

UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

**ACTIVITIES AND PRIORITIES OF THE DEPARTMENT
OF JUSTICE IN PRIVATE INTERNATIONAL LAW**

**REPORT OF THE DEPARTMENT OF JUSTICE CANADA
2005**

**St-John's, Newfoundland and Labrador
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ACTIVITIES AND PRIORITIES OF THE DEPARTMENT OF JUSTICE
IN PRIVATE INTERNATIONAL LAW

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Report of the Department of Justice Canada

August 2005

INTRODUCTION

[1] This report presents Canada's accomplishments in private international law over the past year and describes the projects the Department of Justice, in conjunction with its partners, will work on in the future on a priority basis.

[2] The Department of Justice has devoted resources over the last year to improving and developing the international and national legal framework in private international law. Progress has been made in terms of developing new international instruments. For example, the Hague Conference concluded both a *Convention on Choice of Court Agreements* and modifications to its Statute to allow the European Community to join the Conference. UNCITRAL adopted a *Convention on the Use of Electronic Communications in International Contracts*. Negotiations continued at UNCITRAL, Unidroit and the Hague Conference on Private International Law on projects that will culminate in new private international law instruments.

[3] Domestically, there was some implementation activity throughout 2005. Legislation was adopted at the federal level to implement Unidroit's *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol*. Saskatchewan recently adopted implementing legislation for the Hague Convention on the International Protection of Adults. Nunavut adopted the ULCC Uniform Electronic Act which is in line with the UNCITRAL Model Law on Electronic Commerce. In addition, under the Commercial Law Strategy of the Uniform Law Conference of Canada (ULCC), the Department of Justice and other federal and provincial partners have embarked on new projects, such as the drafting of a uniform act on international commercial conciliation.

[4] The first part of the report deals with the various **Canadian actors in private international law**. In the course of its activities, the Department of Justice consults regularly with the provinces and territories, as well as with other interested federal departments, the private sector and the members of its Advisory Group on Private International Law. Contacts in the International Private Law Section (IPLS) are set out in Annex A.

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[5] The **international and regional organizations** involved in private international law and the projects in which Canada has participated will be briefly described in the second part of the report.

[6] Finally, the third part of the report presents the **activities of the Department of Justice in private international law** by theme. Projects are ranked with respect to their **level of priority**. To evaluate priority, IPLS, in collaboration with the Advisory Group in Private International Law, considers the following: the interest of the international community, Canada's interest and the interest of national actors; its costs and benefits; and the challenges and difficulties related to implementation.

[7] In addition to the order of priority (high, medium, low), projects are divided into the following themes:

- International Commercial Law
- Judicial Cooperation and Enforcement of Judgments
- Family Law
- Protection of Property

[8] Key projects are displayed in similar order in the Overview **Chart of Private International Law Priorities** (Annex B) which provides an outline of the activities in the field of private international law and information on the status of instruments or projects.

[9] We also have attached a provisional list of international meetings for the coming year (Annex D) to inform you of activities in which the Department may be involved.

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I. NATIONAL ACTORS

[10] As matters dealing with in private international law (PIL) most often fall within provincial jurisdiction, federal-provincial cooperation is essential to real progress in this area. The Department of Justice therefore seeks to maintain regular communication with representatives from the provincial governments. Furthermore, consultation with the legal and business community, as well as with other private groups, is very useful as the conventions relate so closely to their interests.

A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

[11] The Advisory Group on Private International Law is composed of five provincial representatives (representing British Columbia, the Prairie Provinces, Ontario, Quebec and the Atlantic provinces) and federal representatives from the Department of Justice and Foreign Affairs Canada. A private practitioner representing the International Law Section of the Canadian Bar Association also participates as an observer. The Group provides the Department with continuing advice on the provincial aspects of the private international law projects in which Canada is involved. The Group held a conference call in December 2004 and a meeting in Ottawa in June 2005.

B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION

[12] In addition to federal-provincial-territorial (FPT) cooperation through the Advisory Group, the Department also communicates directly with provincial and territorial authorities in order to obtain their official views on international instruments. These exchanges take place through written and oral communications among FPT authorities and during the presentation of reports at the Uniform Law Conference of Canada (ULCC) and at the Civil Justice Committee. This year the federal Deputy Minister of Justice wrote to his provincial and territorial counterparts to ask them to consider implementing several private international law instruments.

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1. Uniform Law Conference of Canada

[13] Instituted in 1919 with a view to ensuring uniformity in provincial legislation, the ULCC now participates actively in the implementation of international conventions and other private international law instruments such as model laws. This year, the Department of Justice of Canada continued to participate in the ULCC's activities. From the perspective of the Department of Justice, the ULCC constitutes the key mechanism for facilitating implementation of PIL instruments via the development of uniform implementing legislation.

2. Civil Justice Committee

[14] This 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 greatly appreciated.

C. PRIVATE SECTOR

[15] The Department of Justice maintains contacts with the Canadian Bar Association (CBA) as well as with private sector groups. Over the last year, members of the IPLS have participated in conferences, lectured in law faculties, drafted discussion papers and met with interested parties, all in order to strengthen ties with the business and academic community and the Bar.

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II. INTERNATIONAL ORGANIZATIONS

A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

[16] The Hague Conference on Private International Law, which held its first session in 1893, has 65 Member States, including Canada since 1968. Its objective is to work toward the progressive unification of rules of private international law. The Permanent Bureau, the Secretariat of the Conference, is responsible for administration and supporting research. Its working cycle is approximately four years, at the end of which the Sessions of the Conference are convened, attended by all member States. Member States also meet during the intersessional period in “Special Commissions”, which develop draft conventions to be adopted at the next Session. The Hague Conference has adopted 37 conventions, 26 of which are in force. Further information on The Hague Conference on Private International Law may be found at <http://www.hcch.net>.

[17] The Conference’s work programme is now reviewed each year at a Special Commission on General Affairs and Policy. Its current workplan includes continued negotiation of a new convention on maintenance obligations.

[18] Over the last year, Canada participated in the following activities of the Conference: experts and drafting group meetings, Special Commissions, including the Special Commission of March-April 2005 on General Affairs and Policy of the Conference, the Special Commission on the International Recovery of Child Support and Other Form of Family Maintenance in April 2005 and a Diplomatic Conference to adopt the *Convention on Choice of Court Clauses* in June 2005.

[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* (adoption 1965, in force in Canada 88/05/01); the *Convention on the Civil Aspects of International Child Abduction* (1980, Canada 88/04/01); the *Convention on the Law Applicable to Trusts and on their Recognition* (1985, Canada 93/01/01); and the *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993, Canada 97/04/01). Not all jurisdictions in Canada have implemented all four.

B. UNCITRAL

[20] The United Nations Commission on International Trade Law, the core legal body within the UN system in the field of international trade law, aims to further the progressive harmonisation and unification of the law of international trade. To reach this goal, the

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Commission uses various instruments: it has prepared 10 conventions, 7 model laws, uniform rules and a number of legal or legislative guides. Further information on UNCITRAL may be found at <<http://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 both operate by consensus. Canada was a member of UNCITRAL from 1989 to 1995, participated actively as an observer from 1995 to the fall of 2000, and was elected to the Commission again in the fall of 2000 for a term commencing in June 2001.

[22] At the 38th session of the Commission in July 2005, in which Canada actively participated, UNCITRAL finalized and adopted the *UNCITRAL Convention on the Use of Electronic Communications in International Contracts*.

[23] In terms of future work, the Commission decided to continue the work undertaken by its Working Groups on: procurement, arbitration, transport and security interests. The dates and locations of the Working Group sessions are available on the UNCITRAL website.

[24] Canada is a party to two UN conventions relating to international commercial law: the *U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958, in force 86/08/10) and the *U.N. Convention on Contracts for the International Sale of Goods* (Vienna Convention of 1980, in force in Canada 92/05/01). Canada has also enacted domestic legislation implementing UNCITRAL's *Model Law on International Commercial Arbitration* (1985). Legislation drawing on UNCITRAL's *Model Law on Electronic Commerce* has been adopted by the federal government, the provinces and two territories.

C. UNIDROIT

[25] Although 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 based in Rome. There are 59 Member States, including Canada since 1968, the United States, China, Australia, and many States from Latin America, Africa, and Eastern and Western Europe. Unidroit's mandate differs from that of The Hague Conference as it aims to harmonize and co-ordinate the private law

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of its Member States, rather than their private international law rules. Further information on Unidroit may be found at <<http://www.unidroit.org>>.

[26] Since its creation, Unidroit has drafted more than seventy studies, model laws and conventions on various private law subjects including the law of sales, international leasing and factoring law, the law of carriage, security interests, franchising and cultural property.

[27] Canada is party to only one of the ten Unidroit conventions, the *Convention Providing a Uniform Law on the Form of an International Will* (1973) (in force for Canada on 78/09/02 and extended to Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan). Canada has also signed the *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol*.

D. WORLD BANK

[28] The World Bank's role on the private international law scene stems in part from the creation of the International Centre for Settlement of Investment Disputes (ICSID) under the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada is still not a party to this Convention. Foreseeing a future ratification, the ULCC has prepared a uniform act to implement the Convention. Further information on the World Bank and the ICSID Convention can be found at <<http://www.worldbank.org>>.

**E. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF
AMERICAN STATES**

[29] The Organization of American States (OAS), with 35 member States, provides an important forum for political, economic, social and cultural cooperation in the region of the Americas. In the legal field, the Inter-American Juridical Committee, composed of eleven jurists who are nationals of Member States, acts as an advisory body to the Member States. The Committee recommends the convening of specialized juridical conferences, such as the Inter-American Conference on Private International Law (CIDIP) which meets approximately every four or five years to deal with technical matters and further cooperation in the area of private international law. Further information on the OAS may be found at <<http://www.oas.org/>>.

[30] Canada is not yet party to any of the 23 OAS conventions in private international law, and had only observer status for the first four CIDIP meetings. Since becoming a

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member of the OAS in 1990, however, Canada's interest in exploring ways of enhancing legal cooperation with other OAS countries has increased. Canada did participate officially in the 1994 Fifth Inter-American Conference on Private International Law (CIDIP-V) and in CIDIP-VI which was convened in February 2002, particularly regarding the drafting of a Model Law on Secured Transactions. The OAS is currently preparing for CIDIP-VII.

F. BILATERAL ACTIVITIES

[31] Canada also negotiates bilateral conventions, which mainly deal with the enforcement of judgments. The first convention of this type was 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 Quebec.

[32] The *Canada-France Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance* was signed on June 10, 1996. A uniform act to implement this Convention was adopted by the ULCC in August 1997. Saskatchewan (1998), Ontario (1999) and Manitoba (2001) have adopted legislation to implement this Convention.

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

A. INTERNATIONAL COMMERCIAL LAW

1. HIGH PRIORITIES

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

[33] This Convention, drafted by the World Bank in 1965, sets up voluntary arbitration mechanisms between States and nationals of other States for investments made by corporations or individuals in foreign countries. The Convention creates an international organization, the International Centre for Settlement of Investment Disputes (ICSID), which provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States.

[34] Although the vast majority of our trading partners have ratified the ICSID Convention - 142 States are party to the Convention - Canada has not yet ratified it. This may be explained in part by the fact that the Convention does not contain a federal state clause. The federal government has been working to obtain the agreement of all provinces and territories to implement the Convention. The adoption of implementing legislation by the provinces and territories as well as the federal government would allow Canada to ratify it. The project has received the support in principle from all jurisdictions. There are ongoing discussions with provincial and territorial governments regarding the conditions and the timing for a future ratification. It has been suggested recently that the May 2006 International Council for Commercial Arbitration (ICCA) Congress in Montreal would be an opportunity to announce ratification by Canada if all jurisdictions could have legislation in place. A uniform act for the implementation of the *Convention for the Settlement of International Investment Disputes* was adopted by the ULCC in 1997.

[35] *Action required in Canada:* Coordinate the adoption of implementing legislation and the conditions for ratification with the provinces and territories. Sign and ratify the Convention.

**b. Convention on International Interests in Mobile Equipment and Aircraft
Protocol (Unidroit)**

[36] The texts of the 2001 Convention and Protocol can be found on the Unidroit website. The Convention provides a framework for the creation and effects of an

international interest in mobile equipment (i.e., aircraft equipment, registered ships, oil rigs, containers, railway rolling stock, space property, and other objects that could be identified in the future) and an international registry in which these interests can be registered. Each type of mobile equipment is the subject of a specific Protocol under the Convention. The Convention entered into force internationally on April 1, 2004, after its third ratification, but it will only enter into force as regards a specific category of objects to which a Protocol applies as of the date of the entry into force of that Protocol. For example, it will only enter into force as regards aircraft equipment as of the date of the entry into force of the Aircraft Protocol. Canada signed the Convention and Aircraft Protocol in March 2004.

[37] The *Aircraft Protocol*, not yet in force, adapts to aircraft equipment the mechanisms set out in the Convention. It will enable registration of convention-based international security interests in aircraft equipment, and will facilitate searches.

[38] The ULCC adopted a uniform implementing act in 2002. Canadian jurisdictions have been asked to consider adopting legislation to implement the Convention and Aircraft Protocol. Legislation implementing the Convention and Aircraft Protocol has been adopted at the federal level as well as in Ontario and Nova Scotia.

[39] The federal Cabinet will consider ratifying the Convention and Protocol when sufficient support for ratification will have been expressed by the adoption of implementing legislation in the provinces and territories. When seeking authority to ratify, the federal government will consider the relevant declarations that need to be made under the Convention and Protocol in order for the instruments to apply only in the jurisdictions that so wish, along with other declarations that may be requested by the provinces and territories, such as declarations preserving the status quo of existing interests. The ULCC Working Group on International Interests will continue its work to facilitate the process of drafting declarations.

[40] *Action required in Canada:* Continue to encourage provinces and territories to consider adopting legislation to implement the instruments; continue work to facilitate the drafting of declarations.

c. Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in the Arbitral Context (UNCITRAL)

[41] In 1999, the Commission mandated the Working Group on Arbitration to examine four subjects: 1) conciliation, 2) requirement of written form for the arbitration

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agreement, 3) enforceability of interim measures of protection, and possibly 4) enforceability of an award that had been set aside in the State of origin.

[42] To date, the Working Group has only examined the first 3 subjects. The Model Law on International Commercial Conciliation was adopted in June 2002. Once work on interim awards is completed, the Working Group will resume its work on the written form of the arbitration agreement. During the September 2005 and January 2005 sessions, the Working Group continued its discussions on the harmonized text of draft article 17 of the UNCITRAL Model Law on International Commercial Arbitration regarding the power of an arbitral tribunal to grant interim measures of protection including *ex parte* measures.

[43] The Canadian delegation comprises Manon Dostie (IPLS, Department of Justice Canada), Professor Guy Lefebvre (civil law expert) and Robert Cosman (common law expert).

[44] *Action required in Canada:* Consult with federal provincial and territorial governments, private sector, academics, dispute resolution organizations and other interested parties in preparation for the next Working Group session scheduled for October 3-7, 2005. The Reports of the Working Group and background documents are available on the UNCITRAL website.

d. Draft Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)

[45] The Working Group on Electronic Commerce continued its work on a draft instrument on electronic contracting as a means of increasing legal certainty or commercial predictability in electronic business transactions. Canada, represented by the Department of Justice Canada, as well as civil and common law representatives, participated at the 38th Session of the Commission from July 4 to 15, 2005 where the draft Convention was finalized. Canadian experts John Gregory (Ontario Ministry of the Attorney General), Jeanne Proulx (Justice Québec) and Joan Remsu (Justice Canada) as well as Dominique D’Allaire and Natalie Giassa (IPLS, Justice Canada) formed the Canadian delegation.

[46] The Convention on Electronic Communications removes obstacles to use of electronic communications in the formation of contracts between parties located in different States. The Convention applies to business to business transactions, as contracts concluded for personal, family or household purposes are excluded. It recognizes the

equivalence of paper and electronic communications between parties in the formation and performance of contracts.

[47] In addition to providing a legal framework for parties to international contracts, the Convention on Electronic Communications can also be applied to existing international conventions, such as the *UN Convention on Contracts for the International Sale of Goods*. States wishing to do so will ensure that existing conventions are adapted to electronic communications by allowing the Convention on Electronic Communications to apply to these texts. Similarly, in Canada, provinces and territories would be in a position to apply the Convention on Electronic Communications to conventions that have been implemented in their jurisdiction.

[48] *Action required in Canada:* Determine the interest of provincial and territorial jurisdictions for the adoption of the Convention in Canada and, if need be, prepare a uniform act to facilitate the implementation of the Convention in Canada.

e. Draft Legislative Guide on Security Interests (UNCITRAL)

[49] In July 2001 at its 34th session, UNCITRAL mandated a Working Group to begin developing a uniform legal regime for security rights in tangible goods of a commercial nature. The work is to include the form of the security instrument, the scope of goods that can serve as collateral, perfection, formalities, enforcement, publicity, priority, and creditors' and debtors' rights.

[50] The UNCITRAL work on security interests was initiated because it was felt that modern secured credit laws could alleviate inequalities in access to lower-cost credit between parties in developed countries and parties in developing countries, which would overall contribute to foster international trade. It was also widely recognised that an appropriate balance needed to be struck in the treatment of privileged, secured and unsecured creditors. States agreed that a flexible approach aimed at the preparation of a set of principles in a guide, rather than a model law, would be advisable. Furthermore, given the close link between security interests and the work on insolvency, countries recognised that any effort on security interests would need to be co-ordinated with efforts on insolvency law.

[51] Canadian experts Me Michel Deschamps of McCarthy Tétrault in Montreal and Professors Catherine Walsh and Roderick Macdonald of McGill University have been leading contributors to the project, participating in both Working Group sessions and in the drafting of the Guide. Joint sessions have been held with the Working Group on

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Insolvency Law to ensure consistency with the Insolvency Guide. A joint experts meeting with the Hague Conference reviewed conflicts of law issues in the Security Interests Guide. It is now expected that the work will conclude at the Commission session in 2007, with possible adoption in principle at the 2006 session.

[52] One issue that appears to have been resolved is the orientation of the draft Guide toward a public notice-filing registry, which had been strongly opposed by representatives of one State. Other countries had also expressed some reservations. Many delegations, however, remain with fundamental questions about the costs and operation of a registry system as well as questions about the legal framework. Some key countries will be compelled to support a non-registry approach if they are not reassured with respect to their questions. To address concerns, the Secretariat of the Commission is preparing a document for the Working Group on the technical aspects of registries.

[53] Transfer of title arrangements are now generally to be treated as security interests. For reservation of title arrangements the Working Group is adopting two options: 1) treat reservation of title as a security interest; and 2) treat it separately but apply rules leading to an equivalent result.

[54] From a Canadian perspective, the government monitors the trends the global model is taking with the view of ensuring that it does not take a direction that is inconsistent with our security interests regimes here in Canada. Although the draft Guide would not be particularly useful for Canadian jurisdictions given that our legal framework for secured interest is already relatively modern, our aim is to ensure that countries where Canadians do business have similar regimes.

[55] Working Group documents can be found on the UNCITRAL website. The next meeting of the Working Group will take place in Vienna from September 5 to 9, 2005. The following session is set for January 30 – February 3, 2006 in New York. Canada continues to chair the sessions of the Working Group.

[56] *Action required in Canada:* Distribute working papers for comments. Ensure links are made with the work on security interests in the Commercial Law Strategy.

**f. Project on Harmonised Substantive Rules Regarding Indirectly Held Securities
(Unidroit)**

[57] Unidroit continued its project on transactions on transnational and connected capital markets. This project comprises 5 items: (1) the creation of clear and consistent

rules for the taking of securities, especially securities held indirectly through intermediaries in multi-tiered holding patterns and evidenced by book entries in the investor's account, as collateral; (2) the creation of harmonized "global shares", permitting trade of such shares on more than one (national) stock exchange so as to make foreign capital markets accessible to a wider range of companies with limited means; (3) the development of rules capable of enhancing trading on emerging markets; (4) the development of harmonized or uniform substantive rules applicable to so-called "delocalised" transactions; and (5) the examination of the desirability and feasibility of rules for world-wide takeover bids. This Unidroit project is complementary to the *Convention on the law applicable to certain rights in respect of securities held with an intermediary*, adopted under the auspices of The Hague Conference of Private International Law in December 2002.

[58] The first governmental meeting of experts for the *Unidroit Project on Harmonised Substantive Rules Regarding Indirectly Held Securities* took place on May 9 - 20, 2005. The Canadian delegation was composed of Manon Dostie, Counsel, IPLS, Department of Justice Canada, Mr. Maxime Paré, Senior Legal Counsel with the Ontario Securities Commission, and Mr. Michel Deschamps, Counsel with McCarthy Tétrault in Montreal and who also participated as an expert in the Unidroit Study Group which developed the draft text.

[59] *Action required in Canada*: Consultation on the preliminary draft convention in preparation for the intergovernmental session in March 6-17, 2006.

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

[60] Canada actively participated in the negotiations of the *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary*. The Convention was finalized and adopted during the Diplomatic Session held from December 2 to 12, 2002 in The Hague.

[61] This Convention is a first attempt worldwide to draft cross border rules on the law applicable to securities held with an intermediary. The objective is to enable financial market participants in the global market to ascertain readily and unequivocally which law will govern the proprietary aspects of transfers and pledges of interests in respect of securities held through indirect holding systems. This Convention is intended to provide certainty and predictability on a limited but crucial aspect of such transactions.

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[62] The Canadian delegation included Manon Dostie, IPLS, Department of Justice Canada, two practitioners: Brad Crawford (common law expert) and Michel Brunet (civil law expert), and two experts from the Canadian securities commissions: Eric Spink (Alberta) and Daniel Laurion (from Quebec, absent at the last meeting). Maxime Paré from the Ontario Securities Commission participated as a representative of the International Organization of Securities Commissions (IOSCO) and represented Canada on the Drafting Group leading up to the Diplomatic Conference.

[63] In 2004, the ULCC agreed that the Canadian Securities Administrators (CSA) authorize the Task Force to prepare a uniform implementing statute for the 2002 Hague *Convention on the law applicable to certain rights in respect of securities held with an intermediary* once the Explanatory Report for the Hague Convention is finalized. The Explanatory Report was finalized in late 2004. The approval for the work of the CSA Task Force and related funding was approved in late April 2005.

[64] *Action required in Canada:* The ULCC with the CSA Task Force is to prepare uniform implementing legislation as part of the Commercial Law Strategy.

**h. Conventions on the Limitation Period in the International Sale of Goods
(UNCITRAL)**

[65] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 25 States party to the *Limitation Convention* of 1974, and 17 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico.

[66] The Conventions dovetail with the United Nations *Convention on Contracts for the International Sale of Goods* (Vienna, 1980), which is in force for all of Canada. There is substantial similarity between the three Conventions, in particular the articles setting out the sphere of application, declarations and reservations, the federal State clause, and the final clauses.

[67] The purpose of the *Limitation Conventions* is to eliminate all disparities in the national laws governing limitations on the initiation of legal proceedings arising from contracts for the international sale of goods, as these disparities can create hardship both in cases where meritorious claims are statute-barred by a very short limitation period, and where parties are left open to liability for an inordinately long time in jurisdictions with very long limitation periods. The Conventions establish a uniform prescription period of four years for commercial litigation.

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[68] In 1995, the Advisory Group on Private International Law recommended that the Department take steps toward acceding to and implementing the Conventions. In August 1998, the ULCC adopted the *Uniform International Sales Conventions Act*. This Act would implement the *United Nations Convention on Contracts for the International Sale of Goods*, already in force in Canada, and the *Conventions on the Limitation Period in the International Sale of Goods*.

[69] The Minister of Justice of Canada has undertaken consultations with provincial and territorial counterparts on the desirability of implementing the Limitation Conventions. Some provinces have expressed support for implementation and Nunavut has already enacted the *International Sales Conventions Act*, which received assent on June 6, 2003.

[70] *Action required in Canada:* The federal government will be considering the adoption of federal implementing legislation on the Limitation Conventions, which would apply to contracts for the sales of goods involving the Crown in right of Canada. Once enacted, the federal implementing legislation, and in particular the schedules, could be adopted by reference by provinces and territories. Continue to invite provinces and territories to consider adopting legislation to implement the Conventions.

2. MEDIUM PRIORITIES

a. Convention on the Assignment of Receivables (UNCITRAL)

[71] In July 2001, UNCITRAL adopted the *Convention on the Assignment of Receivables in International Trade* after six years of development. The Convention was opened for signature in December 2001. The rules are 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. Canada was an active participant in the development of this Convention.

[72] A preliminary implementation study has been prepared through the Commercial Law Strategy and the Department of Justice by two leading experts in this area in Canada, Catherine Walsh for the common law perspective and Michel Deschamps for the civil law perspective. The study will be presented at the ULCC meeting in August 2005.

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[73] *Action required in Canada:* Consult with the private sector, federal, provincial and territorial authorities on implementation and request the ULCC to prepare uniform implementing legislation as part of the Commercial Law Strategy.

b. Model Law on International Commercial Conciliation (UNCITRAL)

[74] In June 2002, UNCITRAL adopted the Model Law on International Commercial Conciliation drafted under the auspices of UNCITRAL Working Group II - International Arbitration and Conciliation. The Canadian delegation at the negotiation comprised Manon Dostie (Department of Justice Canada), Professor Guy Lefebvre (civil law expert) and Robert Cosman (common law expert).

[75] The Reports of the Working Group and background documents are available on the UNCITRAL website.

[76] In August 2004, the Uniform Law Conference of Canada approved a Working Group to draft a uniform act to enact the *UNCITRAL Model Law on International Commercial Conciliation*. The Working Group was composed of many federal, provincial and private practice experts.

[77] *Action required in Canada:* Present the uniform act, commentaries and the report for comments and approval at the 2005 ULCC Annual Meeting.

c. Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit)

[78] This draft Protocol takes into accounts the practicalities and particularities of the space industry and adapts the mechanisms set out in the Convention on International Interests in Mobile Equipment to it. The draft Protocol may be found on Unidroit's website.

[79] The last session of the Committee of governmental experts took place in Rome, 25-29 October 2004. Several outstanding issues were identified at the session and States agreed to review these issues further as they were considered critical for the project to move forward. The issues related to the manner by which space assets could be identified for the purpose of registration under the Protocol and Convention. There were also discussions about the desirability and the extent to which public services should be excluded from the Protocol.

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[80] The Department of Justice Canada initiated a public consultation on March 5, 2005 through the publication of a notice in the Canada Gazette (*Notice No. DPI-U01, Canada Gazette Part I, March 5, 2005, p. 581*). Comments received from stakeholders and other federal government departments and agencies will be used to establish the Canadian position for the next Session of governmental experts.

[81] Discussions are also ongoing at the Subcommittee of the United Nations Committee for the Peaceful Utilisation of Outer Space (UNCOPUOS). The Subcommittee discusses the role of the UN as a possible supervisory authority, the authority responsible to oversee the registrar's activities under the Convention and Protocol.

[82] *Action required in Canada:* Ongoing consultations on the Convention and the draft Protocol to develop the Canadian position for the next Unidroit session of governmental experts.

3. LOW PRIORITIES

a. Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)

[83] This Convention was finalised in 1995 and is in force with 6 States party. It aims to establish greater uniformity in the law relating to independent guarantees and stand-by letters of credit in international transactions.

[84] *Action required in Canada:* Prepare a study on the Convention rules in relation to current law in Canada. If provincial and territorial interest, prepare uniform implementing legislation via the ULCC.

b. Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)

[85] This Convention, which was finalised in 1988, is not yet in force. Canada, which actively participated in its drafting, the Russian Federation and the United States have signed it; Gabon, Honduras, Mexico and Guinea have acceded to it. The Convention will enter into force after ten ratifications or accessions. In order to implement it in Canada, federal legislation would be required.

[86] The UNCITRAL Secretariat has prepared a draft Protocol that would bring the Convention into force among NAFTA countries, with provision for additional State

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parties as required. The objective of this Protocol would be to encourage other States to ratify the Convention and to provide the benefit a uniform set of rules for at least one group of States without having to wait for 10 ratifications.

[87] The Convention is the result of nearly 20 years of work by UNCITRAL to devise a unifying law for international bills and notes. It will create a new international regime based on a compromise between the civil and common law traditions. It addresses and regulates a number of complex and difficult issues such as the rights of a holder of a bill or note; forged endorsements; fraud, theft; guarantors; presentment for payment and non-acceptance; notice of dishonour and discharge. When the Convention comes into force, it will therefore introduce more predictability for financial institutions and businesses that use these methods of payment for international transactions.

[88] *-Action required in Canada:* Pursue consultations to seek interest for the Convention, including for its application on a regional basis (NAFTA).

c. Convention on Contracts for the International Sale of Goods (UNCITRAL)

[89] The Sales Convention to which 65 States are party establishes uniform rules for the international sale of goods, which apply in the absence of any expression 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.

[90] The Convention came into force for Canada on May 1, 1992, and applies uniformly across all of Canada since February 1, 1993. A declaration was made with regard to Nunavut, and the Convention entered into force there on January 1, 2004.

[91] The ULCC has recommended that the Sale Convention be amalgamated with other conventions on the international sale of goods. To that end, it has proposed in 1998 the *Uniform International Sales Conventions Act*.

[92] *Action required in Canada:* Pursue the consultations on the appropriateness of adopting the *Uniform International Sales Convention Act* at federal, provincial and territorial level.

d. Inter-American Convention on the Law Applicable to International Contracts (OAS)

[93] This Convention, which was finalised under the auspices of CIDIP-V in Mexico in 1994, has entered into force with the ratification of two States: Mexico and Venezuela. Bolivia, Brazil and Uruguay are signatories. It provides for the recognition of the parties' choice of law applicable to an international contract, a rule which is in general conformity with the existing rules both in common law and civil law regimes in Canada. The Convention also establishes subsidiary rules for determination of the law applicable.

[94] When members of the Department of Justice's Advisory Group on Private International Law reviewed the Convention, the members were of the view that without improvement in the English version in particular, there would not be sufficient support in Canada for signature and ratification.

[95] When the Convention was discussed at the preparatory meeting to CIDIP-VI in December 1998, it was agreed that those States interested in changing the text should bear the responsibility of proposing changes. It was agreed that a proposal for changes would be submitted to the Secretariat which would then circulate it to the States which had signed and ratified the Convention in order to obtain their agreement to a revised text.

[96] Canada is still not party to any of the CIDIP conventions, a situation which does not go unnoticed by other Member States. Given the substantial compatibility of the Convention with Canadian law, Canada could feasibly consider accession to it if the language problems were satisfactorily resolved.

[97] *Action required in Canada:* Consult with provincial and territorial authorities and other interested parties on proposed changes to the English and French versions of the Convention. Arrive at an agreed proposal with other concerned States to be submitted to the OAS Secretariat for distribution to interested States.

e. Model Law on Cross-border Insolvency (UNCITRAL)

[98] Trans- or cross-border insolvency exists where the insolvent debtor has assets in more than one jurisdiction. In many cases, administrators are not able to deal effectively with the assets because of the great differences in insolvency legislation from one State to another and because of a lack of procedures to allow cross-border co-ordination of insolvency proceedings.

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[99] In 1995, UNCITRAL decided to address the issue and attempt to propose solutions to the practical problems caused by the lack of harmony among national laws on cross-border insolvency, notwithstanding the failure of other international organizations to achieve results. In collaboration with INSOL, an international association of insolvency practitioners, the Working Group on Insolvency Law prepared a legislative framework for judicial co-operation and for access and recognition in cross-border insolvency. The Model Law on Cross-Border Insolvency was finished at the 30th Session of the Commission in May 1997. Since then, Eritrea, Japan, Mexico, the United Kingdom and South Africa have enacted the Model Law. Other States, including Australia, New Zealand and the United States are considering its adoption.

[100] Industry Canada is including consideration of the Model Law in its reform consultations and the Senate Standing Committee on Banking, Trade and Commerce has heard presentations on the Model Law.

f. Case Law on UNCITRAL Texts (CLOUT)

[101] UNCITRAL has established a system for collecting and distributing judicial and arbitral decisions on the *New York Convention*, the *Model Law on International Commercial Arbitration*, the *Sales Convention* and other UNCITRAL instruments in force. Designated national correspondents contribute summaries of the decisions. Cases which interpret, for example, the *Sale of Goods Convention*, can be found at the UNCITRAL website. Professor Geneviève Saumier from the Faculty of Law of McGill University, Canadian National Correspondent for CLOUT for both civil and common law cases, submits Canadian decisions to UNCITRAL.

[102] UNCITRAL is also preparing a caselaw digest for international sale cases and arbitration cases.

[103] *Action required in Canada:* Support the work of the national correspondent; distribute collections of decisions as they are received; attend annual meetings of national correspondents.

g. Model Franchise Disclosure Law (Unidroit)

[104] In 2002, the Governing Council of Unidroit adopted the *Model Franchise Disclosure Law*. The purpose of the Model Law is to establish obligations on the part of franchisors regarding disclosure of information and in particular, to determine the information to be disclosed in the “disclosure document”. Some exceptions from the

obligation to disclose are also mentioned. Finally, the Model Law creates remedies for the franchisee.

[105] *-Action required in Canada:* Pursue consultations.

h. Convention on International Leasing and Convention on International Factoring (Unidroit)

[106] These Conventions, which are also known as the Ottawa Conventions since they were finalised in Ottawa in 1988, have been in force since May 1, 1995. The *Leasing Convention* is in force in eight States and the *Factoring Convention* is in force in six States. They provide uniform international rules to facilitate the financing of international commercial transactions.

[107] Canada is not yet party to either of the Conventions. In 1991, however, the Department of Justice consulted 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 was some support for Canada becoming party to both Conventions. Because of changes in the leasing industry and in light of the recent coming into force of the Conventions, however, consultations will be renewed with a view to making a recommendation as to whether Canada should become a party to the Conventions.

[108] Moreover, the Uniform Law Conference has prepared draft uniform legislation that may be adopted by interested jurisdictions for the implementation of the Conventions should there be sufficient interest in Canada's becoming a party.

[109] *Action required in Canada:* Confirm the views of the leasing industry and of the provinces and territories to determine Canada's interest in joining these Conventions.

i. Preliminary draft Protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment (Unidroit)

[110] The Railway Rolling Stock Protocol adapts to railway rolling stock equipment the mechanisms set out in the *Convention on International Interests in Mobile Equipment*. The latest version of the Railway Rolling Stock Protocol may be found on the Unidroit website.

[111] Given the integration of the rail industry on the North American continent and the existence of national security regimes for rolling stock, the added value of using an international registry for rolling stock is not self-evident. However, an electronic

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registration system, as opposed to the current paper registration of security interests, could have economic benefits. Also, financiers based in Canada but active outside North America could also benefit from Canadian participation in an international registry.

[112] The development of the regulations to the Protocol is well underway and the Rail Registry Task Force work should be shared with member States in the near future. Transport Canada maintains ongoing consultations with stakeholders on this project.

[113] *Action required in Canada:* Follow developments on this project.

j. Review of Model Law on Procurement of Goods, Construction and Services (UNCITRAL)

[114] In 2004, UNCITRAL decided to mandate a Working Group to continue work in the area of procurement. The purpose of the work is mainly to review the UNCITRAL Model Law on Procurement of Goods, Construction and Services from two perspectives: one concerns the use of electronic commerce in public procurement and the other consists of exploring new practices in order to enhance transparency and efficiency in public procurement.

[115] The Working Group met for two sessions over the last year, one from August 30 to September 3, 2004 and the other from April 4 to 8, 2005. The Canadian delegation comprised representatives of the Department of Justice and the Department of Foreign Affairs and provincial experts in civil and common law. At the first session, the issues were discussed generally and areas of priority were identified. The second session mainly concentrated on three topics: (1) how to accommodate electronic procurement in the Model Law; (2) electronic reverse auctions; and (3) abnormally low tenders. Canada was represented by Dominique D’Allaire (IPLS, Justice Canada), Eleanor Andres (Manitoba Justice), Marie-Andrée Gauthier (Conseil du Trésor, Québec) and Collin G. Barker (International Trade Canada).

[116] The Department of Justice’s Advisory Group on Private International Law has not yet determined the level of priority of this new project. However, federal and provincial authorities have expressed interest in this project.

[117] *Action required in Canada:* Conduct relevant consultations and establish the Canadian position for the upcoming session of the Working Group from November 7-11, 2005.

B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS

1. HIGH PRIORITIES

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

[118] On June 30, 2005, the Hague Conference on Private International Law closed its 20th Diplomatic Session and completed its work on the Convention on Choice of Court Agreements. The final instrument 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 States party to agree on a reciprocal basis to recognize judgments based on a choice of court agreement that was not exclusive.

[119] Based on the draft submitted to the Diplomatic Conference, the key issues for Canada at the session were:

- 1) retaining an exclusion for matters related to asbestos or raw materials, either specifically, or via a provision retaining the application of mandatory rules of the forum, to cover the exclusive jurisdiction reserved by British Columbia and Quebec;
- 2) retaining the power of a recognizing court to reduce a damage award in certain circumstances;
- 3) ensuring appropriate treatment of maritime law, competition law and intellectual property so that there is no federal obstacle to Canadian acceptance of the Convention; and
- 4) ensuring that our courts retain the power to transfer cases.

[120] The resulting text appears to meet Canada's concerns and is generally in line with Canadian law. In addition to the matters excluded from the scope of the Convention under Article 2, a State may make a declaration under Article 21 to exclude other specific matters from its scope. This would cover asbestos or raw materials as well as any federal matters that Canada might wish to exclude. In addition, there is no prohibition on reservations so that Canada would be in a position to reserve on issues within the limits of treaty law. The authority of Canadian courts to transfer cases between courts or judicial districts remains, although in some circumstances a transfer may remove the case from the scope of the Convention with possible consequences for recognition and enforcement of the resulting judgment. The power to reduce an award of damages also

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remains in the Convention. While the language has changed from the original draft, the substance is intended to be the same.

[121] Overall, the Convention appears to be a positive development. Although it is quite limited in scope and allows States party to create broad exceptions, the frequency of choice of court agreements in commercial matters could make the Convention a useful tool for commercial parties doing business across borders.

[122] The Permanent Bureau of the Hague Conference is preparing the final corrected version of the Convention, which should be available in the coming weeks. The rapporteurs are revising the draft Explanatory Report in light of the discussions at the session and will have a final version as soon as possible.

[123] The Canadian delegation to the 20th Diplomatic Session was led by Kathryn Sabo, General Counsel, IPLS, Justice Canada, and included the following: Manon Dostie, Justice Canada, Darlene Carreau, Industry Canada Legal Services, Darcy McGovern, Saskatchewan Justice, Frédérique Sabourin, Vincent Pelletier and Jean Robitaille, Justice Québec, Scott Fairley of Theall and Associates, Toronto, and Greg Steele of Steele Urquhart Payne, Vancouver. Over the years, many other Canadians have been involved with this project, including T.B. Smith, Q.C. who chaired the sessions into 2001, Louise Lussier, Justice Canada, who headed the delegation to the early Special Commissions, Jeff Richstone, Justice Canada, Christina Sampogna, Industry Canada, Russell Getz from the BC Ministry of Attorney General, Justice Benoît Emery of the Quebec Superior Court, Alain Prujiner of Université Laval, and Jacques Papy. Justice Canada is grateful to all those who contributed to the success of this project and to those governments, law firms and institutions who shared their experts.

[124] *Action required in Canada:* When the final text and the Explanatory Report are available, have a pre-implementation report prepared, determine interest in Canada and consider preparation of uniform implementing legislation.

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

[125] This Convention, which does not yet apply to Canada, is in force in 83 States. It is aimed at replacing the process of legalisation of documents by diplomatic officials with the simpler method of the “apostille”, i.e., a certificate issued in the originating country by a competent authority. At the request of the Secretary General of the Hague Conference, the Advisory Group recommended that consultation on the suitability of

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Canada becoming a party to this Convention, which was suspended in 1993, be reinitiated given the anticipated benefits for private parties, particularly in the context of child adoption process.

[126] In October 2003, the Hague Conference convened a Special Commission on the operation of the Hague conventions on service abroad, taking of evidence abroad and legalisation. Canada participated in the Special Commission and the Canadian delegation included Manon Dostie, IPLS, Department of Justice Canada; John Gregory, Government of Ontario; John Horn, private practitioner, British Columbia; Frédérique Sabourin and Patrick Gingras, both from the ministère des Relations internationales du Québec. The conclusions and recommendations adopted by the Special Commission are available on The Hague Conference website.

[127] Canada sought agreement to include a federal state clause by way of protocol to the legalisation and the taking of evidence conventions. The Special Commission was of the opinion that there was insufficient priority for this to be the subject of a protocol on its own and that, if there were to be a Protocol on other issues, then such a clause might be considered.

[128] Following the Special Commission, a Sub-group of the Advisory Group on Private International Law composed of John Gregory and Frédérique Sabourin, as well as officials from Foreign Affairs Canada and the IPLS, worked out a proposal for implementation and identified some difficulties that would arise and possible solutions.

[129] Foreign Affairs Canada has undertaken a broad consultation with certain States party to the Legalisation Convention in order to assess the different methods of implementation of this Convention.

[130] *Action required in Canada:* Prepare a consultation document for the provinces and territories to consider applying the Convention on Legalisation in their respective jurisdictions.

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2. MEDIUM PRIORITIES

**a. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters
(Hague Conference)**

[131] This Convention, which does not yet apply in Canada, is in force in 40 States. Its purpose is to facilitate the transmission and enforcement of letters rogatory by which foreign authorities are requested to obtain evidence for use in ongoing proceedings. This Convention is a complement to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, which is already in force in Canada.

[132] In October 2003, the Hague Conference convened a Special Commission on the operation of the Hague Conventions on service abroad, taking of evidence abroad and legalisation. Canada participated in the Special Commission and the Canadian delegation included Manon Dostie, IPLS, Department of Justice Canada; John Gregory, Government of Ontario; John Horn, private practitioner, British Columbia; Frédérique Sabourin and Patrick Gingras, both from the Ministère des relations internationales du Québec. The Conclusions and Recommendations adopted by the Special Commission are available on the Hague Conference website.

[133] Canada sought agreement to include a federal state clause by way of protocol to the legalisation and the taking of evidence conventions. The Special Commission was of the opinion that there was insufficient priority for this to be the subject of a protocol on its own and that if there were to be a Protocol on other issues, then such a clause might be considered.

[134] *Action required in Canada:* When appropriate, consult on Canada's accession.

3. LOW PRIORITIES

**a. Canada/United Kingdom Convention on Recognition and Enforcement of
Judgments (Bilateral)**

[135] This Convention, which was concluded in 1984, was the first bilateral treaty entered into by Canada in the area of enforcement of judgments. It now applies to all Canadian jurisdictions except Quebec and Nunavut. However, as legislation to implement the Convention in Nunavut has been adopted, the application of the Convention could be extended to Nunavut in the near future by way of declaration. The Convention was

modified in February 1995 by the incorporation of a reference to the 1988 *Lugano Convention on Judicial Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*, in order to protect Canadian interests against enforcement in the United Kingdom of judgments rendered in European countries party to the *Lugano Convention* on exorbitant bases of jurisdiction. The necessary implementation measures were adopted in the United Kingdom and the amendments came into force on December 1, 1995. The modification is in addition to the protection with respect to judgments from countries party to the 1968 *Brussels Convention* already included in the text.

[136] The 1984 Convention is used from time to time by parties in order to obtain from the courts of one of the State-parties the recognition of the judgments obtained from the courts of another. However, the Convention does not apply to a certain number of areas of the law, like judgments in family matters.

[137] *Action required in Canada:* Monitoring its application; extension to Quebec when possible.

b. Canada-France Convention on Recognition and Enforcement of Judgments (Bilateral)

[138] The *Canada-France Convention*, the first treaty relating to enforcement of judgments negotiated between Canada and a country with a civil law tradition, was signed on June 10, 1996. Ratification by both countries is required before it can come into force. Its main advantage, similar to that under the *Canada-United Kingdom Convention*, is protecting Canadian interests against the enforcement of judgments rendered in European States parties to the *Brussels* and the *Lugano Conventions* on exorbitant bases of jurisdiction. In addition, the *Canada-France Convention* would allow for the simplified enforcement of Canadian judgments in France, not only in general civil and commercial matters, but also in family matters, including maintenance orders.

[139] Since 1996, France has transferred to the European Union an important part of its jurisdiction over the administration of justice, especially concerning the recognition and enforcement of foreign judgments. This transfer of jurisdiction could constitute an obstacle to the ratification of the Convention by France.

[140] The ULCC adopted a uniform law to implement the Convention in August 1997. Relevant documents were sent to the provinces and territories. In June 1998, Saskatchewan became the first jurisdiction to enact legislation based on the Uniform Act. In December

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1999 and August 2000 respectively, Ontario and Manitoba enacted legislation to implement the Convention also based on the Uniform Act.

[141] *Action required in Canada:* Once a response is received from France concerning its capacity to ratify the Convention, take appropriate measures.

c. Convention on Service Abroad (Hague Conference)

[142] This Convention is in force across Canada. It also applies in 51 other States. It is aimed at facilitating the service of documents through Central Authorities established in each State party. Other means of service, such as postal service, are also available provided no objection to their use has been made.

[143] In Canada, Central Authorities have been designated in each province and territory. At the federal level, the Legal Advisory Division of Foreign Affairs Canada serves as the Central Authority and is monitoring the application of the Convention with the input of provincial and territorial Central Authorities. The rules of practice in all provinces and in three territories, as well as at the federal level, have been amended to comply with the Convention.

[144] The Permanent Bureau of the Hague Conference on Private International Law published a new preliminary edition of the Practical Handbook on the operation of the Convention. All Canadian jurisdictions were contacted to update the practical information provided in the Handbook. This information has been provided to the Permanent Bureau of the Hague Conference. The new edition will be available soon.

[145] Following a Special Commission on the operation of the Hague conventions on service abroad, taking of evidence abroad and legalisation in October 2003, where Canada was represented by Manon Dostie, IPLS, Department of Justice Canada; John Gregory, Government of Ontario; John Horn, private practitioner, British Columbia; Frédérique Sabourin and Patrick Gingras, both from the ministère des Relations internationales du Québec, the Hague Permanent Bureau worked with the help of some national experts in order to assess the necessity of amending the forms under the Service Convention and developing guidelines to complete those forms.

[146] *Action required in Canada:* Provide information and respond to requests regarding the application of the Convention.

C. FAMILY LAW

1. HIGH PRIORITIES

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

and

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)

[147] These Conventions create global legal solutions to address the problems raised by the increase in the transborder movement of children and adults in need of protection.

[148] More specifically, the 1996 *Hague Convention on the Protection of Children* establishes conflict of law rules to deal with a variety of matters including parental responsibility, as well as its delegation; rights of custody; guardianship, curatorship and analogous institutions; the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; the placement of the child in a foster family or in institutional care; 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.

[149] Modelled after the 1996 *Convention on the Protection of Children*, the 2000 *Convention on the Protection of Adults* provides for the protection of those adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect the interests of their own person or property. This Convention deals in particular with the determination of incapacity and the institution of a protective regime; the placing of the adult under the protection of a judicial or administrative authority; guardianship, curatorship and analogous institutions; the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult; the placement of the adult in an establishment or other place where protection can be provided; the administration, conservation or disposal of the adult's property; and the authorisation of a specific intervention for the protection of the person or property of the adult.

[150] The final explanatory reports of the Conventions are available on the Hague Conference website.

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Uniform Implementing Acts

[151] The Department of Justice in collaboration with the ULCC prepared Uniform Acts for the implementation of both the 2000 *Convention on the Protection of Adults* and the 1996 *Convention on the Protection of Children*. These Acts were adopted by the ULCC in November 2001. In May 2005, Saskatchewan became the first province to adopt implementing legislation for the 2000 *Convention on the Protection of Adults*.

FPT Committees

[152] The CCSO Working Group on Parenting and Contact Enforcement and Jurisdiction is examining the 1996 Convention's conflict of law rules and their possible application to interprovincial situations. At the same time, this work is extremely useful for provinces and territories wishing to implement the Convention.

[153] Presentations to the FPT Directors' of Child Welfare and the FPT Public Trustee Committees have been scheduled for next fall.

[154] *Action required in Canada:* Consult with provinces and territories and encourage them to implement these Conventions. Continue the work with FPT working groups.

c. Draft Convention on the International Recovery of Support Orders and Other Forms of Family Maintenance (Hague Conference)

[155] The Hague Conference on Private International Law is preparing a new international instrument in relation to the enforcement of support orders.

[156] In April 1999, a Special Commission of the Hague Conference reviewed the 1956 and 1973 *Hague Conventions on the Law Applicable to Maintenance Obligations*, the 1958 and 1973 *Hague Conventions on the Recognition and Enforcement of Decisions relating to Maintenance Obligations* as well as the United Nations' 1956 *New York Convention on the Recovery Abroad of Maintenance*. Canada is not a party to any of the Conventions, but has an interest in the subject.

[157] Several problems with these Conventions were identified: the complete failure of some States to carry out their obligations under the Conventions; differences of interpretation, practice and enforcement under the Conventions; cumulative application of the Conventions; and practical issues, such as the best method of transferring funds. Moreover, the Conventions have not met the needs of the dependants requiring support, the New York Convention has contributed, in part, to inconsistent interpretation and

practice, various changes have occurred in national legislation, and the proliferation of international instruments has created a complex system.

[158] In June 2001, the Hague Conference decided to include the project as a priority. Three special commissions were already held, from May 5 – 16, 2003, June 7-18, 2004 and April 4-15, 2005. All existing documents relevant to those Special Commissions are available on The Hague Conference website.

[159] The Canadian delegation to the third Special Commission was composed of Mounia Allouch, Counsel, IPLS, Department of Justice Canada, Danièle Ménard, Counsel with the Family, Children and Youth Section of the Department of Justice Canada and federal co-chair of the Interjurisdictional Support Sub-Committee, Denise Gervais, civil law expert from Quebec and member of the Coordinating Committee of Senior Officials – Family Justice, and Tracy Morrow, common law expert from Manitoba and the provincial co-chair of the Interjurisdictional Support Sub-Committee.

[160] The third session completely or partially resolved numerous issues, including those regarding the establishment of paternity, the establishment and modification of court decisions, private agreements and authentic instruments, administrative cooperation and the recognition and enforcement of decisions. However, important questions remain and will likely be discussed at the next Special Commission in June 2006. Some of the remaining issues are the following:

- Scope of application of the Convention and possibility of making reservations;
- Cost relating to the effective access by the applicant to the procedures in the State where the establishment, the modification or the recognition of a decision is sought;
- Concepts of habitual residence and child;
- Application of the Convention to direct applications;
- Private agreements and authentic instruments;
- Use of information technologies.

[161] *Action required in Canada:* Consultations in preparation for the next Special Commission in June 2006.

d. Convention on Intercountry Adoption (Hague Conference)

[162] The Convention provides rules for an orderly and harmonised process for international adoption encouraging cooperation between countries of origin and receiving countries. It aims to assure a rapid and flexible process, in the best interests of the

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children concerned. The implementation of the Convention has had a positive impact on Canadian international adoption.

[163] The Convention entered into force in Canada on April 1, 1997 in the five provinces which were the first to enact implementing legislation, i.e. British Columbia, Prince Edward Island, Manitoba, New Brunswick and Saskatchewan. On November 1, 1997, the Convention entered into force for Alberta; on August 1, 1998 for the Yukon; on October 1, 1999 for Nova Scotia; on December 1, 1999 for Ontario; the Northwest Territories on April 1st 2000, Nunavut on September 1, 2001 and Newfoundland on December 1, 2003. In April 2004, Quebec adopted implementing legislation. The Act will enter into force at a date to be determined by the Quebec Government.

[164] The Permanent Bureau of the Hague Convention has circulated a questionnaire and annexes in view of the upcoming Special Commission. Consultations were undertaken in May 2005.

[165] *Action required in Canada:* Follow up with date of entry into force for Quebec. Prepare for the Special Commission scheduled for September 17 – 23, 2005.

2. MEDIUM PRIORITIES

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

[166] This Convention, which is the first Hague Convention to be ratified by Canada, is in force across Canada. It provides for an expeditious remedy in order to obtain the return to the State of habitual residence of a child who has been unlawfully removed to or who is unlawfully retained in another country 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.

[167] 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 federal Department of Justice Legal Services Unit at Foreign Affairs Canada. A transportation programme facilitates the repatriation of children who have been abducted by a parent; the programme operates domestically and as well as internationally. The programme is co-ordinated by the Royal Canadian Mounted Police

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(RCMP) Missing Children's Registry, (tel.: 1-877-318-3576) in cooperation with the national airlines and Via Rail.

[168] A database of judicial decisions taken under the *Hague Convention on the Civil Aspects of Child Abduction* is available at <http://www.incadat.com>. It is hoped that this will facilitate a uniform interpretation of the Convention across all Contracting States. Relevant decisions from Central Authorities will be collected and forwarded to the Permanent Bureau of the Hague Conference.

[169] A new round of consultations has been initiated on Canada's acceptance of the accessions by Latvia, Guatemala, Lithuania, Thailand, Bulgaria, Dominican Republic and Nicaragua to the Convention.

[170] The Hague Conference will convene a Special Commission in March 2006 to review the operation of the Convention.

[171]] *Action required in Canada*: Follow-up on the accession process and prepare for the Special Commission in March 2006.

D. PROTECTION OF PROPERTY

1. HIGH PRIORITY

a. Convention on the Form of an International Will (Unidroit)

[172] This Convention applies to 12 States, including Canada, where it has been extended to 8 provinces and territories. To facilitate implementation of the Convention, the ULCC has prepared a Uniform Act.

[173] The purpose of the Convention is to establish an international form of will, additional to the forms in use in Contracting States, which is to be recognised as valid in all Contracting States. Article 1 of the Convention stipulates that each Party undertakes to introduce into its law the rules regarding an international will set out in the Annex to the Convention. In choosing the form of an international will, testators know that their will is to be recognised in all Contracting States without reference to the conflict of law rules concerning the validity of wills.

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[174] *Action required in Canada:* Consultation with the five other jurisdictions that have yet to implement the Convention.

b. Convention on the Law Applicable to Trusts and their Recognition (Hague Conference)

[175] This Convention is now in force in 11 States, including five exclusively civil law jurisdictions. It entered into force in Canada on January 1, 1993 and now applies to seven jurisdictions: Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland, Manitoba and Saskatchewan.

[176] The Convention aims at resolving issues of conflict of laws related to the establishment and management of trusts and problems related to their recognition, especially in countries with a civil law tradition.

[177] *Action required in Canada:* Consultation with the jurisdictions that have yet to implement the Convention.

2. MEDIUM PRIORITIES

a. Convention on the Law Applicable to Successions (Hague Conference)

[178] This Convention, which has been signed by Argentina, Luxembourg, Switzerland and the Netherlands and which has only been ratified by the Netherlands, is not in force, as three ratifications are necessary. The Convention determines the law applicable to the estates of deceased persons where more than one State is concerned. The Convention's main feature is the principle of unity whereby the entire succession of an estate is governed by one law unless a choice of law has been made.

[179] Canada actively participated in the negotiation of this Convention. Since 1994, consultation regarding possible support in Canada for the implementation of this Convention has been suspended in order to allow further study of the Convention to answer questions raised as to its interpretation.

[180] At the request of the Secretary General of the Hague Conference, the Advisory Group on Private International Law considered the suggestion that Canada ratify the Convention soon, after a new round of consultation. It was felt that consultations should not be undertaken at this point given that the Convention is not in force.

[181] *Action required in Canada:* Consultation on possible Canadian ratification and implementation, when appropriate.

3. LOW PRIORITIES

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

[182] This Convention, to which 23 States are party, was finalised under the auspices of Unidroit in June 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. An explanatory report on the Convention and its implementation is available on the Unidroit website.

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

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CONCLUSION

[184] In this report, we have described the activities of the Department of Justice in private international law over the past year. This last year has been particularly fruitful in terms of finalizing international instruments and initiating new projects in international organizations. Progress has also been made on the implementation front in terms of renewing interest for texts that have already been negotiated – this is reflected by shifting to a higher priority level some instruments open for implementation – which now need to be translated into legislative proposals in interested jurisdictions.

[185] We anticipate devoting greater resources over the next few years to increasing the number of PIL instruments to which Canada is party. It is clear that collaboration between the Department of Justice and the ULCC in matters of private international law is key to achieving the objective and we look forward to continuing private international law work with the Conference, and with the Commercial Law Strategy in particular.

[186] We would like to reiterate our invitation to members of the ULCC to provide us with comments or questions arising from this report. We would be particularly interested in knowing whether the ordering of our priorities corresponds to the priorities of the provincial and territorial governments. Your comments or questions may be directed to Kathryn Sabo, IPLS, Department of Justice Canada.

ANNEX A

INTERNATIONAL PRIVATE LAW SECTION CONTACTS (2005)

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ANNEXES B AND C

ANNEX B

Overview Chart of Private International Law Priorities

ANNEX C

Chart of Private International Law Priorities

OVERVIEW CHART OF PRIVATE INTERNATIONAL LAW PRIORITIES

| 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"> Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL) Draft Legislative Guide on Security Interests (UNCITRAL) Project on Harmonised Substantive Rules Regarding Indirectly Held Securities (UNIDROIT) | | <ul style="list-style-type: none"> Draft Convention on Maintenance Obligations (Hague) | |
| | Implementation | <ul style="list-style-type: none"> Convention on the Settlement of Investment Disputes (ICSID) - (World Bank) Convention on International Interests in Mobile Equipment and Aircraft Protocol (UNIDROIT) Convention on Securities Held by Intermediaries (Hague) - ULCC Uniform Act Convention on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL) Convention on the Assignment of Receivables (UNCITRAL) | <ul style="list-style-type: none"> Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) | <ul style="list-style-type: none"> Convention on the International Protection of Adults - (Hague) Convention on Parental Responsibility and Measures of Protection of Children (Hague) | <ul style="list-style-type: none"> Convention on the Form of an International Will (Unidroit) Convention on the Law Applicable to Trusts - (Hague) |
| 2 | Negotiation | <ul style="list-style-type: none"> Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (UNIDROIT) | | | |
| | Implementation | <ul style="list-style-type: none"> Draft Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act | <ul style="list-style-type: none"> Convention on the Taking of Evidence Abroad (Hague) Convention on Choice of Court Agreements (Hague) | <ul style="list-style-type: none"> Convention on the Civil Aspects of International Child Abduction (Hague) Convention on Intercountry Adoption (Hague) | <ul style="list-style-type: none"> Convention on the Law Applicable to Successions (Hague) |
| 3 | Negotiation | <ul style="list-style-type: none"> Preliminary draft Protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment (UNIDROIT) | | | |
| | Implementation | <ul style="list-style-type: none"> Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL) Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL) Inter-American Convention on the Law Applicable to Contracts (OAS) Model Law on Cross-border Insolvency (UNCITRAL) Model Franchise Disclosure Law (Unidroit) Conventions on International Leasing and on International Factoring (Unidroit) | <ul style="list-style-type: none"> Canada-U.-K. Convention on Recognition and Enforcement of Judgments (Bilateral) Canada-France Convention on Recognition and Enforcement of Judgments (Bilateral) Convention on Service Abroad (Hague) | | <ul style="list-style-type: none"> Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit) |

ORGANIZATIONS:

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NOTE: 1, 2 and 3 represent the order of priority afforded to each project, 1 being the highest priority.

International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|--|---|---|
| 1 | Ongoing Negotiations | Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL) | | Instrument not finalized yet | Comments and input from provinces, territories, stakeholders and experts for consideration in determining Canadian positions on various key issues |
| 1 | Ongoing Negotiations | Draft Legislative Guide on Secured Transactions (UNCITRAL) | | Instrument not finalized yet | <ul style="list-style-type: none"> - Distribute working papers for comments - Ensure links are made with the work on security interests in the Commercial Law Strategy |
| 1 | Ongoing Negotiations | Project on Harmonised Substantive Rules Regarding Indirectly Held Securities (UNIDROIT) | | Instrument not finalized yet | Consultation on the preliminary draft convention in preparation for the next intergovernmental session |
| 1 | Implementation or monitoring | Convention on the Assignment of Receivables in International Trade (UNCITRAL) | Preliminary implementation study done for submission to ULCC August 2005 | <ul style="list-style-type: none"> - Not in force - 3 signatures: Luxembourg, Madagascar, U.S. - requires 5 ratifications or | <ul style="list-style-type: none"> - Consult with the private sector, federal, provincial and territorial authorities on implementation - Request the ULCC to prepare uniform implementing legislation as part of the Commercial Law Strategy |

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International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|---|--|--|---|
| | | | | accessions | |
| 1 | Implementation or monitoring | Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) - (World Bank) | <ul style="list-style-type: none"> - Ontario adopted implementing legislation (1999) but not yet in force - The ULCC adopted uniform implementing legislation (1998) | <ul style="list-style-type: none"> - In force on October 14, 1966 - 142 States party | <ul style="list-style-type: none"> - Obtain provincial and territorial support for ratification, including the adoption of legislation implementing the convention at the provincial and territorial levels - Preparation of federal implementing legislation |
| 1 | Implementation or monitoring | Convention on International Interests in Mobile Equipment and Aircraft Protocol (UNIDROIT) | <ul style="list-style-type: none"> - Implementing legislation adopted in Canada (2005), Nova Scotia (2003) and Ontario (2001) but not yet in force - The ULCC has adopted implementing legislation | <ul style="list-style-type: none"> - Adopted in Cape Town on November 16, 2001 - Convention in force at the international level (04/01/04); Aircraft Protocol not yet in force - Canada has signed both instruments | <ul style="list-style-type: none"> - Seek wider support from provinces and territories in terms of implementation before recommendation for ratification is made - Input from jurisdictions to prepare for declarations |

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International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|---|--|---|
| 1 | Implementation or monitoring | Convention on Securities Held by Intermediaries (Hague) - ULCC Uniform Act | ULCC approved a Working Group to prepare uniform implementing legislation as part of the Commercial Law Strategy | <ul style="list-style-type: none"> - Concluded at The Hague on 02-11-13 - Not yet in force | - Establish a ULCC Working Group to draft uniform implementing legislation |
| 1 | Implementation or monitoring | Conventions on the Limitation Period in the International Sale of Goods (UNCITRAL) | <ul style="list-style-type: none"> - The ULCC adopted uniform implementing legislation (1998) - Consultation at federal, provincial and territorial level in 2002 and 2005 - Implementing legislation adopted in Nunavut, but not yet in force | <ul style="list-style-type: none"> - In force on August 1st, 1988 - 25 States party | <ul style="list-style-type: none"> - Consideration by the federal government to adopt an implementing legislation - Pursue consultations on the adoption by the provinces and territories of the ULCC International Sales Conventions Act |
| 2 | Ongoing Negotiations | Preliminary draft Protocol on Matters specific to Space | | Instrument not finalized yet | Preparation for the upcoming Governmental Session of |

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International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|-------------------------------|---|--------------------------|---|--|
| | | Assets to the Convention on International Interests in Mobile Equipment (UNIDROIT) | | | Experts |
| 2 | Implementation or monitoring | Convention on the Use of Electronic Communications in International Contracts (UNCITRAL) | | Finalised by UNCITRAL in July 2005 | Consultation with provinces, territories, stakeholders and experts on implementation |
| 2 | Implementation and monitoring | Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act | | Model Law adopted by UNCITRAL in June 2002 | <ul style="list-style-type: none"> - Adoption of Uniform Act at federal level - Encourage adoption of Uniform Act by provinces and territories - Uniform Act adopted by ULCC in August 2005 |
| 3 | Ongoing Negotiations | Preliminary draft Protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment (UNIDROIT) | | Instrument not finalized yet | Follow developments on this project |
| 3 | Implementation or monitoring | Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL) | | - Adopted and opened for signature in December 1995 | - Consultation with provinces and territories on Canada becoming a party |

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International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|---|---|---|--|
| | | | | - Not yet in force | - Study of implementation mechanisms |
| 3 | Implementation or monitoring | Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL) | | - Open for signature in 1988 - Not yet in force | - Consultation with provinces and territories on Canada becoming a party |
| 3 | Implementation or monitoring | Inter-American Convention on the Law Applicable to Contracts (OAS) | | Concluded at CIDIP-V, Mexico City, on March 18, 1994 and in force | Consultation to be undertaken when and if appropriate on the desirability of ratifying and implementing the Convention |
| 3 | Implementation or monitoring | Model Law on Cross-border Insolvency (UNCITRAL) | For consideration by Industry Canada in the context of the bankruptcy and insolvency reform | Adopted by UNCITRAL in 1997 | Provide information when requested |
| 3 | Implementation or monitoring | Model Franchise Disclosure Law (Unidroit) | | Adopted by Unidroit in 2002 | Provide information when requested |
| 3 | Implementation or monitoring | Conventions on International Leasing and on International Factoring (Unidroit) | - Consultation with provinces, territories and industries in 1991 | Entry into force on May 1 st , 1995 for both | Confirm the views of the industry and of the provinces and territories to determine Canada's interest in |

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International Commercial Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|--|------------------------------|---|---|--|--|
| | | | indicated support for implementation - The ULCC has drafted and adopted implementing legislation | conventions | becoming party to the Conventions. |
| 3 | Implementation or monitoring | Case Law on UNCITRAL Texts (CLOUT) (UNCITRAL) | No need for implementation | Collection of cases on UNCITRAL instruments available on line at www.uncitral.org | Monitor providing information on relevant Canadian cases to UNCITRAL |
| Instrument already implemented in Canada | | Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UNCITRAL) | In force in all Canadian jurisdictions | Adopted by the United Nations in 1958 | UNCITRAL Working Group examining Art. II(2) of the Convention |
| Instrument already implemented in Canada | | Model Law on Electronic Commerce (UNCITRAL) | - ULCC Uniform Act (1999) - implemented in all jurisdictions except N.W.T. | Adopted by UNCITRAL in May 1995 | |

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International Commercial Law

| Priority Level | Instrument | Implementation in Canada | International Status | Action Required |
|--|--|---|---|---|
| Instrument already implemented in Canada | Convention on Contracts for the International Sale of Goods (UNCITRAL) | Implemented and in force in all Canadian jurisdictions | - In force in 1988 - Canada ratified in 1991 | |
| Instrument already implemented in Canada | Model Law on International Commercial Arbitration (UNCITRAL) | Implementing legislation adopted and in force in all Canadian jurisdictions | Adopted by UNCITRAL in 1985 | UNCITRAL Working Group examining issues under the Model Law |

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Judicial Cooperation and Enforcement of Judgments

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|---|---|--|
| 1 | Implementation or monitoring | Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) | | In force in 87 States | Consult provinces and territories on the interest of implementing the Convention |
| 2 | Implementation or monitoring | Convention on Exclusive Choice of Court Agreements (Hague) | | Adopted by the Hague Conference on June 30, 2005 | <ul style="list-style-type: none"> - Consult with Canadian jurisdictions on implementation - Preparation of Uniform implementing legislation |
| 2 | Implementation or monitoring | Convention on the Taking of Evidence Abroad (Hague) | | In force in 43 States | Consultation on accession to the Convention if and when decided appropriate by the Advisory Group on Private International Law |
| 3 | Implementation or monitoring | Canada-U.-K. Convention on Recognition and Enforcement of Judgments (Bilateral) | <ul style="list-style-type: none"> - Extended to all jurisdictions except Québec - Implementing legislation adopted in CAN., B.C., MAN., N.S., N.B., ONT., Y.T. (1984), P.E.I. (1987), N.W.T. and | <ul style="list-style-type: none"> - In force for Canada on January 1st, 1987 - Modifications to include reference to 1988 Lugano | Extend the Convention to Quebec once implementing legislation adopted |

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Judicial Cooperation and Enforcement of Judgments

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|--|------------------------------|--|---|---|--|
| | | | SASK. (1988) NFLD. (1989) ALTA. (1990) and Nunavut (2002) | | |
| 3 | Implementation or monitoring | Canada-France Convention on Recognition and Enforcement of Judgments (Bilateral) | <ul style="list-style-type: none"> - Implementing legislation adopted but not yet in force in SASK(1998); ONT (1999); MAN (2000) - Uniform Act adopted by the ULCC in 1997 | <ul style="list-style-type: none"> - Convention signed in Ottawa on June 10, 1996 - Not yet in force | Consultation with France on ratification – Ratification by France unlikely |
| Instrument already implemented in Canada | | Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague) | <ul style="list-style-type: none"> - Implemented and in force in Canada on 89-05-01 - Amendments adopted for all rules of court in all jurisdictions and for those of the Federal Court | A practical handbook on the operation of the Convention is available on the website of the Conference – www.hcch.net | Provide information when requested |

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Judicial Cooperation and Enforcement of Judgments

| Priority Level | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------|--------------------------|---|-----------------|
| | | | (2002 version and provisional 2003 version) | |

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Family Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|---|--|---|---|
| 1 | Ongoing Negotiations | Draft Convention on Maintenance Obligations (Hague) | | <ul style="list-style-type: none"> - Instrument not finalized yet - Possible conclusion in 2007 | Consultations with federal, provincial and territorial partners and the private and academic sectors in view of the fourth Special Commission in June 2006 |
| 1 | Implementation or monitoring | Convention on the International Protection of Adults - (Hague) | <ul style="list-style-type: none"> - Uniform implementing legislation was adopted by ULCC (December 1st, 2001) | <ul style="list-style-type: none"> - Concluded at The Hague on October 2d, 1999 - Not yet in force - 1 Contracting State | Working and consulting with provincial and territorial jurisdictions on implementation issues |
| 1 | Implementation or monitoring | Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and Measures of Protection of Children (Hague) | <ul style="list-style-type: none"> - Uniform implementing legislation was adopted by ULCC (December 1st, 2001) | <ul style="list-style-type: none"> - Concluded at The Hague on October 19, 1996 - Not yet in force - 10 states party | <ul style="list-style-type: none"> - Working and consulting with provincial and territorial jurisdictions on implementation issues - FPT consultations in view of a Special Commission in November 2006 |
| 2 | Implementation | Convention on Protection of | - Implementing | - In force for | - Consult and work with the |

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Family Law

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|---|--|---|
| | or monitoring | Children and Cooperation in Respect of Intercountry Adoption (Hague) | <p>legislation adopted and in force in</p> <p>P.E.I. (1994), SASK., B.C., MAN. (1995), N.B. (1996), ALTA (1997), YT, N.S., ONT (1998), N.W.T., Nunavut (1999), NFId (2003), Québec (2006)</p> <p>- Convention in force in Québec on February, 1, 2006</p> | <p>Canada (1994), B.C., MAN., N.B., P.E.I., SASK., ALTA (1997), YT (1998), NS, ONT (1999), NWT (2000), Nunavut (2001) and NFLD (2003)</p> <p>- 66 States party</p> | provinces, territories and the Hague Conference on good practice guide |
| 2 | Implementation or monitoring | Convention on the Civil Aspects of International Child Abduction (Hague) | <p>Implementing legislation adopted in all provinces and territories</p> | <p>- In force for Canada in 1983</p> <p>- 75 States party</p> | FPT consultation in view of the Hague Special Commission on the operation of the Convention in March 2006 |

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 UNCITRAL: United Nations Commission on International Trade Law
 Unidroit: International Institute for the Unification of Private Law
 World Bank

NOTE: 1, 2 and 3 represent the order of priority afforded to each project, 1 being the highest priority.

Protection of Property

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|--|--|--|
| 1 | Implementation or monitoring | Convention on the Form of an International Will (Unidroit) | Implementing legislation adopted in ALTA. (1976), MAN. (1975), NFLD. (1975-1976), ONT. (1977), SASK. (1980-1981), P.E.I. (1994), N.B. (1997), N.S. (2000) | - In force for CAN., MAN., NFLD., ONT., ALTA (1978), SASK. (1982), P.E.I. (1995), NB (1997) and N.S. (2001) - 12 States party | Extension to remaining jurisdictions when implementing legislation is adopted |
| 1 | Implementation or monitoring | Convention on the Law Applicable to Trusts and their Recognition - (Hague) | - Implementation legislation with declaration: P.E.I. (1988), N.B. (1988), B.C. (1989), NFLD (1990), ALTA (1990), MAN. (1993), SASK. (1994), N.S. (2005) - 1988 Uniform Act by Uniform Law Conference | - In force for CAN, ALTA, B.C., N.B., NFLD, P.E.I. (1993), MAN., SASK (1994) - 10 States party | Extend the Convention to N.S. upon request. Adopt implementing legislation in QUÉ., ONT., Y.T., N.W.T. and Nunavut |
| 2 | Implementation or monitoring | Convention on the Law Applicable to Successions to | | - Concluded at the Hague on | Consult with provinces and territories when appropriate |

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Protection of Property

| Priority Level | | Instrument | Implementation in Canada | International Status | Action Required |
|----------------|------------------------------|--|--------------------------|---|---|
| | | the Estates of Deceased Persons (Hague) | | August 1 st , 1989 and not yet in force - 1 State Party (Netherlands) | |
| 3 | Implementation or monitoring | Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit) | | - Entered into force on July 1 st , 1998 - 24 States party | Consultation with provinces and territories on Canada becoming a party when appropriate |

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ANNEX D

2005-2006 IPLS Provisional Travel Schedule

PROVISIONAL SCHEDULE FOR IPLS TRAVEL
August 2005 - July 2006

| Meeting | | Travel dates | Place |
|---------|--|---|-----------|
| 1 | UNCITRAL Working Group VI - Security Interests | September 5-9, 2005 | Vienna |
| 2 | Hague Conference draft Convention on Maintenance Obligations, Drafting Committee meeting | September 5-9, 2005 | The Hague |
| 3 | Hague Conference Special Commission to review the operation of the <i>Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption</i> | 17-23 September 2005 | The Hague |
| 4 | UNCITRAL Working Group II - Arbitration | October 3-7, 2005 | Vienna |
| 5 | UNCITRAL Working Group I - Procurement | November 7-11, 2005 | Vienna |
| 6 | UNCITRAL Working Group III - Transport Law | November 28-December 9, 2005 | Vienna |
| 7 | Unidroit - Railway Protocol | Fall 2005 (dates to be confirmed) | Rome |
| 8 | Unidroit - Space Protocol | Fall 2005 / Winter 2006 (dates to be confirmed) | Rome |
| 9 | UNCITRAL Working Group II - Arbitration | January 23-27, 2006 | New York |
| 10 | UNCITRAL Working Group VI - Security Interests | January 30 to February 03, 2006 | New York |
| 11 | UNCITRAL Working Group III - Transport Law | March 13-24, 2006 | New York |
| 12 | Hague Conference Special Commission to review the operation of the <i>Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction</i> | March 2006 (to be confirmed) | The Hague |
| 13 | Hague Conference Special Commission on the <i>1996 Convention on the Protection of Children</i> | (approx. 2 days) March 2006 (to be confirmed) | The Hague |

| Meeting | | Travel dates | Place |
|---------|--|------------------------------------|------------|
| 14 | Second meeting of governmental experts for the draft Convention on Harmonised Substantive Rules regarding Securities Held with an Intermediary | March 2006 (to be confirmed) | Rome |
| 15 | CIDIP-VII -Diplomatic Conference | Winter 2006 (to be confirmed) | Washington |
| 16 | UNCITRAL Working Group I - Procurement | April 24-28, 2006 | Vienna |
| 17 | UNCITRAL Working Group VI - Security Interests | May 1-5, 2006 (to be confirmed) | New York |
| 18 | UNICTRAL 39th Session | June 19 - July 7, 2006 | New York |
| 19 | Hague Conference Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance | June 2006 (to be confirmed) | The Hague |