

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
2018**

**Québec, Québec
August 12-16, 2018**

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Report of the Department of Justice Canada

August 2018

INTRODUCTION

[1] This report has been prepared for the August 12-16, 2018 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.

[3] UNCITRAL adopted a *Convention on International Settlement Agreements Resulting from Mediation* as well as a Model Law on Cross-border Recognition and Enforcement of Insolvency-related Judgments at its 51st session in July 2018. On May 22, 2018, the federal government introduced Bill C-78, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act, which also implements the *Hague 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* and of the *Hague 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* at the federal level. Canada signed these Conventions in 2017. Once ratified, the two Conventions will significantly facilitate the recognition and enforcement of Canadian court orders dealing with family law and child protection matters and with maintenance obligations in other States party. They will also facilitate cross-border cooperation in these areas.

[4] In Saskatchewan, *The Electronic Communications Convention Implementation Act*, which received Royal Assent on May 9, 2018, implements the *United Nations Convention on the Use of Electronic Communications in International Contracts*. Saskatchewan also adopted *The Choice of Court Agreements (Hague Convention Implementation) Act*, assented to on May 9, 2018. Finally, the Legislative Assembly in British Columbia passed the *2018 International Commercial Arbitration Act*, which incorporates the most recent version of the UNCITRAL Model Law on International Commercial Arbitration.

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[5] The first part of this report deals with the various Canadian actors 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. The contact persons in the Section are listed in Annex E of this report.

[6] 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 this report. A list of the conventions, protocols and models laws in the area of international private law adopted by The Hague Conference on Private International Law (Hague Conference), UNCITRAL, UNIDROIT and the Organization of America States (OAS) is set out in Annex A.

[7] Finally, the third part of this 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.

[8] Projects are ranked with respect to their level of priority (high, medium, low). To evaluate priority, CAILS, in collaboration with the Department of Justice's FPT Advisory Group on Private International Law, 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

[9] 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.

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A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

[10] 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 2017 and June 2018.

B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION

[11] 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 through the presentation of reports to the ULCC and to the Civil Justice Committee.

1. Uniform Law Conference of Canada

[12] 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

[13] 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

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

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II. INTERNATIONAL ORGANIZATIONS AND RELATIONS

A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

[15] The Hague Conference on Private International Law, which held its first session in 1893, has 83 Members, including Canada since 1968. Its objective is to work toward the progressive unification of rules of private international law. The Permanent Bureau, the secretariat of the Conference, is responsible for the administration and supporting research. The Hague Conference's website includes a list of finalized instruments, their status and practical information on Conventions. The address is: www.hcch.net.

[16] Over the last year, Canada participated in the activities of the Hague Conference including: two Special Commissions to prepare a draft convention on the recognition and enforcement of foreign judgments relating to civil or commercial matters (the "Judgments Project"); the Seventh Meeting of the Special Commission on the Practical Operation of the *1980 Child Abduction Convention* and the *1996 Child Protection Convention*; the sixth meeting of the Working Group to develop a Guide to Good Practice on the interpretation and application of Article 13(1)(b) of the *Child Abduction Convention*; and the third Experts' Group meeting on the Parentage/Surrogacy Project.

[17] At its meeting this year, the Council on General Affairs and Policy welcomed the progress made with regard to the Judgments Project and reviewed the possibility of a future convention on co-operation and access to justice for international tourists. The Council also decided not to proceed with the preparation of an instrument on recognition and enforcement of foreign civil protection orders. In the area of international commercial law, work is continuing on the preparation of a guide to uniform legal instruments in the area of international commercial contracts (with a focus on sales) in cooperation with UNCITRAL and UNIDROIT and the development of a resource tool addressing the intersection between private international law and intellectual property law in cooperation with the World Intellectual Property Organization (WIPO). The Conclusions and Recommendations of the 2018 Meeting of the Council are available on the Hague Conference's website: <https://www.hcch.net/en/governance/council-on-general-affairs>.

[18] In the coming year, the Conference will convene a Diplomatic Session on the Judgments Project, hold the fourth and fifth meetings of the Experts' Group on the Parentage/Surrogacy Project as well as the seventh meeting of the Working Group to develop a Guide to Good Practice on the interpretation and application of Article 13(1)(b) of the *Child Abduction Convention*.

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[19] 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 (UNCITRAL)

[20] 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 trade. To reach this goal, the Commission uses various instruments: it has prepared or is responsible for 12 conventions, 11 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

[21] 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.

[22] Over the last year, Canada participated in the following UNCITRAL activities : 29th and 30th sessions of Working Group I (Micro, Small and Medium-sized Enterprises) in October 2017 and March 2018; 67th and 68th sessions of Working Group II (Arbitration and Conciliation / Dispute Resolution) in October 2017 and February 2018; 34th and 35th sessions of Working Group III (Investor-State Dispute Settlement Reform) in November 2017 and in April 2018; 56th session of Working Group IV (Electronic Commerce) in April 2018; 52nd and 53rd sessions of Working Group V (Insolvency) in December 2017 and May 2018; 32nd and 33rd sessions of Working Group VI (Security Interests) in December 2017 and May 2018; and the 51st session of the Commission from June 25 - July 13, 2018.

[23] At its 51st session, the Commission adopted a Convention as well as a Model Law on International Settlement Agreements Resulting from Mediation, a Legislative Guide on Key Principles of a Business Registry, and a Model Law on Cross-border Recognition and

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Enforcement of Insolvency-related Judgments with a Guide to its Enactment. The Commission's current work program will continue on: a legislative text on cross-border recognition of electronic identity; simplified incorporation of an organization for micro, small and medium-sized enterprises; a model law on cross-border judicial cooperation between insolvency proceedings of a corporate group; investor-State dispute settlement reform; and a user's guide to the Model Law on Secured Transactions. In addition, the Commission has added the following topics to its work programme: the preparation of an instrument on the cross-border recognition of the judicial sale of ships, a legal framework for contractual networks for micro, small and medium-sized enterprises, and preliminary work on warehouse receipts in the context of secured financing. Information on UNCITRAL's current work program is available on its website.

[24] Canada is party to three United Nations conventions relating to international commercial law: the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958, in force for Canada 86/08/10), the *United Nations Convention on Contracts for the International Sale of Goods* (1980, in force for Canada 92/05/01) and the *United Nations Convention on Transparency in Treaty-based Investor-State Arbitration* (2014, in force for Canada 17/10/18).

[25] Legislation implementing the UNCITRAL Model Law on International Commercial Arbitration (1985) has been adopted in Canada and steps are currently being taken 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

[26] The International Institute for the Unification of Private Law, known as UNIDROIT, was created in 1926 as an organ of the League of Nations. Since 1940 it has been an independent inter-governmental organization located in Rome. There are 63 Member States, including Canada since 1968. UNIDROIT's mandate differs from that of The Hague Conference as it aims to harmonize and co-ordinate the private law of its Member States, rather than their private international law rules. 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.

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[27] The 2017-2019 Work Program is available on UNIDROIT's website at: <http://www.unidroit.org/about-unidroit/work-programme>. Of note are the activities in relation to the preparation of an international guidance document on agricultural land investment contracts and the preparation of a draft Protocol on Matters Specific to Agricultural, Construction and Mining Equipment to the *Convention on International Interests in Mobile Equipment*. Information and documents about this project are available at <http://www.unidroit.org/work-in-progress-studies/current-studies/mac-protocol>.

[28] Canada is party to 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] Upon request from Member States, the Commonwealth Secretariat carries out work for 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, which is now completed.

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.

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[32] Canada is not party to any of the OAS international private law conventions, 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.

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 and Nunavut.

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

A. INTERNATIONAL COMMERCIAL LAW

1. HIGH PRIORITIES

a. Convention on International Commercial Settlement Agreements Resulting from Mediation and related modifications to the Model Law on International Commercial Conciliation (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) (Model Law). Laws inspired by the Model Law have been adopted in Ontario and in Nova Scotia. These laws provide for accelerated recognition and enforcement of mediated settlement agreements by summary application to a court.

[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 with its terms. 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

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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 the enforcement of international mediated settlements agreements could contribute to fair, expedited and cost-effective enforcement.

[37] With this objective in mind and in order to promote the use of mediation as accepted mode of resolving international commercial disputes, UNCITRAL has prepared model provisions to complement the Model Law as well as an international convention on the enforcement of international mediated settlement agreements. These two texts were finalized and adopted by the Commission in July 2018.

[38] *Actions to be taken in Canada:* Consult stakeholders on Canada's interest in becoming party to the Convention and adopting revisions to the Model Law.

b. Contractual Aspects of Cloud Computing Project (UNCITRAL)

[39] Further to a proposal by Canada, UNCITRAL is reviewing legal issues in the provision of cloud computing services. 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 provided 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.

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c. Draft MAC Protocol to the *Convention on International Interests in Mobile Equipment* (UNIDROIT)

[43] 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. A fourth protocol to deal with mining, agricultural and construction equipment (together referred to as “MAC” equipment) has been under development since a Study Group was convened in 2014 to prepare a draft text.

[44] The draft MAC Protocol was submitted to a Committee of Governmental Experts for formal multilateral treaty negotiations. This Committee met twice in 2017 and the project is now sufficiently advanced for a Diplomatic Conference to be convened.

[45] The draft text is available on the UNIDROIT website at www.unidroit.org. This preliminary draft is aligned as closely as possible with the articles and the structure of the existing protocols.

[46] *Action to be taken in Canada:* Justice Canada will be consulting government and industry representatives on the draft text.

d. Identity Management and Trust Services Project (UNCITRAL)

[47] At its forty-eighth session in 2015, the Commission decided to conduct preparatory work on identity management and trust services. It is recognized by a number of countries that the need to identify business partners in a legally enforceable manner is of paramount importance to promote trade across borders.

[48] Working Group IV on Electronic Commerce has prepared a list of issues relevant to this work which can be found in the report of the 56th session of the Working Group. At this stage, it is unclear what form the instrument on identity management and trust services will take. One recommended approach consists in focusing the work of the Working Group on cross-border recognition of digital identity credentials.

[49] *Action to be taken in Canada:* Justice Canada will be consulting government and industry representatives.

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

[50] 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.

[51] In addition to providing substantive rules on the use of electronic communications for parties to international contracts, the Convention applies to the use of electronic communications in connection with the formation or performance of a contract to which existing international conventions apply, such as the *United Nations Convention on Contracts for the International Sale of Goods* to which Canada is a party, except where a State has made a declaration of non-applicability of the Convention with respect to those conventions. The Convention also applies to any international convention to which a State may become party unless otherwise declared by the State. There is a federal State clause in the Convention allowing Canada to consider becoming a party even if the Convention is not implemented in all Canadian jurisdictions.

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

[53] The ULCC adopted the Uniform Electronic Communications Convention Implementation Act in 2011. Ontario and Saskatchewan have adopted legislation based on the ULCC Uniform Act.

[54] *Action required in Canada:* Implement the Convention.

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

[55] 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 different legal or economic systems.

[56] 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

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Convention). The Uniform ICAA was subsequently adopted by all Canadian jurisdictions, some with minor adjustments.

[57] 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 to 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.

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

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

[59] The Convention and its amending Protocol grew out of the work of UNCITRAL to unify international sales law. They entered into force internationally on August 1, 1988. There are 30 States party to the Convention, and 23 States party to the Convention as amended by the Protocol, including, in both cases, our NAFTA trading partners. Canada is not party to the Convention nor to the Convention as amended by the Protocol.

[60] The Convention and its amending Protocol establish a standard limitation period of four years for the initiation of legal proceedings arising from contracts for the international sale of goods. They dovetail with the *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 1980), which is in force throughout 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.

[61] 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 *Convention on the Limitation Period in the International Sale of Goods* and its amending Protocol. Nunavut and Ontario have adopted implementing legislation based on the 1998 Uniform Act.

[62] *Action required in Canada:* Implement the Convention and the Protocol.

2. MEDIUM PRIORITIES

a. Micro, Small and Medium-sized Enterprises (UNCITRAL)

[63] Since 2014, UNCITRAL has been developing two instruments to reduce the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, in particular in developing economies. UNCITRAL adopted one of these instruments, the Legislative Guide on Key Principles of a Business Registry, in June 2018. UNCITRAL will continue its work on the other instrument, a legislative guide on a limited liability organization.

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

b. Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions (UNCITRAL)

[65] In the area of secured transactions, UNCITRAL has already prepared a Legislative Guide on Secured Transactions, a Supplement on Security Rights in Intellectual Property, a Guide on the Implementation of a Security Rights Registry (Registry Guide) and a Model Law on Secured Transactions with a Guide to Enactment. This work is largely consistent with Canadian law.

[66] In 2017, based on a proposal put forward by Australia, Canada, Japan and the United Kingdom, the Commission mandated Working Group VI to prepare a practice guide to the Model Law. The guide is to be aimed at parties to transactions, judges, arbitrators, regulators, insolvency administrators and academics and should address contractual, transactional, and regulatory issues related to secured transactions, as well as financing of micro-businesses. The Working Group is expected to complete the draft Practice Guide for adoption by the Commission at its 52d session in 2019.

[67] *Action required in Canada:* Continue providing input on the draft Practice Guide to ensure consistency with the Model Law.

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

[68] 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,

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confidentiality and the admissibility of evidence in other proceedings as well as post-conciliation issues, such as the enforceability of settlement agreements.

[69] In 2005, the ULCC adopted the Uniform Act on International Commercial Mediation, which aims to facilitate adoption of the Model Law in Canada. To date, both Nova Scotia and Ontario have enacted the Uniform Act. Given recent developments at the international level with respect to the legal framework for the enforcement of mediation agreements, enacting jurisdictions should be considering the most recent UNCITRAL projects in this field in their assessment of the Model Law.

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

3. LOW PRIORITIES

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

[71] 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. The Aircraft Protocol applies the Convention framework to aircraft equipment. Other protocols deal with other types of mobile equipment, such as railway rolling stock.

[72] 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.

[73] 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.

[74] 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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[75] *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)

[76] 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.

[77] 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 consent 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.

[78] The vast majority of our trading partners have ratified the ICSID Convention, which has 153 States party. The federal government implemented the Convention in 2008. Implementing legislation has also been adopted in Ontario (1999), Saskatchewan (2006), British Columbia (2006), Newfoundland and Labrador (2006), Nunavut (2006), the Northwest Territories (2009) and Alberta (2013).

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

[80] *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)

[81] 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.

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[82] A pre-implementation report prepared by Me Michel Deschamps of McCarthy Tétrault was presented to 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 was desirable to consider developments taking place in the United States in relation to the Convention before considering a Canadian ratification. The United States signed the Convention in 2006 and ratified it in 2017. The Convention entered into force on April 1, 2017.

[83] *Action required in Canada:* Form a ULCC working group to determine next steps for possible implementation in Canada.

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

[84] 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.

[85] 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.

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

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

e. *Guide on Agricultural Land Investment Contracts* (UNIDROIT)

[88] A working group established by UNIDROIT is preparing an international guidance document on agricultural land investment contracts. The document being prepared is a legal guide which focuses on leases and concession agreements. The legal guide, if adopted by UNIDROIT, would be used by counsel working on the leasing of agricultural land – whether from a State, customary authority or private party – in order to support the

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preparation, negotiation and implementation of agricultural land investment contracts that are consistent with other international instruments. The guide will not endorse large-scale land acquisitions and will raise awareness about alternative investment models. The guide will acknowledge that land acquisitions continue to occur and will help to ensure that leases of agricultural land are done responsibly and that stakeholders' rights, including holders of legitimate tenure rights, are both protected and respected.

[89] *Action required in Canada*: Consult with stakeholders, in particular those involved in international development, on the draft legal guide prior to its submission to the Governing Council of UNIDROIT for adoption.

B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS

1. HIGH PRIORITIES

a. Judgments Project (Hague Conference)

[90] Work on common jurisdictional rules and rules for recognition and enforcement of judgments has had a long and somewhat difficult history at the Hague Conference. Following the conclusion of the Choice of Court Convention in 2005 after more than a decade of work, the subject was set aside until 2011 when the Council on General Affairs and Policy mandated an Experts' Group to assess the feasibility of resuming work. In 2012, the Council 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 work on jurisdiction.

[91] 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. The Working Group prepared a draft on the basis of which the Council on General Affairs convened a Special Commission which met four times since 2016. The Special Commission completed its work in May 2018 and a diplomatic conference is expected to take place in June 2019 to finalize the convention and open it for signature and ratification or accession by States.

[92] The draft convention and preparatory documents are available at <https://www.hcch.net/en/projects/legislative-projects/judgments/special-commission1>. A number of issues have yet to be resolved, including:

- the treatment of intellectual property judgments and the potential recognition and enforcement of decisions of competent authorities;
- whether to cover judgments issued by courts common to two or more Contracting States;

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- the relationship with other instruments;
- the extent to which privacy matters should be excluded from the Convention;
- a possible mechanism of declarations to allow judgments pertaining to governments to be excluded from the scope of the Convention; and
- a possible exclusion of anti-trust (competition) matters.

Informal working groups have been mandated to facilitate discussion and possible resolution of these outstanding issues in advance of the diplomatic conference.

[93] Canada participated in all four meetings of the Special Commission. Over the four meetings, the delegation included Kathryn Sabo from the federal Department of Justice, Michael Ryan and Christine Hudon, Department of Justice Legal Services, Innovation Science and Economic Development, Russell Getz from the B.C. Attorney-General, Frédérique Sabourin from Justice Québec, Sarah Dafoe, Alberta Justice, Gregory K. Steele, Q.C., from British Columbia, Patrick Ferland, LCM Avocats, Montreal, and Geneviève Saumier from McGill University. Professor Saumier was appointed a Co-Rapporteur for the project.

[94] From Canada's perspective, the draft presents at least one particular problem which relates to exclusive jurisdiction in Canada for residential tenancies, irrespective of the length of the tenancy. The delegation will continue to seek a workable solution for that issue.

[95] At the March 2018 meeting of the Council on General Affairs, the Council decided that the Experts' Group will be reconvened shortly after the Diplomatic Conference to address matters relating to direct jurisdiction.

[96] *Action required in Canada:* Consult in Canada with governments and stakeholders in preparation for the diplomatic conference. Participate in the informal working groups as appropriate and coordinate with like-minded States.

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

[97] This Convention, to which Canada is not party, has 115 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 for a multitude of purposes, including to conduct business, to work, to adopt children, to get married, to study and to claim an inheritance. Examples of

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public documents used for these purposes 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 the signatures and seals on 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.

[98] The Authentication and Service of Documents Section at GAC authenticates signatures or seals on approximately 150,000 Canadian public documents annually and the provinces and territories authenticate approximately 65,000. These are then legalized in Canada by the diplomatic or consular officials of the country where they will be produced. Accession to the Convention would make it easier for Canadians to use Canadian public documents in the 115 Contracting States

[99] *Action required in Canada:* Continue to work to resolve implementation issues.

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

[100] The Convention came into force internationally in 2015 and has 31 Contracting Parties including the United Kingdom and all of the Member States of the European Union. The United States signed the Convention in 2009. The Convention sets rules for when a court must take jurisdiction or refuse to do so where commercial parties have entered into an exclusive choice of court agreement. The Convention also provides for the recognition and enforcement of resulting judgments, with an option for Contracting States to agree on a reciprocal basis to recognize judgments based on a choice of court agreement that was not exclusive.

[101] 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.

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[102] 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 makes the Convention a useful tool for commercial parties doing business across borders.

[103] 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. Ontario and Saskatchewan have adopted implementing legislation based on the ULCC Uniform Act.

[104] *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.

d. Model Law on Cross-border Recognition and Enforcement of Insolvency-related Judgments (UNCITRAL)

[105] Since 2014 UNCITRAL has been developing a model law on 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.

[106] UNCITRAL adopted the Model Law on Cross-border Recognition and Enforcement of Insolvency-related Judgments in July 2018. The Working Group considered a number of issues relevant to the development of the legislative text, including the types of judgments that should be covered, procedures for recognition and grounds for refusing recognition. Canada's objective was to ensure that there would be no inconsistency between the project and existing provincial and territorial legislative frameworks on the recognition and enforcement of foreign judgments and to promote the recognition of Canadian judgments abroad.

[107] *Action required in Canada:* Consult stakeholders to assess interest for the adoption of the Model Law given the existing Canadian legislative framework.

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

[108] This Convention is currently in force in 73 States, including Canada. It sets out mandatory rules for the service of judicial documents in civil or commercial matters from one Contracting State to another.

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[109] Although the Convention has applied throughout Canada since 1989 and provincial and territorial governments agreed to Canada's accession, it was not implemented in a uniform and coordinated manner. Each jurisdiction implemented the Convention by amending its rules of civil procedure.

[110] 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. Saskatchewan and Manitoba have amended their rules of civil procedure based on the Uniform Rules.

[111] *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 amend their rules of civil procedure with rules based on the Uniform Rules.

C. FAMILY LAW

1. HIGH PRIORITIES

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

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

[113] 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

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leadership and expertise, an expert from British Columbia 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.

[114] The text of the Convention, Explanatory Report and practical documents are available on The Hague Conference website.

International Status

[115] The Convention entered into force on January 1, 2013. The Convention applies in 38 States and 1 Regional Economic Integration Organization including 27 Member States of the European Union and the United States.

Status in Canada

[116] Canada is not 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 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*.

[117] On May 23, 2017, Canada signed both the 1996 Convention on the Protection of Children and the 2007 Convention. On May 22, 2018, Bill C-78 was introduced in Parliament. The Bill implements the two Conventions at the federal level as part of a package of amendments to the *Divorce Act*.

[118] Work leading to the ratification of the Convention will take some time. Ratification will only be possible once the following conditions are met: amendments to the *Divorce Act* and to the laws of at least one province or territory are made to ensure consistency with Convention rules; and at least one province or territory that has amended its laws asks the federal government to have the Convention apply in its jurisdiction. Upon ratification, Canada will declare that the application of the Convention extends only to such province(s) or territory(ies). New declarations will be made as other provinces and territories amend their laws and request that the Convention apply to their jurisdiction.

[119] *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)

[120] 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 establishes private international law rules that apply to a variety of cross-border matters involving the protection of children including: parental responsibility, as well as its delegation; rights of custody and access; 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; child welfare issues including 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 48 countries, including all 28 States of the European Union, Australia and Switzerland

[121] In 2001, the ULCC adopted a uniform act for the implementation of the Convention. The Working Group on the 1996 Convention of the Coordinating Committee of Senior Officials - Family Justice (CCSO-FJ), in collaboration with the Department of Justice (CAILS), is continuing to analyze the implications of implementing the Convention in Canada. Over the last year, this work has progressed very well.

[122] On May 23, 2017, Canada signed the Convention. On June 5, 2017, in accordance with the Policy on Tabling of Treaties in Parliament, the Convention was tabled in the House of Commons. On May 22, 2018, Bill C-78 was introduced in Parliament. The Bill implements the two Conventions at the federal level as part of a package of amendments to the *Divorce Act*.

[123] Work leading to the ratification of the Convention will take some time. Ratification will only be possible once the following conditions are met: amendments to the *Divorce Act* and to the laws of at least one province or territory are made to ensure consistency with Convention rules; and at least one province or territory that has amended its laws asks the federal government to have the Convention apply in its jurisdiction. Upon ratification, Canada will declare that the application of the Convention extends only to such province(s) or territory(ies). New declarations will be made once other provinces and territories have amended their laws and requested that the Convention apply to their jurisdiction.

[124] Canada participated in the 7th Meeting of the Special Commission to review the Practical Operation of the 1980 Convention and the 1996 Convention on Child Protection held in The Hague from October 10-17, 2017. The Canadian delegation was headed by

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Justice Canada (CAILS) and included federal officials of the Department of Justice and Global Affairs Canada, representatives from the provinces and territories and two Canadian representatives to the International Hague Network of Judges. The Conclusions and Recommendations adopted by the Special Commission and later approved by the Council on General Affairs and Policy at its March 2018 meeting are available at: <https://assets.hcch.net/docs/edce6628-3a76-4be8-a092-437837a49bef.pdf>

[125] *Action required in Canada:* Continue working with federal-provincial-territorial partners on the analysis and implementation of the Convention; Follow-up as needed on the Special Commission; Actively promote implementation of the Convention in Canada.

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

[126] The *Convention on the Civil Aspects of International Child Abduction* was the first Hague Convention to be ratified by Canada and brought into force in all 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 98 States party to the Convention.

[127] 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 Global Affairs Canada. Canadian Central Authorities work regularly with external agencies in order to locate children, including police, the Royal Canadian Mounted Police (RCMP) through its National Centre for Missing Persons and Unidentified Remains, the Canada Border Services Agency, education and child protection agencies and non-governmental organizations.

[128] Pursuant to Article 38 of the Convention, any State that was not a member of the Conference when the Convention was concluded in 1980 may accede to it. However, in order for such accession to have effect between the acceding State and another State party to the Convention, it is necessary for the latter to declare its acceptance of the accession.

[129] Canada has yet to make decisions on the acceptance of the accessions to the Convention by the following 18 States: Armenia, Bolivia, Gabon, Guatemala, Guinea, Iraq, Jamaica, Kazakhstan, Lesotho, Nicaragua, Pakistan, the Philippines, the Republic of

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Korea, the Russian Federation, Seychelles, Thailand, Tunisia 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.

[130] Canada participated in the 7th Meeting of the Special Commission to review the Practical Operation of the 1980 Convention and the 1996 Convention on Child Protection held in The Hague from October 10-17, 2017. The Canadian delegation was headed by Justice Canada (CAILS) and included federal officials of the Department of Justice and Global Affairs Canada, representatives from the provinces and territories and two Canadian representatives to the International Hague Network of Judges. The Conclusions and Recommendations adopted by the Special Commission and later approved by the Council on General Affairs and Policy at its March 2018 meeting are available at: <https://assets.hcch.net/docs/edce6628-3a76-4be8-a092-437837a49bef.pdf>.

[131] Since June 2013, CAILS has been participating in the Hague Working Group developing a draft guide to good practice on the interpretation and application of the grave risk of harm exception set out in Article 13(1) (b) of the Convention. The most recent meeting of the Working Group was held in the margins of the Special Commission in October 2017 and another meeting is scheduled to take place in September 2018. A Draft Guide is expected to be finalized in time to be presented for approval to the Council on General Affairs and Policy in March 2019.

[132] The Working Party on Mediation of the Malta Process, co-chaired by Canada (Global Affairs Canada), did not meet over the course of the last year. Work was done, however, to identify a new co-chair to succeed to Pakistan and to expand the membership of the Working Party. The main objective of the Malta Process is to foster dialogue between States party to the Hague children's Conventions and non-party States of Islamic legal tradition. The Department of Justice (CAILS) supports this initiative as part of its responsibilities for Canada's participation in the work of the Hague Conference.

[133] In 2011, the Hague Conference adopted the Principles for the Establishment of Mediation Structures in the Context of the Malta Process (<https://assets.hcch.net/docs/c96c1e3d-5335-4133-ad66-6f821917326d.pdf>), which call on States to designate Central Contact Points to provide general information and assistance to access mediation services. Canada has designated the unit of Justice Canada acting as the Federal Central Authority for the 1980 Convention as its Central Contact Point for incoming cases and Global Affairs Canada (Consular Services), as its Central Contact Point for outgoing cases. For incoming cases, the Central Contact Point will essentially direct applicants to information available via the Inventory of Government-Based Family Justice

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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>).

[134] *Action required in Canada:* Continue participation in the Working Group developing a draft guide to good practice on the interpretation and application of Article 13(1)(b) of the Convention. Follow-up, as needed, on the Special Commission. Continue the acceptance of accessions process.

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

[135] 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 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.

[136] There are currently 99 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.

[137] In October 2016, the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption resumed its activities. The Working Group was set up after the June 2010 Special Commission to review the operation of the *Intercountry Adoption Convention*. In October 2012, it produced a discussion paper titled “*Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases*” (<https://assets.hcch.net/upload/2012discpaper33en.pdf>). Since resuming its activities, the Working Group has been developing a toolkit to identify and address illicit practices, policies or lack thereof that create an environment for illicit practices, and activities that, while not in themselves necessarily illicit, may facilitate or promote illicit practices. The Working Group is to coordinate its activities with the work of the Experts’ Group on the Financial Aspects of Intercountry Adoption. Canada has been participating in the activities of the Working Group since 2011 and in those of the Experts’ Group since 2012.

[138] In March 2018, the Council on General Affairs and Policy welcomed and approved the *Note on habitual residence and the scope of the 1993 Hague Convention*, which aims to promote a proper and more consistent application and interpretation of the Convention.

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The Council also approved the commencement of preliminary discussions regarding possible topics for the next meeting of the Special Commission on the operation of the *Intercountry Adoption Convention*. Due to limited resources and other competing priorities of the Hague Conference, this meeting may not be held before 2021.

[139] *Action required in Canada:* Continue to participate in the activities of the Working Group on Preventing and Addressing Illicit Practices and the Experts' Group on the Financial Aspects of Intercountry Adoption.

e. Status of Children Project (Hague Conference)

[140] 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. The Experts' Group has met three times so far: in February 2016, January/February 2017 and February 2018. Its 4th and 5th meetings are scheduled to take place in September 2018 and in January/February 2019. Canada is represented on the Experts' Group by the Department of Justice (CAILS). Information on the work done by the Hague Conference on the private international law issues related to legal parentage and surrogacy since 2010, including the reports of the meetings of the Experts' Group, is available on its website at: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>.

[141] The Experts' Group has agreed, in principle, on the feasibility of developing a binding multilateral instrument dealing with the recognition of foreign judicial decisions on legal parentage. It is continuing its work on the possible operation of such an instrument, as well as on harmonized private international law rules on the recognition of foreign public documents recording legal parentage. In addition, the Experts' Group will discuss the feasibility of applying the private international law rules it develops to legal parentage established in situations involving international surrogacy arrangements and the possible need for additional rules and safeguards in these situations, as well as in situations involving assisted reproductive technology generally. The Experts' Group will report to the Council on General Affairs and Policy at its 2019 Meeting.

[142] *Action required in Canada:* Prepare and consult, as necessary, in preparation for the fourth and fifth meetings of the Experts' Group.

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

[143] The *Convention on the International Protection of Adults* came into force internationally in 2009 and has 12 Contracting States: Austria, Cyprus, Czech Republic,

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Estonia, Finland, France, Germany, Latvia, Monaco, Portugal, Switzerland, and the United Kingdom (Scotland). Its purpose is to solve conflicts of law issues relating to the international protection of incapacitated adults. It does so by harmonizing conflict of laws rules applicable to the protection of the person or the property of incapacitated adults and by establishing a structure for effective co-operation on such cases between Contracting States.

[144] At recent meetings of the Hague Conference's Council on General Affairs and Policy, Members of the Hague Conference have reiterated the importance of this Convention.

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

[146] In 2016, the ULCC adopted the Uniform Interjurisdictional Recognition of Substitute Decision-Making Documents Act which also deals with the recognition of documents granting powers of representation - a matter covered by the Convention. This uniform act provides two options to deal with the question of applicable law, one of which is consistent with the Convention.

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

D. PROTECTION OF PROPERTY

1. MEDIUM PRIORITIES

a. Convention Providing a Uniform Law on the Form of an International Will (UNIDROIT)

[148] The *Convention Providing a Uniform Law on the Form of an International Will* establishes an international form of will which is recognized as valid in all Contracting States without reference to the conflict of law rules concerning the validity of wills.

[149] The 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). The Uniform Wills Act (2014) as amended by the ULCC in 2016 contains provisions implementing the Convention. The adoption of implementing legislation by

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Canadian jurisdictions that have not yet done so and the subsequent extension of the application of the Convention to those jurisdictions would allow a greater number of Canadians to benefit from the Convention.

[150] *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)

[151] The *Convention on the Law Applicable to Trusts and on their Recognition* provides rules to determine the law applicable to foreign trusts. It also requires the recognition of these trusts by Contracting States, including by civil law countries which do not provide for trusts in their law.

[152] The Convention is currently in force in 14 States, the majority of which are civil law jurisdictions. It entered into force for Canada on January 1, 1993 and now applies to nine jurisdictions (Alberta, British Columbia, Manitoba New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, Prince Edward Island and Saskatchewan). The Convention started applying to Ontario on May 1, 2018. The adoption of implementing legislation by Canadian jurisdictions that have not yet done so and the subsequent extension of the application of the Convention to those jurisdictions would allow a greater number of Canadians to benefit from the Convention.

[153] *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)

[154] The *Convention on the Return of Stolen or Illegally Exported Cultural Objects* was finalized 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 43 States party to the Convention.

[155] 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

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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. They are available on the website of UNIDROIT at: <http://www.unidroit.org/instruments/cultural-property/model-provisions>

[156] The UNIDROIT Secretariat continues its efforts to promote the Convention and the Model Legislative Provisions in partnership with other intergovernmental organizations such as UNESCO with a view to protecting cultural property and combating terrorism and transnational organized crime. Successful initiatives include the establishment in 2017 of an informal Ratification Task Force, which is expected to meet yearly, and of the 1995 UNIDROIT *Convention Academic Project* (“UCAP”), an online platform for the sharing of information on UNIDROIT instruments protecting the art market and cultural heritage from illicit conduct. The UCAP addresses institutional and individual partners (mostly professors in the area of cultural heritage law) and its sponsors include UNESCO, INTERPOL and UNODC.

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

CONCLUSION

[158] 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 are also presented. As such, we hope this report will be useful for provincial and territorial government officials.

[159] Given the priorities laid out in this report, we suggest that provinces and territories give particular attention 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)
- *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 on the Limitation Period in the International Sale of Goods and Protocol* (UNCITRAL)
- *Convention Providing a Uniform Law on the Form of an International Will* (UNIDROIT)

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

[160] Demands in terms of the development of new instruments will continue this year given the number of topics under negotiation. In that regard, the Department of Justice will need to prioritize its activities and to adjust to resource allocation constraints. Many of these new projects will require input from experts in specific areas of the law. Practitioners, government experts, and 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:

- MAC Protocol to the Convention on International Interests in Mobile Equipment (UNIDROIT)
- Cross-border Recognition of Digital Identity (UNCITRAL)

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- Judgments Project (Hague Conference)
- Status of Children Project (Hague Conference)

[161] 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 implementing such conventions and other international instruments that require provincial and territorial legislation in order for Canadians to benefit from 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.

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
- 2018 - Convention on International Settlement Agreements Resulting from Mediation

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
- 2017 - UNCITRAL Model Law on Electronic Transferable Records
- 2018 - UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation
- 2018 - UNCITRAL Model Law on the Cross-border Recognition and Enforcement of Insolvency-related Judgments

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

June 2017

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 (UNCITRAL) • Enforcement of settlement agreements resulting from international commercial conciliation/mediation (UNCITRAL) • Preliminary Draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (UNIDROIT) • Identity Management and Trust Services (UNCITRAL) • Legislative guide on key principles for business registration (UNCITRAL) 	<ul style="list-style-type: none"> • Judgments Project (Hague) • Model law on cross-border recognition and enforcement of insolvency-related judgments (UNCITRAL) 	<ul style="list-style-type: none"> • Status of Children Project (Hague) 	
	Implementation	<ul style="list-style-type: none"> • 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) 	<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 	<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) 	<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)

Priority Level		International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
		<ul style="list-style-type: none"> Conventions on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL) 	Documents in Civil and Commercial Matters (Hague)	<ul style="list-style-type: none"> Convention on the International Protection of Adults (Hague) 	
	Monitoring			<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) 	
2	Negotiation	<ul style="list-style-type: none"> Legislative guide on an UNCITRAL limited liability organization Practice Guide to the Model Law on Secured Transactions (UNCITRAL) 			
	Implementation	<ul style="list-style-type: none"> Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation 			<ul style="list-style-type: none">
	Monitoring		<ul style="list-style-type: none"> Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters 		
3	Implementation	<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) 			
	Monitoring	<ul style="list-style-type: none"> Convention on Securities Held by Intermediaries (Hague) - ULCC Uniform Act Convention on the Assignment of Receivables (UNCITRAL) Convention on International Interests in Mobile Equipment and Aircraft Protocol (UNIDROIT) 			<ul style="list-style-type: none"> Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT)

CANADIAN STATUS CHART OF INTERNATIONAL PRIVATE LAW INSTRUMENTS*

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
1	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 33 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) - Implementing legislation adopted in Ontario (2017) British Columbia (2018) 	<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 80 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) - Implementing legislation adopted in Ontario (2017) Saskatchewan (2018) 	<ul style="list-style-type: none"> - Entered into force on March 1, 2013 - 10 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 in in Nunavut (2003) Ontario (2017) 	<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	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

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
3	Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (Hague)	- ULCC uniform act under consideration	- In force - 3 States party	- Development of uniform act and commentaries
	Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)	- ULCC uniform act in preparation	- Entered into force on January 1, 2000 - 8 States party	- Develop a uniform act and commentaries
	Convention on the Assignment of Receivables in International Trade (UNCITRAL)	- ULCC uniform act (2007)	- Adopted in 2001 - Not in force - 5 ratifications – accessions required to enter into force - 1 accession	- Monitor ratification developments
Monitoring	Convention on International Interests in Mobile Equipment and Aircraft Protocol (UNIDROIT)	- ULCC uniform act (2002) Entered into force in Canada on April 1, 2013 and application extended to all Canadian jurisdictions	- Entered into force March 1, 2006 - 71 States party (Convention and Protocol)	
	Convention on Substantive Rules for Intermediated Securities (UNIDROIT)		- Adopted in 2009 - Not in force	- None at this time
	Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		- Adopted in 1988 - Not in force - 10 ratifications – accessions required to enter into force - 5 accessions - Signed by Canada on December 7, 1989	- None at this time
	Convention on International Financial Leasing (UNIDROIT) Convention on International Factoring (UNIDROIT)	- ULCC uniform act (1995)	- Entered into force on May 1, 1995 - 9 States party (Convention on International Factoring) - 10 States party (Convention on International Financial Leasing)	- Consult with governments and industry on interest
	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UN)	- Entered into force in Canada on August 10, 1986 - In force in all Canadian jurisdictions	- Entered into force on June 7, 1959 - 159 States party	- None at this time
	Model Law on Electronic Commerce (UNCITRAL)	- ULCC uniform act (1999) - Enacted by all Canadian jurisdictions	- Adopted in 1996 - Model Law enacted in 71 States	- Provide information when requested

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action
	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 - 89 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 44 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
I	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		<ul style="list-style-type: none"> - Entered into force on January 24, 1965 - 115 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 - 73 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 - Implementing legislation adopted in Ontario (2017) and Saskatchewan (2018) 	<ul style="list-style-type: none"> - Entered into force on November 10, 2015 - 31 Contracting parties à 	<ul style="list-style-type: none"> - Coordinate federal implementation analysis and promote implementation in provinces and territories
Monitoring	Convention between Canada and the United Kingdom of Great Britain and Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters	<ul style="list-style-type: none"> - In force in Canada and application extended to all Canadian jurisdictions except Québec and Nunavut 	<ul style="list-style-type: none"> - Entered into force 1984 	<ul style="list-style-type: none"> - Extend application when requested
	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
I	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 - 39 States party and 1 Regional Economic Integration Organisation	- Continue work on implementation
	Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and Measures of Protection of Children (Hague)	- ULCC uniform act (2001) CCSO – Family Justice Working Group on implementation	- Entered into force on January 1, 2002 - 48 States party	- Continue work on implementation with FPT partners and follow-up as needed on the Special Commission
	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 - 12 States party	- Work with other federal departments and provincial and territorial authorities on implementation issues.
Active 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 - 98 States party	- Consider decisions on acceptance of 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 - Follow-up as needed on the Special Commission
	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 - 99 States party	- Participate in the activities of the Working Group on Preventing and Addressing Illicit Practices and the Experts' Group on the Financial Aspects of Intercountry Adoption

Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action
2	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), Ontario (2018) - 	<ul style="list-style-type: none"> - Entered into force on January 1, 1992 - 14 States party 	<ul style="list-style-type: none"> - Consult with the jurisdictions that have not yet implemented the Convention
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 - 40 States party (Convention) 	<ul style="list-style-type: none"> - When requested, assist the Department of Canadian Heritage in consultations on the Convention

PROVISIONAL SCHEDULE OF INTERNATIONAL PRIVATE LAW MEETINGS

August 2018 - July 2019

Meeting		Dates	Place
1.	Hague Conference Experts' Group on proposed protection of tourists project	28-31 August 2018	The Hague
2.	Hague Conference – 125 Years HCCH	12 September 2018	The Hague
3.	Hague Conference Working Group on the Draft Guide to Good Practice on Article 13(1)(b) of the Abduction Convention	18-21 September 2018	The Hague
4.	Hague Conference Experts' Group on Parentage	25-28 September 2018	The Hague
5.	UNCITRAL Working Group I: Micro, Small and Medium-sized Enterprises	8-12 October 2018	Vienna
6.	UNCITRAL Working Group IV: Electronic Commerce	19-23 November 2018	Vienna
7.	UNIDROIT General Assembly	December 2018	Rome
8.	UNCITRAL Working Group V: Insolvency Law	10-14 December 2018	Vienna
9.	UNCITRAL Working Group VI: Security Interests	17-21 December 2018	Vienna
10.	Hague Conference Experts' Group on Parentage	29 January - 1 February 2019	The Hague
11.	UNCITRAL Working Group II: Dispute Resolution	4-8 February 2019	New York

Meeting		Dates	Place
12.	Hague Conference: Council on General Affairs	March 2019	The Hague
13.	UNCITRAL Working Group I: Micro, Small and Medium-sized Enterprises	25-29 March 2019	New York
14.	UNCITRAL Working Group IV: Electronic Commerce	8-12 April 2019	New York
15.	UNIDROIT Governing Council	8-10 May 2019	Rome
16.	UNCITRAL Working Group VI: Security Interests	13-17 May 2019	New York
17.	UNCITRAL Working Group V: Insolvency Law	28-31 May 2019	New York
18.	Hague Conference Diplomatic Session Judgments (TBC)	17 June - 2 July 2019	The Hague
19.	UNCITRAL 52 nd Commission Session	8-26 July 2019	Vienna

**CONSTITUTIONAL, ADMINISTRATIVE AND INTERNATIONAL LAW SECTION
(CAILS)**

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