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REPORT OF THE DEPARTMENT OF JUSTICE
TO THE UNIFORM LAW CONFERENCE

Charlottetown, August 7-11, 1994

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REPORT OF THE DEPARTMENT OF JUSTICE TO THE UNIFORM LAW CONFERENCE

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INTRODUCTION

Since the last meeting of the Uniform Law Conference, Canada has continued to participate actively in the activities of The Hague Conference on Private International Law, UNCITRAL and Unidroit. It also participated for the first time as a member of the Organization of American States in the Inter-American Specialized Conference on Private International Law which was held in Mexico City in March, 1994. The Department of Justice has consulted regularly with the provinces and the territories and with other interested federal Departments as well as with the private sector on various conventions adopted by those organizations and on instruments being developed under their auspices.

Before referring to those activities, let me mention the assistance provided by the Advisory Group on Private International Law and remind you of the Status Chart of Canadian Activities on Private International Law.

ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

The Advisory Group on Private International Law was first established by the Department of Justice in 1973 to provide it with close and continuing guidance in matters of provincial interest that are under consideration by certain international organizations in private international law. The Group, which was last reconstituted in 1990, is now composed of a private practitioner and five regional representatives: one from Manitoba representing Manitoba, Alberta and Saskatchewan; one from Prince Edward Island representing the Atlantic provinces; and one from each of British Columbia, Ontario and Quebec.

The Group has met on two occasions since last August: in November, 1993, and April, 1994. I would like to mention that the Chair of the International Law Section of the Canadian Bar Association was present as an observer at these meetings. The agenda for these meetings was very full and gave rise to a very productive exchange of views on various projects and conventions of The Hague Conference, Unidroit,

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UNCITRAL, the World Bank and the Organization of American States, as well as other related matters in private international law.

It is worth noting that suggestions made last year by the Group to improve the consultation process regarding private international law activities were put into place and achieved positive results. For instance, documents are now drafted for the purpose of presenting the Canadian perspective on the subject matter of a consultation as well as proposing a Canadian position in order to assist participants in the consultation. Despite the short delays in consultations, attributable mainly to the late arrival of documents from international organizations, replies were numerous and were taken into consideration in the finalization of the Canadian positions presented at various meetings of these organizations.

Since the mandate of the current members of the Advisory Group expires this year, consultation will be undertaken regarding the Group's recomposition in time for the meeting of the Group planned for the fall.

STATUS CHART OF CANADIAN ACTIVITIES IN PRIVATE INTERNATIONAL LAW

In an effort better to inform provinces and interested groups on developments in private international law in Canada, the Department of Justice of Canada prepares a Status Chart of Canadian Activities in Private International Law. It is intended to give updated information on private international law conventions to which Canada is a party and on conventions or model laws currently under consideration for future implementation.

The latest edition of the Status Chart dated July, 1994, has been sent to all provinces and territories as well as to Bar associations, law societies, and universities.

LATEST DEVELOPMENTS IN PRIVATE INTERNATIONAL LAW

The main event of the last year in the field of private international law was the signature by Canada of the *Hague Convention on the Protection of Children and Cooperation with Respect to Intercountry Adoption* on April 12, 1994.

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In 1994, Canada participated in various meetings of the Hague Conference, such as a working group on the impact on refugee children of the Intercountry Adoption Convention in April, 1994, the Special Commission on revision of the 1961 *Convention on the Protection of Minors* from May 26 to June 3, 1994, and the Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments from June 20-24, 1994.

Convention on Intercountry Adoption

Since the Hague *Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption* was finalized on May 29, 1993, fifteen States, including Canada, have become signatories. The other States are Brazil, Burkina Faso, Columbia, Costa Rica, Ecuador, Finland, Israel, Mexico, the Netherlands, Romania, Sri Lanka, the United Kingdom, the United States and Uruguay. Canada signed the Convention on April 12, 1994. This is the first step in the process of having the Convention apply to Canada. Once implementing measures are in place in a certain number of provinces, hopefully before the end of 1994, Canada may then be in a position to ratify the Convention.

The Convention represents a satisfactory compromise between countries of origin and receiving countries in matters of adoption. It will increase the legal safeguards guaranteeing that intercountry adoption takes place only when in the best interests of the child. It will establish a framework of State cooperation in ensuring the respect of those safeguards and will also provide for the recognition of adoptions made in accordance with the Convention. Overall, the Convention will add certainty and uniformity to the adoption process while allowing for flexibility and timeliness in its application. It is noteworthy that the Convention will change existing Canadian practices in the field of international adoptions.

Decisions will have to take place in each province and territory on how to implement the Convention. Implementation will be facilitated thanks to the adoption by the Uniform Law Conference in 1993 of the *Uniform Intercountry Adoption (Hague Convention) Act*. Prince Edward Island is the first jurisdiction to enact implementing legislation in Canada. It is hoped that other jurisdictions will soon follow the example set by Prince Edward Island.

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Department of Justice officials along with other federal officials from the National Adoption Desk and the Citizenship and Immigration Department will meet with provincial authorities in the coming months to follow up on the implementation process. Canada will participate in a meeting on the implementation of the Intercountry Adoption Convention at The Hague in October, 1994.

One remaining issue not fully discussed in May, 1993, at The Hague was the problematic application of the Convention to refugee and other displaced children. This question was addressed at a meeting of a working group from April 12-14, 1994, in which Canada participated. The discussion led to the drafting of a proposal recommending that the Convention be interpreted with respect to refugee and other displaced children by taking into consideration the vulnerable situation of these children. The recommendation will be reviewed at the October meeting.

Convention on the Law Applicable to Trusts and their Recognition

In 1992, Canada ratified the 1986 *Hague Convention on the Law Applicable to Trusts and Their Recognition*. The Convention came into force for Canada on January 1, 1993, and was extended to those jurisdictions which had by then adopted implementing legislation based on the Uniform Act, namely Alberta, British Columbia, New Brunswick, Newfoundland, and Prince Edward Island. Since then, Manitoba and Saskatchewan have passed necessary implementing legislation. As a result, the Convention has been extended to those provinces; it entered into force for Manitoba on July 1, 1994, and will enter into force in Saskatchewan on September 1, 1994. Other jurisdictions will be encouraged to adopt necessary legislation with a view to having the Convention applied throughout Canada in the near future.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters

This Convention has been in force throughout Canada since May 1, 1989. The rules of practice in all jurisdictions and at the federal level have been amended to comply with it. A review of the application of the Convention in Canada was undertaken by the federal Central Authority designated under the Convention. Provincial and territorial Central Authorities were invited to submit comments on the operation of the Convention in their jurisdiction, either as a requesting or requested authority to facilitate the service of documents transmitted to or coming from abroad.

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Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

Consultation on the opportunity for Canada to accede to this Convention was undertaken in 1990. So far, the implementation of this Convention has received the support of six jurisdictions while two provinces are still reviewing the matter. Three jurisdictions have not yet responded to our consultation and one has received clarification on questions regarding the impact of the Convention on existing rules. The issue of the costs of applying the Convention was raised and input from foreign Central Authorities in Australia, the United Kingdom and the United States was sought on the matter. The members of the Advisory Group will review the costs issue at its next meeting.

A final consultation will be initiated by the end of this year with a view to finalizing the Canadian position regarding possible accession to the Convention. Upon the conclusion of this consultation, this Department might seek the assistance of the Uniform Law Conference for the implementation of the Convention in Canada.

There is no federal State clause in the Convention; therefore the unanimous support of all the provinces and territories to its implementation must be obtained in order for Canada to become party to it. It is worth noting that the implementation of the Taking of Evidence Convention would supplement the application of the Service Convention already in force in Canada.

Convention Abolishing the Requirement of Legalisation for Foreign Public Documents

Upon the recommendation of the Advisory Group, the consultation process regarding Canada's accession to this Convention has been suspended until further notice. Letters were sent to inform the provinces and territories to that end on March 9, 1994.

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Convention on the Law Applicable to the Succession to the Estates of Deceased Persons

In the past year, consultation regarding possible support for the implementation of this Convention has not been actively pursued. Different positions have been expressed on the matter and further study of the Convention has been undertaken to answer questions raised on the interpretation of the Convention. Consultation might be reactivated pending decisions on work priorities in private international law matters.

Convention on the Civil Aspects of International Child Abduction

Upon the tenth anniversary of the coming into force of the Convention in Canada, a meeting of all Central Authorities at the federal, provincial and territorial levels was organized in Halifax in December, 1993, upon the conclusion of the meeting of the Federal/Provincial/Territorial Committee on Family Law.

The Attorney General of Canada, as well as the Attorneys General of Manitoba and Ontario, intervened before the Supreme Court of Canada in January, 1994, in the appeal of a decision of the Manitoba Court of Appeal in *Thomson v. Thomson*. The Supreme Court, with reasons to follow, upheld an order for the return of a child illegally removed by his mother from Scotland to Canada. This was a very important test case as it was the first occasion for the Supreme Court of Canada to discuss the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*. We are waiting for reasons for judgment.

Thirty-seven States are now parties to this Convention, after having either ratified it or acceded to it. Consultation has been undertaken in Canada on the issue of the domestic process followed prior to Canada's acceptance of new States' accession to the Convention. A paper was circulated in May, 1994, to members of the Federal/Provincial/Territorial Committee on Family Law as well as to Central Authorities in all jurisdictions to consult with them on this issue. Upon completion of the consultation, a decision will be taken on the need for changing the current process established in 1986 at the time of the first State's accession to the Convention. There are currently eight new cases of accession on which Canada has yet to declare its acceptance.

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The Hague Conference's Work of Current Interest

Convention on the Protection of Minors

The Department of Justice participated in the first meeting of the Hague Conference Special Commission, held in The Hague, May 26-June 3, 1994, which is mandated to review the 1961 *Convention on the Protection of Minors*. This project constitutes the priority item on the 1993-96 work programme of the Hague Conference with a view to submitting a revised Convention for the agreement of its member States at the Eighteenth Session in October, 1996. This revision might also encompass the extension of the Convention to incompetent adults. Consultation took place in time for the first meeting of the Special Commission.

The task of the Special Commission is aimed primarily at identifying the direction of the proposed revision in matters related to the protection of the person and the property of the minor in the context of conflicts of laws and jurisdiction. In so doing, the Special Commission will try to fix the problems of the existing Convention which has failed to attract common law countries as parties. It will also take into consideration the rights of the child as embodied in the 1989 United Nations *Convention on the Rights of the Child*.

Initial discussion on the scope of the revision regarding the protection of the person of the minor has indicated an agreement to study the inclusion of the enforcement of custody orders in the proposed revision. Consultation will be undertaken with interested authorities prior to the meetings of the Special Commission to be held in 1995.

Recognition and Enforcement of Foreign Judgments

The Hague Conference organized a meeting of a Special Commission in June, 1994, to study further the problems of drafting a new multilateral convention on the questions of jurisdiction, and recognition and enforcement of foreign judgments in civil and commercial matters, as part of its 1993-1996 work programme. Canada was represented at the meeting. Given that the rules on recognition and enforcement of judgments in Canada are in flux in light of recent decisions by the Supreme Court,

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this project may represent an interesting step in providing for harmonization of the principles of recognition and enforcement worldwide. The current work of the Uniform Law Conference has been taken into consideration.

The Department of Justice consulted the provinces and territories and solicited the views of practitioners and academics interested in the matter prior to the meeting of the Special Commission. A report will be distributed on the conclusions reached by the Special Commission as soon as it is available from the Hague Conference. It will be up to the Special Commission of the General Affairs and Policy of the Hague Conference, which will meet in June, 1995, to decide to recommend or not the continuation of the work on this project.

UNCITRAL

The United Nations Commission on International Trade Law is the "core legal body within the United Nations system in the field of international trade law" whose mandate is to further the progressive harmonization and unification of the law of international trade.

The membership of UNCITRAL is limited at present to thirty-six States, structured so as to be representative of the various geographic regions and the principal economic and legal systems of the world. Observers from States and international governmental and non-governmental organizations are welcome to participate at meetings of UNCITRAL and of its working groups which operate by consensus. Canada has been a member of UNCITRAL since 1989.

The Commission currently has three working groups: the Working Group on International Contract Practices (ICP); the Working Group on the New International Economic Order (NIEO); and the Working Group on Electronic Data Interchange (EDI, formerly the Working Group on International Payments). At this time, the Working Group on International Contract Practices and the Working Group on Electronic Data Interchange are completing projects. The next project for the Working Group on the New International Economic Order has not yet been determined.

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United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980)

The Convention came into force for Canada on May 1, 1992. At that time the Convention extended to all Canadian jurisdictions with the exception of the Yukon, which adopted implementing legislation in June, 1992. A declaration extending the Convention to the Yukon was deposited and took effect on January 1, 1993. Since British Columbia then amended its implementing legislation to repeal the provision rendering Article 1(1)(b) of the Convention inapplicable there, a declaration withdrawing the declaration concerning Article 1(1)(b), made at the time of Canada's accession to the Convention, was deposited and took effect on February 1, 1993. The Convention now applies uniformly across Canada.

Convention on the Limitation Period in the International Sale of Goods

The United Nations *Convention on the Limitation Period in the International Sale of Goods* (New York, 1974) (the "Limitation Convention") grew out of the work of UNCITRAL to unify international sales law. The resulting Convention, as amended by the 1980 Protocol, was intended to dovetail with the United Nations *Convention on Contracts for the International Sale of Goods* (Vienna, 1980) (the "Sales Convention"). There is substantial similarity between the Conventions, in particular the Articles setting out the sphere of application, declarations and reservations, the federal State clause, and the final clauses.

The purpose of the Limitation Convention is to eliminate disparities in the national laws governing limitations on the initiation of legal proceedings; these disparities create uncertainty and can create hardship both in cases where meritorious claims are statute-barred by a very short limitation period, and also where parties are left open to liability for an inordinately long time in jurisdictions with very long limitation periods.

The Convention is divided into four Parts, of which Part One, containing the actual limitation provisions, is the most important; it contains a very detailed scheme of substantive law. Parts Two, Three and Four deal with implementation, declarations and reservations, and final clauses, respectively. The Limitation Convention sets a standard four-year limitation period for commercial litigation.

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At the date of the latest UNCITRAL session (May-June, 1994), there were seventeen ratifications, accessions and successions, including our North American trading partners, Mexico and the United States (May 5, 1994). The Limitation Convention entered into force August 1, 1988. Now that the Vienna Sales Convention is in force for Canada, we are considering whether there is sufficient interest for accession to the Limitation Convention.

Convention on International Bills of Exchange and International Promissory Notes

The UNCITRAL *Convention on International Bills of Exchange and International Promissory Notes* was adopted by the General Assembly of the United Nations on December 9, 1988. Canada participated in drafting the Convention, which will establish a new international regime based on a viable compromise between the common law and the civil law systems. Canada was the first country to sign this Convention; the United States and the U.S.S.R. (now succeeded by the Russian Federation) have also done so. Guinea and Mexico have acceded to it. The Convention will come into force after ten ratifications or accessions. In order to implement it in Canada, federal legislation would be required.

Model Law on International Credit Transfers

At the 25th session in New York in May, 1992, the Commission completed its review of and adopted the *Model Law on International Credit Transfers* (formerly the *Model Law on Electronic Funds Transfer*) that had been prepared by the Working Group on International Payments. By resolution in October, 1992, the U.N. General Assembly recommended that all States give consideration to enacting legislation based on the Model Law. The Model Law achieves an acceptable compromise on issues that arise because of the speedy nature of electronic funds transfers (EFTs) on the one hand and the need to give as much protection as possible to clients of financial institutions using EFT systems. An example is found in the provision relating to the consequences of failed, erroneous or delayed credit transfers. Implementation of the Model Law in Canada would fall under the responsibility of the Canadian Payments Association which under its legislation is mandated to operate the national clearings and settlement system and to plan the evolution of the national payments system.

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Model Law on Procurement of Goods and Construction

This subject is considered important by developing States who often perceive their access to markets in developed States as being unnecessarily limited by governmental procurement practices, in particular. The Department of Justice has participated very actively in the work on procurement and has consulted with federal and provincial departments and with industry as the work progressed in the UNCITRAL Working Group on the New International Economic Order. The Model Law was submitted to the Commission at its 26th session in Vienna in July, 1993, when it was reviewed, amended and adopted. The U.N. General Assembly has adopted a resolution urging States to adopt it.

The Model Law is intended to serve as a model law to countries for the evaluation and modernization of their procurement laws and practices and for the establishment of procurement legislation. Basically, it provides for all the essential procedures and principles for conducting procurement proceedings in a transparent and equitable manner.

From a practical point of view, the Model Law mandates the use of international tendering as a general rule although limited or domestic tendering can be used in some cases. In exceptional circumstances, it offers other methods. The procedures provided for in the Model Law are designed to maximize competition in accordance with fair treatment to suppliers and contractors bidding to do government work.

Model Law on the Procurement of Goods, Construction and Services

The *Model Law on the Procurement of Goods and Construction* does not apply to the procurement of services except insofar as they are incidental to the procurement contract. The Commission decided at its 26th session that its Working Group on the NIEO should prepare model provisions on procurement of services. The Working Group completed this project in the spring of 1994 in New York and the Commission finalized and adopted the new Model Law at its 27th session in New York from May 31 to June 17, 1994.

The new provisions are thus contained in a free-standing new model law which adds procurement of services to the existing provisions on goods and construction. It is expected that the General Assembly will adopt a resolution at its next session

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recommending that States enact it. States will thus have the option of adopting provisions which apply only to goods and construction, using the first Model Law, or adopting provisions which apply to goods, construction and services, using this new Model Law.

Legal Guide on International Countertrade Transactions

At its 25th session in May, 1992, the Commission reviewed and adopted a draft *Legal Guide on International Countertrade*, the draft chapters of which had been examined and revised by the Commission at its 23rd session in 1990 and by the Working Group on International Payments in September, 1991. It was published by UNCITRAL in 1993 (ISBN 92-1-133444-6).

UNCITRAL's Work of Current Interest

Independent Guaranty Letters

The Working Group on International Contract Practices has continued its preparation of rules governing independent guarantees and stand-by letters of credit. These rules will take the form of a convention. A final draft is expected to be completed at a meeting of the Working Group in Vienna from September 19 to 30, 1994, although it may carry over to a session in early 1995. The draft, once completed, will be sent to the Commission for consideration and adoption at its 28th session in May, 1995, following which a diplomatic conference would be called to consider finally and adopt the Convention.

Electronic Data Interchange

The Working Group on Electronic Data Interchange is continuing its consideration of draft Model Rules on EDI. The Group is scheduled to meet in Vienna from October 3-14, 1994 and in New York from February 27 to March 10, 1995. The Group hopes to have completed the draft for submission to the Commission's 28th session in May, 1995.

The Working Group is examining a number of EDI issues, including the substantive scope of application of uniform rules, the notion of EDI, definitions of parties to an EDI transaction, form requirements, obligations of parties, formation

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of contracts, liability and risk and the questions of electronic signatures and evidence. The Group has had before it the relevant provisions of the Quebec Civil Code concerning these latter questions and has adopted a similar approach, although the language is not identical.

Draft Guidelines for Pre-hearing Conferences in Arbitral Proceedings

At its 26th session, the Commission considered some of the proposals put forward at the Conference on Uniform Commercial Law in the 21st Century. The Commission decided that the Secretariat should prepare for consideration by the 27th session of the Commission a draft of guidelines on pre-hearing conferences in arbitral proceedings. Such guidelines would be useful because pre-hearing conferences between arbitrators and parties could make it easier for participants to prepare for the various stages of arbitral proceedings.

The Commission reviewed the draft at its 27th session and suggested a number of changes to the Secretariat. The draft guidelines will be discussed and reviewed by the ICCA at its congress in November, 1994, following which the Secretariat will revise them and resubmit them to the Commission at the 28th session in 1995. After work on the guidelines is complete, the Commission will decide whether it should undertake any work on multi-party arbitration and the taking of evidence in arbitral proceedings.

Future Work Programme

The Commission has decided that the Secretariat should, in consultation and cooperation with Unidroit, which is studying the feasibility of a model law on security interests, prepare a study on work on the unification of law on the assignment of claims.

The Commission has also determined that the practical problems caused by the lack of harmony among national laws on cross-border insolvency warrant an in-depth study by the Secretariat notwithstanding the failure of other international organizations to achieve results. It will consider what aspects of cross-border insolvency law might lend themselves to harmonization and the most suitable vehicle therefor. The Secretariat will carry out this work in collaboration with INSOL.

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UNIDROIT

The International Institute for the Unification of Private Law, known as Unidroit, is an inter-governmental organization based in Rome, of which Canada has been a member since 1969. There are fifty-six member States, including the United States, China, Australia, and States from Eastern and Western Europe, South America and Africa. The mandate of Unidroit is to examine ways of harmonizing and coordinating the private law of States. Unidroit drafts conventions and model laws on various private law subjects including the law of sale and related matters, credit law, the law of carriage, security interests, franchising and cultural property. Canada is an active participant in Unidroit.

Leasing and Factoring Conventions

In May, 1988, Canada hosted a Diplomatic Conference, organized by the Department of Justice, for the purpose of adopting two conventions prepared under the auspices of Unidroit, namely, the *Convention on International Financial Leasing* and the *Convention on International Factoring*. Both Conventions were adopted at the Conference. Thus far, France and Italy are the only States to have ratified both Conventions. Nigeria is expected to ratify them soon. The Conventions will come into force after three States have become party to them. Nine other States have signed both Conventions: Belgium, the former Czechoslovakia, Finland, Ghana, Guinea, Morocco, the Philippines, Tanzania and the United States. (Both Slovakia and the Czech Republic, as successor states to the former Czechoslovakia, will consider ratifying conventions to which Czechoslovakia was a signatory.) Germany and the United Kingdom have signed the *Convention on International Factoring*, whereas Panama is a signatory to the *Convention on International Financial Leasing*.

The Department of Justice conducted consultations with the provinces, territories and interested private sector groups and experts on the desirability of Canada becoming a party to the Conventions. The responses received indicated that there is general support for Canada becoming party to both Conventions. At the request of the Department, the Uniform Law Conference has agreed to prepare draft uniform legislation regarding the implementation of the Conventions for adoption by interested jurisdictions.

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Uniform Law on the Form of an International Will

The *Convention Providing a Uniform Law on the Form of an International Will* was acceded to by Canada in 1977. The government of France deposited its instrument of ratification of the Wills Convention on June 2, 1994. Other States parties are Ecuador, Niger, Portugal, Libya, Belgium, Cyprus and Italy.

The Convention has been extended to five Canadian provinces: Manitoba, Newfoundland, Ontario, Alberta and Saskatchewan. On May 19, 1994, Prince Edward Island enacted legislation implementing the Convention. A declaration extending the Convention to Prince Edward Island will be filed soon.

Unidroit's Work of Current Interest

Unidroit has a number of interesting projects on its current Work Program, some of which include the following:

Security Interests in Mobile Equipment

The subject of security interests in mobile equipment is of particular interest to Canada. Following on the momentum established at the 1988 Diplomatic Conference on Leasing and Factoring, Canada proposed that Unidroit look into the desirability and feasibility of developing uniform laws on security interests in mobile equipment. Unidroit agreed and requested Professor Ronald Cuming of the University of Saskatchewan to prepare a report on the subject.

In his report, Professor Cuming stated that the conflict of laws rules of Western European and North American jurisdictions are inadequate to meet the needs of those who engage in modern financing transactions involving collateral in the form of mobile equipment (such as trucks and construction equipment). He concluded that there is a need to establish a legal framework within which the financing of high-value mobile equipment can function effectively, although it would not be necessary to develop a complete code on international secured transactions law.

An Unidroit questionnaire circulated in commercial and financial circles elicited numerous responses demonstrating widespread support for the drawing up of an international convention or set of uniform rules as a means of recognizing security

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interests in movables at the international level. Unidroit has convened a study group to draw up draft uniform rules on certain international aspects of security interests in mobile equipment.

Principles for International Commercial Contracts

The Department has also followed the progress of the Unidroit Working Group that was established to develop an international instrument on principles for international commercial contracts. The Working Group is a non-governmental body composed of 13 experts representing various legal systems, including Professor Paul-André Crépeau of McGill University.

The Group was not seeking to develop a convention or an international instrument that would place obligations on States. Rather, it set out to draft rules in non-technical language that incorporate concepts of the various legal systems around the world. The Unidroit "Principles for International Commercial Contracts", which contains over 100 principles as well as commentary on each of them, will be available this summer in English and French. The Principles are expected to have many practical applications including the following: parties may choose them as the law governing a contract between them; arbitrators may wish to refer to them in settling disputes; and legislators may draw on them in developing national legislation.

International Protection of Cultural Property

Unidroit will convene a diplomatic conference in the Spring of 1995 to consider a *Draft Convention on the International Return of Stolen or Illegally Exported Cultural Objects*. The draft was prepared by a Committee of Governmental Experts, on which Canada was represented. The purpose of the Convention is to set out rules for the return of stolen or illegally exported cultural property, as defined in the Convention, provided that certain conditions are met. The questions of compensation for *bona fide* purchasers and limitation periods for bringing actions are addressed, as is the issue of the proper jurisdiction in which to bring a claim.

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The Franchising Contract

Unidroit is continuing to examine the feasibility of drawing up uniform rules on certain aspects of international franchising. Unidroit has pursued its cooperation on this matter with the international franchising committee of the business law section of the International Bar Association. Unidroit has set up a study group to prepare an international instrument on franchising, beginning with laying down rules relating to disclosure requirements and then considering the issues of choice of law and forum and the tri-partite relationship of master franchise agreements.

ORGANIZATION OF AMERICAN STATES

Canada was represented by a four member delegation, including provincial representatives from Ontario and Quebec as well as one academic, at the Fifth Inter-American Conference on Private International Law (CIDIP V) which was held in Mexico City from March 14-18, 1994. Two conventions were adopted at CIDIP V, one in commercial law, the other in family law, on the basis of the work prepared by experts at meetings held the previous fall. Consultations were undertaken on the draft conventions prior to CIDIP V.

The *Inter-American Convention on International Traffic in Minors (Criminal and Civil Aspects)*, finalized at CIDIP V, covers a broad range of issues related to child sale, prostitution, exploitation, etc. The Convention is aimed at preventing and punishing illegal acts and sets principles for national action and measures as well as international cooperation. It is also aimed at facilitating the return of child victims of traffic as well as providing for civil remedies.

The other convention concluded at the time of the recent CIDIP V is the *Inter-American Convention on the Law Applicable to International Contracts*. This Convention provides for the recognition of the choice of the law applicable to an international contract by the parties to such contract. This rule is in general conformity with existing rules in both common law and civil law regimes in Canada. The Convention also establishes subsidiary rules for the determination of the law applicable.

A report on CIDIP V will be distributed to the provinces and territories in the coming months.

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WORLD BANK

Convention on the Settlement of Investment Disputes Between States and Nationals of other States

The last consultation on the ratification of the Convention undertaken by the Minister of Justice and the Minister for International Trade among their provincial and territorial counterparts is completed. The process of ratification is suspended temporarily because the project has not received unanimous support by the provinces and territories.

OTHER CONVENTIONS ON MUTUAL LEGAL ASSISTANCE

Canada-United Kingdom

The Department of Justice, in conjunction with the Department of Foreign Affairs, is now engaged in the process of modifying the 1984 *Convention between Canada and the United Kingdom on the Recognition and Enforcement of Judgments in Civil and Commercial Matters*. The changes are aimed at incorporating a reference to the 1988 Lugano *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* to prevent the enforcement of European judgments based on exorbitant grounds of jurisdiction against the interests of Canadian defendants. Since the Canada-United Kingdom Convention already provides for such a clause regarding the 1968 Brussels *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*, this modification is limited in scope. The amendment process is expected to be finalized in the fall of 1994 and at the time appropriate measures will be taken to disseminate information.

Canada-France

A draft convention, prepared after consultation with provinces and territories, was submitted to the French authorities in August, 1992. Somewhat similar to the Canada-UK Convention, the proposed convention with France is also intended to encompass matters concerning recognition and enforcement of maintenance orders. In May, 1994, a French counter-proposal was transmitted with a view to holding the first negotiations in Paris on July 18-19, 1994. Consultation was undertaken by this

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Department to prepare the Canadian position. A report on the negotiations will be presented at this meeting and consultation will be pursued in preparation for the next round of negotiations.

CONCLUSION

As many private international law conventions deal with matters within provincial legislative jurisdiction, Canadian participation in those conventions and in their drafting requires very close coordination between the provinces and the federal government.

The Advisory Group in Private International Law, which was established by the Department of Justice to advise the Department on private international matters, as well as the Uniform Law Conference play a key role in the coordination process. They both make it possible for Canada to participate fully in the development of private international law on the international level.

In particular, the Uniform Law Conference plays an important role in the harmonization of private law by drafting uniform acts that facilitate the implementation in Canada of private international law conventions. In that respect, it is worth noting that the draft *Uniform Court Jurisdiction and Proceedings Transfer Act* (expected to be finalized this year) as well as the 1991 *Uniform Enforcement of Canadian Judgments Act* are of special relevance in the context of the development of international conventions on recognition and enforcement of foreign judgments. We also foresee a role for the Conference in monitoring the uniform acts implementing international conventions in order to ensure that amendments to those uniform acts comply with the conventions they implement. For instance, one of the issues raised in the *Thomson* case before the Supreme Court in January, 1994, is related to the implementing legislation. Perhaps reports on the enactment of uniform acts implementing conventions in the provinces and territories could be of some interest.

This year we hope that the Conference will complete its work relating to the Unidroit Leasing and Factoring Conventions. Finally, we would like to seek the views of the Conference on the usefulness of having reports from jurisdictions on their enactment of uniform acts implementing private international law conventions.