Table A

COMMERCIAL LAW STRATEGY

Introduction

In September 1996, Ministers of Consumer Affairs approved a recommendation that a strategy for the reform of commercial legislation be prepared for consideration. In February, 1997, Ministers of Justice accepted a similar recommendation. Ministers requested that the Civil Justice Committee together with Consumer Officials and the Uniform Law Conference of Canada (ULCC) work together to prepare a strategy for presentation to Ministers.

A strategy has been developed and was endorsed by the Uniform Law Conference of Canada in August, 1998. The approach has been endorsed by the following organizations:

National Business Law Section, Canadian Bar Association
Canadian Bankers Association
Canadian Chamber of Commerce
Retail Council of Canada
Law Commission of Canada
British Columbia Law Institute
Alberta Law Reform Institute
Civil Justice Committee (Officials from Ministries of Justice)

Representatives of these organizations together with representation from the Uniform Law Conference and the Consumer Measures Committee compose the Working Group on this strategy. Members of the Working Group are also seeking endorsements from a number of other organizations representing business interests in Canada.

This strategy outlined in this report has been approved by Justice Deputy Ministers in February 1999.

This report will identify certain key needs of the Canadian economy from the national legislative regulatory infrastructure. Secondly, it will identify practical examples of how inefficiency is created by a lack of reform. Next, it identifies those elements of a framework for reform that the Working Group outlined above has recommended. The paper goes on to identify the Working Group's short term priorities. Finally, the paper talks about how a project of this magnitude needs to be led and funded.

The Case for Reform

This report makes the case that Canada is in need of a commercial law framework. In other words, Canada would benefit considerably from a strategy that gives provinces and territories as well as the federal government, a blueprint for the reform of Canadian commercial legislation. Existing commercial legislation is, for the most part, lacking in uniformity and seriously out-of-date. The only significant effort at large-scale modernization of commercial legislation in Canada in the last 50 years has occurred in Quebec with the recent enactment of the revised Civil Code and in the common law provinces, with the development and significant harmonization of the Personal Property Security Acts in a number of jurisdictions.

How is the need for such a strategy articulated? In general terms, the case can be made that the Canadian economy needs a predictable, responsive and efficient legal system regulating the marketplace, that supports Canada's competitive position in the world. Legislation is a critical element of that regulatory framework.

1. ***Predictability***: In a federal system, each jurisdiction has considerable latitude to enact laws that suit its circumstances. Not all legal rules in one jurisdiction need to be the same as those of its neighbours. However, in commercial law, in a modern nation, competing in the world economy, a lack of predictability causes serious practical problems. Comprehensive legislative review and reform is necessary from time to time in order to keep commercial laws functioning properly. Case law decisions simply cannot keep pace with developments in practice. There is a very sharp loss in predictability every few years as transaction patterns evolve beyond what may confidently be asserted to be the law dealing with the commercial elements of the transaction. Harmonized and modernized commercial law increases predictability to the marketplace.

2. ***Responsiveness***: The commercial world values responsiveness to the needs of business and consumers. An ad hoc approach to commercial legislative reform in thirteen (soon to be fourteen) Canadian jurisdictions means that we have an inherent inability to operate within a "national vision" and to be able to respond to problems as they arise in a cohesive way.

3. ***Efficiency***: The marketplace values efficiency. The Agreement on Internal Trade is based on the notion that Canada is a more efficient marketplace if trade barriers can be lowered within Canada. A key element of an efficient marketplace is the certainty provided by a predictable, harmonized legal infrastructure. It must be more than that however. It must be sensible, rational and attuned to changing times. Our current legal infrastructure does not meet any of these tests. Very often, old systems or patterns of dealing must be maintained in order to serve the needs of some jurisdictions, long after new systems or patterns of dealing have been

developed to take advantage of changes in the laws enacted by the leading jurisdictions. The longer an implementation schedule, the greater the cost of duplication. The current legal infrastructure needs to be streamlined to eliminate redundancy and unnecessary "red tape".

4. ***Competitiveness***: Canada is seldom the jurisdiction in which major international transactions originate. The willingness of parties in other jurisdictions to include a Canadian component in their transactions is directly related to the amount of additional legal work that may be required to structure a transaction to comply with antiquated Canadian commercial law requirements or concepts. The greater the harmonization of Canadian commercial law with those of other leading commercial and financial legal jurisdictions the more readily Canadian businesses will be admitted as participants in major transactions.

The Commercial Law Strategy is very much consistent with the Agreement on Internal Trade.

Article 405 addresses the question of reconciliation. It provides:

> "1. In order to provide for the free movement of persons, goods, services and investments within Canada, the parties shall, in accordance with Annex 405.1, reconcile their standards and standard-related ventures by harmonization, mutual recognition and other means.
>
> 2. Where a difference, duplication or overlap in regulatory measures or regulatory regimes operates to create an obstacle to internal trade, the parties shall, in accordance with Annex 405.2, co-operate with a view to addressing the difference, duplication or overlap."

Article 807 provides that for the purposes of Article 405, the parties shall, to the greatest extent possible, reconcile the respective consumer related measures and standards to a high and an effective level of consumer protection, no party shall be obliged by such reconciliation to lower the level of consumer protection that it maintains at the time of the entry into the enforcement of this agreement.

As this report has already suggested, commercial law is seriously out of date and is very much lacking in harmonization. This analysis is interesting as far as it goes. But what are practical examples of these shortcomings in our current legal infrastructure:

- Lack of harmonization means a higher risk of error. Where risk exists, it is harder or more expensive to do business. Reform means lower risk of error or unwanted legal result where laws are modern and reflect current business practices.

- Lack of harmonization means that different business or consumer transactional documents and forms are used for different provinces. Harmonization should mean that similar forms could be used throughout Canada.

- Lack of harmonization creates significant difficulty for consumers. In a highly mobile economy, consumers would be well-served by commercial law that has consistent, modern and understandable standards from one jurisdiction to the next.

- Modernization of law reduces confusion or inconsistency with foreign laws, especially those based on modern conventions. For example, Canada is a party to the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods). That means that sales between Canadians and foreigners in contracting states (such as the USA) are governed by the Convention's rules unless parties opt out. Those rules are modern and clearer than those under the *Sale of Goods Act*. As a result, Americans and foreign parties get better rules of law dealing with Canadian importers and exporters than Canadians do among themselves. As electronic commerce and internal business transactions inevitably expand, this becomes all the more significant.

A considerable amount of commercial law contemplated by this strategy has significant consumer implications, for example:

(a) sale of goods law contains basic rules around the structure of contracts and the rules for enforcing them;

(b) secured transactions legislation contains basic consumer rights such as the right to access agreements from a creditor, to obtain statements in writing of the amount of the indebtedness of a particular consumer and to make a correction of the amount of indebtedness where an error exists. As well this type of legislation sets up the basic structure for security agreements in personal property and as such has a huge impact on individual consumers;

(c) Proposed uniform electronic commerce legislation removes legal impediments to the use of electronic commerce in the marketplace. This legislation would ensure an electronic transaction is valid. This can favour a buyer or a seller, depending on who is trying to enforce a contract. The rules in the uniform legislation on consent to use of electronic communication and or the presumption of receipt of messages help to ensure equality of bargaining power and to reduce the chances that someone will be tricked or trapped into using electronic communication when they are not ready to do so.

(d) Cost of credit disclosure legislation has been the subject of work by both the Consumer Measures Committee and the Uniform Law Conference of Canada. It

establishes basic rules for disclosure of the cost of credit in Canada.

What are the key elements in the Commercial Law Strategy?

If we accept the argument that we need a commercial law strategy for Canada and that Canada's current commercial law infrastructure is outdated, lacks harmonization and generally needs reform, how do we define how that reform takes shape? What is this concept of commercial law - what's in the tool kit and what is not?

These are not straightforward questions. The Working Group considered these questions. Their response is a very practical one. They suggest that Canadian jurisdictions should consider the reform of private commercial law that is most commonly used in Canada or that needs to be used. They recommend~~ed~~ a 10 year strategy for developing and implementing a "national framework" of commercial law reform. They also suggest priorities for reform in the first years of that strategy. Obviously, the 10 year plan is merely a beginning as business is constantly changing and commercial law must continuously evolve to support economic realities.

The areas covered by this strategy can be generally described in two categories - firstly, commercial law that orders affairs between private parties and, secondly, enforcement law which structures dispute resolution. In considering the content of the framework, the Working Group considered projects completed, underway or under consideration by the ULCC. They reviewed the elements contained in the Uniform Commercial Code developed and revised over the last 46 years in the United States by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. They also made their own suggestions for inclusion.

The elements of the recommended framework are set out below:

I. *Commercial Law that Orders Affairs between Private Parties*

	Uniform Commercial Code **Equivalent**
1. Sale of Goods	Article 2
2. International Sale of Goods	
3. Secured Transactions	Article 9
4. Federal Secured Transactions **	
5. Commercial Liens	
6. Warehouse Receipts, Bills of Lading and Other Documents of Title	Article 7
7. Investment Holding and Transfer	Article 8
8. Electronic Commerce *	
9. Leases	Article 2A
10. Licensing of Intellectual Property	Article 2B (in draft)
11. Negotiable Instruments (Bills of Exchange) **	Article 3
12. Cost of Credit Disclosure	

***** Electronic Commerce is listed here as a separate item because it has some "stand-alone" features. However, it also pervades a number of the other elements.

****** While commercial law jurisdiction is largely provincial, in the view of the Working Group, the federal government has a role to play in ensuring the success of a Canadian Commercial Law Framework, for two reasons. First, the federal government has constitutional jurisdiction in many areas of commercial law under section 91 and 92(10)(a) of the *Constitution Act*. Second, the federal government has exercised these powers in many areas relevant to the uniform projects. Leading examples are Negotiable Instruments (Bills of Exchange and Promissory Notes), Banking, Bankruptcy, Intellectual Property and Shipping. It also seems likely that in the foreseeable future, the federal government will adopt legislation dealing with certain aspects of electronic commerce.

II. *Enforcement Law*

1. Civil Enforcement
2. Enforcement of Canadian Judgments and Decrees
3. Court Jurisdiction and Proceedings Transfer
4. Enforcement of Foreign Judgments
5. Enforcement of Judgments Convention
6. Arbitration
7. International Commercial Arbitration
8. Settlement of Investment Disputes

The Detailed Analysis of each of these components of the framework and the reason for their inclusion are set out in Appendix A.

Priorities

The Working Group in their deliberations felt that, in recommending a Canadian Commercial Law Strategy to governments in Canada, certain priorities should be suggested:

- First of all, the group felt that the elements of Category I - Commercial Law that Orders Affairs between Private Parties - should receive priority over Category II Enforcement Law. They recognized, however, that a significant amount of effort has gone into enforcement law reform and that these pieces of proposed legislation are very largely ready for enactment.

- Secondly, within the first category certain priorities should be recommended for development and enactment:

  (a) **Transfer of Indirectly Held Securities:** The Working Group agreed that the proposed reforms are essential to maintaining the global competitiveness of Canada's securities markets, and that they will benefit all market participants. These measures would be critically important in the face of a financial calamity. A uniform Act will be considered by the ULCC in August, 2000.

  (b) **Cost of Credit Disclosure**: Both the Consumer Measures Committee and the ULCC have finalized their work on this project. It was identified as a target for harmonization in the Agreement on Internal Trade process. It has the potential to significantly harmonize a complex area of law that is highly relevant to consumers and to business.

  (c) **Electronic Commerce**: Electronic Commerce initiatives have been identified as priorities by Justice and Consumer Ministers and Ministers responsible for the Information Highway. These issues need to be addressed to ensure legal structures keep pace with technological development. A *Uniform Electronic Commerce Act* was adopted in September, 1999.

  (d) **Leases:** The Working Group recommended that, because of the serious gaps in Canadian legislation and the increasing need to pursue solutions, developmental work on a leasing project should begin immediately. A report was prepared for ULCC in August, 1999. It is recommended that uniform legislation in the area of consumer leasing be prepared. That report is now being considered by the Steering Committee of the ULCC.

  (e) **Federal Secured Transactions:** Attention needs to be given to a number of areas of concern including the ability to properly secure mobile equipment (particularly aircraft), the level of uncertainty about security in intellectual property and the need to examine the interrelationship between section 427 of the *Bank Act* and provincial secured transactions regimes. There is a need to change the focus

of existing federal security interests from individual forms of property under discrete federal statutes, to the enterprise which owns the right in the various forms of federal property. The Law Reform Commission of Canada and the ULCC have commenced a project on Federal Secured Transactions.

Leadership

In order for a project of this nature to be successful, leadership is essential. There are four basic components required.

1. **Political Commitment** - Our political leadership in the federal government as well as the provinces and territories need to see the value of a "national vision" around commercial law reform. There needs to be some commitment to the principles of harmonization and recognition of the need to have a legal commercial infrastructure that is predictable, responsive and efficient.

2. **Dynamic Consensus** - There needs to be support at the grass roots level for such an enterprise. Canadian governments, business, consumer organizations, the academic community and the legal community must, first of all, see value in this work and secondly must be willing to support it politically and financially. The reality is that without this support, this project will not succeed.

3. **Tasking** - There must be an orderly effort at "delivering the goods". It is one thing to establish a framework, it is quite another to be able to co-ordinate the work necessary to make the strategy a reality over the next decade. The ULCC is probably the only organization able to undertake this work, assuming that it is supported by the commitments referred to above. It must be done in such a way that political leadership and stakeholders always have a concept of overall conceptual goals and time lines. The Uniform Law Conference of Canada has constituted a national steering committee to guide the project. The Steering Committee is currently seeking funding from Deputy Ministers of Justice to appoint a National Co-ordinator for the project.

4. **Funding**

   There is no question that additional funding will be necessary to ensure this strategy can proceed. Funding requirements would depend on the scope and timing of the work undertaken.

This money will be used to hire a National Co-ordinator, fund scholarly research, consultation and project management in key areas as directed by the ULCC and supported by government and stakeholders in the legal and business community. The project will require financial, volunteer and in-kind support from governments, law commissions and the academic, legal and business communities to achieve the intended result. Recently the Deputy Minister of Justice for Canada and the Deputy

Minister of Industry Canada approved a grant for $75,000 each to support a National Co-ordinator. At the recent Deputy Ministers of Justice meeting, Deputies from most provincial jurisdictions also indicated a willingness to support this initiative financially.

Conclusion

It is not as widely appreciated as it should be that the volume of trade among the provinces and territories of Canada actually exceeds the volume of trade between Canada and the outside world. Yet, while Canada has signed many conventions and treaties designed to harmonize the rules of international trade, and to improve the flow of international commerce, these international developments have not always been matched by comparable progress at the domestic level. The federal and provincial governments have recognized this by signing the Agreement on Internal Trade. The AIT is designed both to dismantle existing interprovincial barriers to trade and to encourage the adoption of uniform provincial legislation.

The proposed commercial law strategy for Canada represents an important departure for the reform of Canadian commercial law. It postulates that, in order to have a coherent legislative framework, a “national vision” is required. This vision should respond to the need within the Canadian economy for a legislative framework that is predictable, responsive and efficient. It should address the practical problems that create legal barriers to trans-Canada and international commercial relations.

The Working Group is of the view that the recommended framework will significantly contribute to meeting the needs of predictability, responsiveness, efficiency and competitiveness. This framework identifies key elements that address the practical problems. It sets in place broad priorities for commercial law reform over the next decade. The strategy requires that political leaders and key stakeholders in the business, academic, consumer and legal communities support this enterprise in order for it to have any hope for success. It challenges the ULCC to act in a leadership role to task and secure funding for this important work.

APPENDIX A

THE DETAILED ANALYSIS

I. *COMMERCIAL LAW THAT ORDERS AFFAIRS BETWEEN PRIVATE PARTIES*

1. Sale of Goods

The current law on the sale of goods in the common law provinces is based heavily on the English statute of 1893. The law does not conform to what businesses actually do. It does not fit in well with more modern commercial law like the PPSA, or with the international regime on the sale of goods which other jurisdictions have implemented. Significant discussion should also be had around the extension of this legislation to include "services".

The new Civil Code of Quebec applies to sales contracts and as much as possible the general rules of the law of obligations were harmonized with those of the other Books (of the Civil Code), particularly with respect to security interests. Inspiration for the rules came from the *United Nations Convention on Contracts for the International Sale of Goods.*

A *Uniform Sale of Goods Act* was adopted by the Uniform Law Conference of Canada in 1981, and has subsequently been refined, but is in need of modernization before it could be implemented.

In the Uniform Commercial Code, Article 2 contains the American Sale of Goods regime.

2. United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention)

The Sales Convention establishes uniform rules for the international sale of goods which will apply in the absence of agreement to the contrary by the parties to the sales contract. While the Convention applies to contracts for the sale of goods, it excludes the sale of goods for personal use, sale by auction, judicial sales, and the sale of stocks, ships, aircraft or electricity. The provisions of the Convention deal with the formation of the contract and the rights and obligations of the seller and buyer. The Convention does not govern the validity of the contract or its terms, nor does it deal with the seller's liability outside the contract.

Implementation

The Convention came into force for Canada on May 1, 1992, and applies uniformly across all of Canada since February 1, 1993. As of May 1998, 51 states are party to the Convention.

3. Secured Transactions

Legislation in this area governs the obtaining of consensual security interests in personal property, establishes a system for registering notices of such security interests, governs the priority of many of the competing interests in such property and establishes enforcement rules. The law is nearly uniform in most of common law Canada under what is known as the Western PPSA. It is important to complete the harmonization and to maintain the harmony in this field, especially in light of significant changes soon to be made to Article 9 of the Uniform Commercial Code in the United States.

4. Federal Secured Transactions

At the present time, there is considerable debate over whether the federal government should enact secured transactions legislation such as a federal PPSA to deal with the property that is within federal jurisdiction or take steps to make it clear that provincial secured transactions regimes are responsible for regulating security in what is thought of as “federal property”. The current scheme is arguably flawed in having, as its focal point, each individual type of federal property.

What property might fit within a federal regime? It might include:

(i) certain property under security regimes which are contained in legislation dealing with matters under federal jurisdiction (namely, vessels, aircraft and rolling stock);

(ii) certain property which is subject to federal jurisdiction where the relevant legislation may (or may not) contain a security regime (namely, intellectual property); and

(iii) certain property subject to security under the *Bank Act* (Canada) in favour of a secured party which itself is subject to federal jurisdiction (namely, a bank).

With respect to intellectual property, there is debate over the method of registering security in intellectual property between the regimes under the various federal intellectual property statutes and provincial PPSA's. There is also an issue over what interests in intellectual property can be secured. It will

be necessary to rationalize traditional powers of enforcement by secured creditors with the fragile property concepts of some intellectual property statutes in which assertion of control by someone other than the property owner may result in dilution or destruction of the asset involved. This area of law needs clarification.

In addition, there are some serious gaps in legislation dealing with mobile equipment, particularly aircraft. The Draft UNIDROIT Convention on International Interests in Mobile Equipment and Related Draft Aircraft Equipment Protocol addresses many of these questions and needs to be the basis of legislation. This preliminary draft Convention provides a framework for the creation and effects of international interests in mobile equipment (i.e., airframes, aircraft engines, helicopters, registered ships, oil rigs, containers, railway rolling stock, space property and other objects that could be identified in the future). Each of these types of mobile equipment will be the subject of a specific protocol under the Convention.

The preliminary draft protocol will adapt to aircraft equipment the mechanism set out in the Convention. Among other things, it will establish a central registry to register interests in aircraft equipment.

There should be a resolution to the debate over the future of *Bank Act* security. This debate has raged for many years and a productive settlement of that debate should occur.

The Law Reform Commission and the ULCC are jointly sponsoring a project on Federal Secured Transactions.

5. Commercial Liens

Although Ontario has enacted modern lien legislation, that legislation is not in harmony. The current law in most of the other provinces provides unpredictable and often unregisterable lien claims for businesses such as repairers, storers, garage owners, innkeepers, warehousers and woodsmen. In Québec, when the Civil Code was reformed, the notion of liens was replaced with that of priorities. The number of liens that become priorities was also considerably reduced (see Articles 2650 to 2659 of the Civil Code of Québec).

The *Uniform Liens Act*, adopted by the Uniform Law Conference of Canada in 1996, creates a unified set of rules about the nature and extent of certain non-consensual liens, the priority of liens against third parties and the procedure for enforcement.

6. Warehouse Receipts, Bills of Lading and Other Documents of Title

A *Uniform Documents of Title Act* was approved in principle by the Uniform Law Conference in 1995 based on similar work in Article 7 of the Uniform Commercial Code, but a final draft has not yet been prepared. This Act would codify the law relating to all forms of documents of title that have an established commercial usage. It covers bills of lading, warehouse receipts and other negotiable and non-negotiable documents of title. Documents of title are used primarily in interprovincial and international trade. The law on documents of title should be harmonized to the PPSA, to ensure that the effectiveness of the PPSA is not hampered.

7. Transfer of Indirectly Held Securities

The ULCC is one of the partners working on a project to update the law with respect to rights in securities that are held through an intermediary such as a broker. Current law does not reflect the reality that the owner of a share almost never holds the paper certificate. Securities transfers occur in a global securities market. Intermediaries for indirectly held securities operate across the country. As a result, harmonization and modernization is essential. This work is based on revised Article 8 of the Uniform Commercial Code.

8. Electronic Commerce

The *Uniform Electronic Commerce Act* was adopted by the ULCC in 1999. This project was funded by Industry Canada. This legislation implements the principles of the United Nations Model Law on Electronic Commerce.

The *Uniform Electronic Commerce Act* is helpful in providing consumers and the people who sell to consumers the legal certainty that their transactions will be enforceable. Both sides of the transaction like that, because it lowers transaction cost (the costs thrown away, but built into the price of goods, when someone gets out of a transaction in bad faith.) The *Uniform Electronic Commerce Act* is neutral in its effect between consumers and sellers. Ensuring that a transaction is valid in law and enforceable - in the face of a writing requirement or a signature requirement - can favour either buyer or seller, depending on who is trying to enforce and who is trying to evade. This works for writing and signature requirements but also for the validity of contracts signed by clicking e-mails, a common consumer practice that the consumer would generally want to be able to enforce.

9. Leases

Leases of personal property have existed for a long time. However, in recent

decades, this type of transaction has increased exponentially. Today, leasing transactions are a significant segment of commercial activity in Canada involving billions of dollars annually and ranging in scope from consumers' leases of automobiles to leases of commercial aircraft and industrial machinery. It is evident that equipment leasing is big business in Canada and, indeed, in many other countries.

Under our present law, transactions of this type are governed partly by common law principles relating to personal property and partly by principles relating to real estate leases. The legal rules and concepts derived from these sources do not adequately address many matters pertinent to lease transactions. In particular, there are uncertainties in four important areas: first, the classification of leases and, specifically, distinguishing between a "true" lease and a disguised secured sale; secondly, the nature of the warranties that might be implied in a lease contract in favour of the lessee; thirdly, the obligations of a lessor in a "financing lease" in which the lessor is neither the manufacturer nor the supplier of the item being leased; and fourthly, the remedies of a lessor where the lessee has breached its obligation under the lease.

In the United States, Article 2A of the Uniform Commercial Code pertains to leases. It was added to the Code about ten years ago. The American experience under Article 2A merits careful study and, while views may differ as to whether the vagaries of the current law of leasing in common law jurisdictions in Canada necessitates an extensive codification of the law, there would seem to be little doubt that some reforms and clarification are in order.

It is also important to note that the National Conference of Commissioners on Uniform State Laws is currently working on a uniform act on consumer leases and this approach is worth exploring as a complement to Article 2A.

It should be noted that the Quebec Civil Code (Article 1842 to 1850 C.C. Q.) has dealt with leasing in specific ways and any project on leasing needs to keep the Quebec provisions in mind.

The ULCC recently received a report recommending a consumer leasing statute and has that report under consideration.

10. <u>Licensing of Intellectual Property</u>

There are many kinds of licences. An increasingly important part of our commercial fabric is licences involving data, text and similar materials and transactions involving software, on-line and Internet commerce. As the modern economy is changing, the service sector is becoming increasingly dominant. The software industry - which provides the basic fuel for the information age - did not even exist until recent decades. The information industry now exceeds most

manufacturing sectors in size.

Information transactions and, in particular, transactions involving licensing of information, differ substantially from transactions involving the sale or lease of goods. The differences are manifested in both the conditional nature of the transaction and in the fact that value lies not in the goods but in the information and rights severable from the goods. A body of law tailored to transactions intended to pass title to goods is not readily adapted to transactions whose purpose is instead to convey rights in intangible property and information.

In recent years, various groups in the United States have examined the consequences of the mismatch of concepts between contract law aimed at defining relationships in the sale or lease of goods and relationships in which information is the centre of the transaction and the contractual format most often is a licence rather than a sale or lease. They have concluded that transactions involving licensing of information differ substantively from transactions involving the sale or lease of goods. These differences, coupled with the commercial significance of the information industry, have prompted a current project in the United States to draft Article 2B to the Uniform Commercial Code concerning Licences. This project is ongoing and should be monitored closely in Canada.

11. Negotiable Instruments (Bills of Exchange)

Important aspects of the *Bills of Exchange Act* (Canada) may need to be revised. In the view of the Working Group, it will be logical to include a revised Negotiable Instruments Act in the framework even though it will continue to be federally enacted.

12. Cost of Credit Disclosure

This project unifies the rules for calculating and disclosing the cost of consumer loans. This project was undertaken by the Consumer Measures Committee under the Agreement on Internal Trade working in conjunction with the ULCC. Final changes have been made to the *Uniform Cost of Credit Disclosure Act* of the ULCC, based on the drafting template prepared by the Consumer Measures Committee. Ministers of Consumer Affairs have undertaken to implement harmonized cost of credit legislation.

II. ENFORCEMENT LAW

1. Civil Enforcement

In many jurisdictions, civil enforcement procedures have not been recently reformed and are spread through a number of statutes and the common law.

Substantial work has been done by the Alberta Law Reform Institute on overhauling the remedies for enforcement of money judgments. The Alberta report was based on several general principles:

(a) *Universal Exigibility*: All of a debtor's property should be subject to enforcement, excepting only such property as is deliberately excepted.

(b) *Just Exemptions*: Such property as the debtor reasonably requires for the maintenance of his family should be deliberately exempt.

(c) *Sharing among Creditors*: The proceeds of enforcement processes should be shared among enforcement creditors.

(d) *Creditor Initiative*: The enforcement system should continue to be creditor driven.

(e) *One Statute*: The entire enforcement system should be governed by one consistent, coherent and logically ordered statute.

(f) *Judicial Supervision*: The enforcement system should operate with a minimum of judicial supervision, but there should be ready access to the court when directions are required.

Implementation

- Alberta, New Brunswick and Newfoundland have recently modernized their civil enforcement regime. They have used the Alberta Law Reform Institute recommendations to a significant extent.

- In Quebec, the rules concerning this topic have been modernized in the Civil Code and the Civil Procedure Code.

2. Enforcement of Canadian Judgments and Decrees Act and Court Jurisdiction and Proceedings Transfer Act

A *Uniform Enforcement of Canadian Judgments Act* was adopted in 1992 by the ULCC. A *Uniform Enforcement of Canadian Decrees Act* was adopted by the Conference in 1997. The former deals with money judgments and the latter deals with non-money judgments. In 1997, a decision was made to roll the two Acts together in a *Uniform Enforcement of Canadian Judgments and Decrees Act*, which deals with both money and non-money judgments. A *Uniform Court Jurisdiction and Proceedings Transfer Act* was adopted in 1994. The entire package implements a harmonized system for granting and enforcing judgments throughout Canada. The jurisdiction Act provides for Canadian courts to follow a

uniform set of rules in determining whether they have jurisdiction to hear a case. Then, under the enforcement Act, a judgment granted anywhere in Canada will be enforced in the same manner as if it was granted by that court.

The Enforcement of Canadian Judgments Act and *The Court Jurisdiction and Proceedings Transfer Act* have been passed in Saskatchewan, but are awaiting implementation by several other province. *The Enforcement of Canadian Judgments Act* has also been passed by British Columbia and Prince Edward Island.

In Quebec, the jurisdiction of Quebec's tribunals in international litigation and the rules of attornment and execution of both Canadian and foreign judgments were modernized when the Civil Code was reformed. The provisions are similar to those included in the uniform Acts.

3. Enforcement of Foreign Judgments

The ULCC is reviewing the issue of enforcement within Canada of both monetary and non-monetary judgments granted outside Canada. Full faith and credit may not always be acceptable because of the variety of legal systems around the world. Therefore Canadian courts will have additional discretion to determine whether enforcement is appropriate.

A preliminary draft Act was considered by the ULCC in August 1998. The Working Group is currently preparing a draft Act for adoption by the Conference in August 2000.

4. Enforcement of Judgments Convention Act

A *Uniform Enforcement of Judgments Convention Act* was adopted in 1997. It provides, initially, for the adoption by provinces and territories of *The Convention Between Canada and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance*. It will allow for future enforcement conventions to be adopted by regulation.

Implementation

- This Act has been enacted by Saskatchewan.
- Since 1978, Quebec is tied to a bilateral Accord with France. The Accord was put into place through legislation (R.L.Q., c. E-19).

5. Arbitration Act

This Act modernizes the law of commercial arbitration. A *Uniform Arbitration Act* was adopted in 1990. It provides a framework for conducting an arbitration, while leaving the parties latitude to design rules that suit themselves. It gives the courts less discretion to intervene in the conduct or result of arbitration. It also allows for simple enforcement of arbitral awards.

Implementation

- The Uniform Act has been adopted in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Prince Edward Island.
- Parallel legislation is in force in Canada and Quebec.
- Similar legislation is in force in British Columbia.

6. International Commercial Arbitration Act

A *Uniform International Commercial Arbitration Act* was adopted in 1986. It adopts the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and *Model Law on International Commercial Arbitration*.

Implementation

- This Act has been implemented in every jurisdiction in Canada.

7. Settlement of International Investment Disputes Act

A uniform Act was adopted in 1997 to provide for the implementation of the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*. This convention was sponsored by the World Bank to facilitate and increase the flow of international investment. It applies in 128 countries, including all members of the G-7 and the OECD, except Canada, Mexico and Poland. It establishes rules which parties may use to resolve investment disputes between States and nationals of other States by means of conciliation or arbitration.

Implementation

- This legislation has not been adopted by any jurisdiction in Canada at the present time.