictions
	Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act (2011) 	<ul style="list-style-type: none"> - Entered into force on March 1, 2013 - 7 States party 	<ul style="list-style-type: none"> - Adoption of the uniform act by interested jurisdictions
	Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act (1998) - Implementing legislation adopted but not yet in force in Nunavut (2006) 	<ul style="list-style-type: none"> - Entered into force on August 1, 1988 - 30 States party (Convention); - 23 States party (Convention as amended by the Protocol) 	<ul style="list-style-type: none"> - At the appropriate time, follow-up on consultations with provinces and territories - Consideration by the federal government of adopting implementing legislation - Consider simpler approach to implementation
3 - Implementation	Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)	<ul style="list-style-type: none"> - ULCC uniform act (2002) - Entered into force in Canada on April 1, 2013 - Application extended to: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon. 	<ul style="list-style-type: none"> - Entered into force March 1, 2006 - 64 States party (Convention and Protocol) 	<ul style="list-style-type: none"> - Continue implementation efforts

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
3 - Implementation	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) (World Bank)	<ul style="list-style-type: none"> - ULCC uniform act (1998) - Enacted by Canada (2008), Ontario (1999), British Columbia, Newfoundland and Labrador, Nunavut, Saskatchewan (2006), Northwest Territories (2009) and Alberta (2013) - Applicable in Canada since December 1, 2013 	<ul style="list-style-type: none"> - Entered into force on October 14, 1966 - 153 States party - Ratified by Canada on November 1, 2013 	<ul style="list-style-type: none"> - Continue provinces and territories implementation
	Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (Hague)	<ul style="list-style-type: none"> - ULCC uniform act under consideration 	<ul style="list-style-type: none"> - Not in force - 3 ratifications – accessions required to enter into force - 2 ratifications 	<ul style="list-style-type: none"> - Development uniform act and commentaries
	Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act in preparation 	<ul style="list-style-type: none"> - Entered into force on January 1, 2000 - 8 States party 	<ul style="list-style-type: none"> - Develop a uniform act and commentaries
	Convention on the Assignment of Receivables in International Trade (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act (2007) 	<ul style="list-style-type: none"> - Adopted in 2001 - Not in force - 5 ratifications – accessions required to enter into force - 1 accession 	<ul style="list-style-type: none"> - Monitor ratification developments
3- Monitoring	Convention on Substantive Rules for Intermediated Securities (UNIDROIT)		<ul style="list-style-type: none"> - Adopted in 2009 - Not in force 	<ul style="list-style-type: none"> - None at this time
	Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		<ul style="list-style-type: none"> - Adopted in 1988 - Not in force - 10 ratifications – accessions required to enter into force - 5 accessions - Signed by Canada on December 7, 1989 	<ul style="list-style-type: none"> - None at this time
	Convention on International Financial Leasing (Unidroit) Convention on International Factoring (Unidroit)	<ul style="list-style-type: none"> - ULCC uniform act (1995) 	<ul style="list-style-type: none"> - Entered into force on May 1, 1995 - 9 States party (Convention on International Factoring) - 10 States party (Convention on International Financial Leasing) 	<ul style="list-style-type: none"> - Consult with governments and industry on interest
	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UN)	<ul style="list-style-type: none"> - Entered into force in Canada on August 10, 1986 - In force in all Canadian jurisdictions 	<ul style="list-style-type: none"> - Entered into force on June 7, 1959 - 156 States party 	<ul style="list-style-type: none"> - None at this time

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
3- Monitoring	Model Law on Electronic Commerce (UNCITRAL)	<ul style="list-style-type: none"> - ULCC uniform act (1999) - Enacted by all Canadian jurisdictions 	<ul style="list-style-type: none"> - Adopted in 1996 - Model Law enacted in 67 States 	<ul style="list-style-type: none"> - Provide information when requested
	Convention on Contracts for the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none"> - Entered into force in Canada on May 1, 1992 - Application extended to all Canadian jurisdictions 	<ul style="list-style-type: none"> - Entered into force on January 1, 1988 - 85 States party 	<ul style="list-style-type: none"> - None at this time
	Model Law on Cross-border Insolvency (UNCITRAL)	<ul style="list-style-type: none"> - Provisions based on the Model Law in federal insolvency laws 	<ul style="list-style-type: none"> - Adopted in 1997 - Model Law enacted in 41 States 	<ul style="list-style-type: none"> - Provide information when requested

Judicial Cooperation and Enforcement of Judgments

Priority Level	Instrument	Implementation in Canada	International Status	Action
1 - Implementation	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		<ul style="list-style-type: none"> - Entered into force on January 24, 1965 - 112 States party 	<ul style="list-style-type: none"> - Continue implementation analysis and follow-up with provinces and territories
	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague)	<ul style="list-style-type: none"> - Entered into force in Canada on May 1, 1989 - Application extended to all Canadian jurisdictions 	<ul style="list-style-type: none"> - Entered into force on February 10, 1969 - 71 States party 	<ul style="list-style-type: none"> - Continue to provide information and respond to requests regarding the application of the Convention - Coordinate the exchange of information among Canadian Central Authorities
	Convention on Choice of Court Agreements (Hague)	<ul style="list-style-type: none"> - ULCC uniform act adopted in 2010 	<ul style="list-style-type: none"> - Entered into force on November 10, 2015 - 30 States and regional international organizations party 	<ul style="list-style-type: none"> - Coordinate federal implementation analysis and promote implementation in provinces and territories
3 - 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"> - ULCC uniform act (1997) - Implementing legislation adopted in Saskatchewan (1998), Ontario (1999) and Manitoba (2000) 	<ul style="list-style-type: none"> - Not in force - Convention signed on June 10, 1996 	<ul style="list-style-type: none"> - None at this time

Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
1 - 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	- Entered into force on January 1, 2013 - 32 States party	- Continue work on implementation analysis
	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 - 44 States party	- Continue work on implementation analysis, including federal implementation issues
1 - Monitoring	Convention on the Civil Aspects of International Child Abduction (Hague)	- Entered into force in Canada on December 1, 1983 - Application extended to all Canadian jurisdictions:	- Entered into force on December 1, 1983 - 95 States party	- Consider decisions on acceptance of 16 States that have acceded to the Convention - Participate in the Hague Working Group to develop a Guide to Good Practice on Article 13 b) of the Convention
	Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague)	- ULCC uniform act (1996) - Entered into force in Canada on April 1, 1997 - Application extended to all Canadian jurisdictions	- Entered into force on May 1, 1995 - 96 States party	- Coordinate follow-up work on conclusions and recommendations of the 2015 Special Commission, including work on the financial aspects of intercountry adoption and on preventing and addressing illicit practices
2 - 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 - 9 States party	- Work with other federal departments and provincial and territorial authorities on implementation issues.

Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action
2 - Implementation	Convention Providing a Uniform Law on the Form of an International Will (Unidroit)	<ul style="list-style-type: none"> - Entered into force in Canada on February 9, 1978 - Application extended to Canadian jurisdictions: Alberta, Manitoba, Newfoundland and Labrador, Ontario (1978), Saskatchewan (1982), Prince Edward Island (1995), New Brunswick (1997), Nova Scotia (2001), British Columbia (2014) 	<ul style="list-style-type: none"> - Entered into force on February 9, 1978 - 13 States party 	<ul style="list-style-type: none"> - Consult with jurisdictions that have not yet implemented the Convention
	Convention on the Law Applicable to Trusts and on their Recognition (Hague)	<ul style="list-style-type: none"> - Entered into force in Canada on January 1, 1993 - Application extended to Canadian jurisdictions: Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Prince Edward Island (1993), Manitoba, Saskatchewan (1994), Nova Scotia (2006) 	<ul style="list-style-type: none"> - Entered into force on January 1, 1992 - 12 States party 	<ul style="list-style-type: none"> - Consult with the jurisdictions that have not yet implemented the Convention
3- Monitoring	Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit) 2011 Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects (Unidroit/UNESCO)		<ul style="list-style-type: none"> - Entered into force on July 1st, 1998 - 37 States party (Convention) 	<ul style="list-style-type: none"> - When requested, assist the Department of Canadian Heritage in consultations on the Convention

Annex D**SCHEDULE OF INTERNATIONAL PRIVATE LAW MEETINGS**

June 2016 – July 2017

Meeting		Dates	Place
1.	UNCITRAL Working Group II: Dispute Settlement	12 – 23 September 2016	Vienna
2.	UNCITRAL Working Group I: Micro, Small and Medium-sized Enterprises	3 – 7 October 2016	Vienna
3.	UNCITRAL Working Group IV: Electronic Commerce	31 October – 4 November 2016	Vienna
4.	10th International Forum on the e-APP	1 November 2016	The Hague
5.	Hague Conference: Special Commission on the 1961 Apostille Convention	2 – 4 November 2016	The Hague
6.	UNCITRAL Working Group VI: Security Interests	5 – 9 December 2016	Vienna
7.	UNCITRAL Working Group V: Insolvency Law	12 – 16 December 2016	Vienna
8.	UNCITRAL Working Group II: Dispute Settlement	6 – 10 February 2017	New York
9.	UNCITRAL Working Group VI: Security Interests	13 – 17 February 2017	New York
10.	Hague Conference: Special Commission Judgments	16 – 24 February 2017	The Hague
11.	Unidroit: Committee of Governmental Experts on preliminary draft Protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment (MAC)	March (TBC)	Rome

Meeting		Dates	Place
12.	Hague Conference: Council on General Affairs	March 2017	The Hague
13.	UNCITRAL Working Group IV: Electronic Commerce	24 – 28 April 2017	New York
14.	UNCITRAL Working Group I: Micro, Small and Medium-sized Enterprises	1 – 9 May 2017	New York
15.	UNCITRAL Working Group V: Insolvency Law	10 – 19 May 2017	New York
16.	Commission Session (UNCITRAL)	3 – 21 July 2017	Vienna

Annex E**CONSTITUTIONAL, ADMINISTRATIVE AND INTERNATIONAL LAW SECTION
(CAILS)****INTERNATIONAL PRIVATE LAW CONTACTS (2016)**

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