

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
2006**

**Edmonton, Alberta
August 20-24, 2006**

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

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IN PRIVATE INTERNATIONAL LAW

Report of the Department of Justice Canada

August 2006

INTRODUCTION

[1] This report portrays the status of implementation of private international law instruments, describes measures that have been taken by Canadian jurisdictions in the past year for their implementation and gives an outline of the projects the Department of Justice, in conjunction with its partners, will work on in the future and their level of priority.

[2] Domestically, there was a great deal of implementation activity throughout 2006. In particular, a significant effort has been devoted to the implementation of the *ICSID Convention*. There was also progress on the implementation of other instruments at the provincial/territorial and federal levels. In addition, under the Commercial Law Strategy of the Uniform Law Conference of Canada (ULCC), the Department of Justice and other federal, provincial and territorial partners have embarked on new projects, such as the drafting of a uniform act on the *UNCITRAL Convention on the Assignment of Receivables*.

[3] The Department of Justice has allocated 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, in June 2006, changes to the Model Law on International Commercial Arbitration have been adopted by UNCITRAL. These changes give legislative guidance to enacting States, provinces and territories with respect to interim measures for arbitral tribunals. Negotiations continued at UNCITRAL, Unidroit and the Hague Conference on Private International Law on projects that will culminate in new private international law instruments.

[4] The first part of this 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 on 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. Another chart provides details on all of these subjects (Annex C).

[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 private international law most often fall within provincial jurisdiction, federal-provincial-territorial cooperation is essential to real progress in this area. Consultations with the legal and business community, as well as with other private groups, are useful where the work of IPLS relates 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 the Department of Foreign Affairs and International Trade. 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 November 2005 and a meeting in Ottawa in June 2006. The Group is generally referred to as the “Advisory Group” in this text.

B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION

[12] In addition to federal-provincial-territorial (FPT) cooperation through the Advisory Group, the Department also communicates directly with provinces and territories authorities in order to obtain their official views on international instruments. These exchanges take place through written and oral communications among FPT authorities as well as with the presentation of reports to the Uniform Law Conference of Canada (ULCC) and to the Civil Justice Committee.

1. Uniform Law Conference of Canada (ULCC)

[13] Instituted in 1919 with a view to ensuring uniformity in provincial legislation, the ULCC today participates actively in the implementation of international conventions and other private international law instruments such as model laws. This year, the Department of Justice 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 private international law instruments through the development of uniform implementing legislation.

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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.

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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 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. Further information on the Hague Conference on Private International Law can be found at: 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 work plan includes continued negotiation of a 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 April 2006 on General Affairs and Policy of the Conference and the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance in June 2006.

[19] Canada is party to four Hague Conference Conventions in private international law: the *Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters* (1965, in force in Canada 88/05/01); the *Convention on the Civil Aspects of International Child Abduction* (1980, in force in Canada 88/04/01); the *Convention on the Law Applicable to Trusts and on their Recognition* (1985, in force in 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 Commission uses various instruments: it has prepared 10 conventions, model laws, uniform

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rules and a number of legal or legislative guides. Further information on UNCITRAL, including instruments adopted by the Commission, status of ratifications and adoption of instruments, and working group reports, can be found at: www.uncitral.org.

[21] UNCITRAL comprises 60 Member States representing various geographic regions and the principal economic systems and legal traditions of the world. Members are elected for a six-year term by the General Assembly. Other States and international governmental and non-governmental organizations may participate as observers in meetings of the Commission and its working groups, which both operate by consensus. Canada was a member of UNCITRAL from 1989 to 1995, participated actively as an observer from 1995 to 2001, and was elected to the Commission for a term commencing in June 2001 and ending in June 2007.

[22] At the 39th session of the Commission in July 2006, UNCITRAL finalized and adopted legislative provisions on interim measures and legislative provisions on the written requirement of an arbitration clause. These provisions will be added to the UNCITRAL Model Law on International Commercial Arbitration, which has been adopted by 50 States. The Commission also adopted a recommendation concerning articles II and VII of the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* with respect to the written requirement within the meaning of the Convention. The 39th Session reviewed and approved in principle the key objectives and policies of the Draft Legislative Guide on Secured Transactions.

[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 Commission also decided to refer work on the treatment of corporate groups to a Working Group on international insolvency starting in December 2006. Finally, the Commission discussed Congress 2007, a public congress similar to UNCITRAL's 1992 Congress on Uniform Commercial Law in the Twenty-first Century, held in New York City. Congress 2007, to be held in Vienna in the context of the fortieth annual session of the Commission, envisages reviewing the results of the past work programme of UNCITRAL, as well as related work of other organizations active in the field of international trade law, assessing current work programmes and considering and evaluating topics for future work programmes.

[24] Canada is 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*

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(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] 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 60 Member States, including Canada since 1968. Unidroit's mandate differs from that of the Hague Conference as it aims to harmonize and co-ordinate the private law of its Member States, rather than their private international law rules. Further information on Unidroit can be found at: www.unidroit.org.

[26] Since its creation, Unidroit has drafted more than seventy studies, model laws and conventions on various private law subjects including sales, international leasing and factoring, transport, 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 Canada 78/09/02). Canada has also signed the *Convention on International Interests in Mobile Equipment* and its related *Aircraft Protocol*. Not all jurisdictions have implemented these instruments.

D. WORLD BANK

[28] The World Bank's role in the field of private international law stems in part from the creation of the International Centre for the Settlement of Investment Disputes (ICSID) under the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada is still not party to this Convention. To facilitate ratification, the ULCC adopted a uniform act to implement the Convention. Further information on the World Bank and the *ICSID Convention* can be found at: 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 Americas. In the legal field, the Inter-American Juridical Committee, composed of eleven jurists who are nationals of Member States, serves as an advisory body to the OAS. The Committee recommends the convening of specialized legal conferences, such as the Inter-American Specialized 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 can be found at: 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 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 took place in 2002. Since the adoption of an OAS General Assembly resolution in 2003, CIDIP-VII has been under preparation. Two topics have been selected: one on consumer protection, and the other on secured transactions and electronic registries. Consultations with provincial and territorial governments and stakeholders have begun and will continue over the coming months.

F. BILATERAL ACTIVITIES

[31] Canada has also entered into bilateral conventions on 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.

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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] The *ICSID Convention*, prepared under the auspices of the World Bank in 1965, establishes rules and a venue for conciliation or arbitration of international investment disputes. The Convention applies to disputes between States and nationals – the investors – of other States party. It is a unique mechanism as awards rendered by ICSID are enforceable in any country party to the Convention as if they were final court judgement of that country.

[34] Recourse to ICSID conciliation and arbitration is entirely voluntary. However, once the parties have consented to arbitration under the *ICSID Convention*, neither can unilaterally withdraw its consent. Provisions on ICSID arbitration are commonly found in free-trade agreements such as North-American Free-Trade Agreement (NAFTA) and foreign investment protection agreements (FIPAs). These agreements constitute advance consents by governments to submit investment disputes to ICSID arbitration.

[35] The Convention creates an organization, the International Centre for Settlement of Investment Disputes (ICSID), which provides facilities for conciliation and arbitration of investment disputes. Under the *ICSID Convention*, proceedings need not be held at the Centre's headquarters in Washington, D.C. The parties to a proceeding are free to agree to choose another venue for their proceeding. The *ICSID Convention* contains provisions that facilitate advance stipulations for such other venues when the place chosen is the seat of an institution with which the Centre has an arrangement for this purpose (e.g., Australian Commercial Dispute Center in Sydney). Canadian arbitration centres such as the Canadian Commercial Arbitration Centre and the British Columbia International Arbitration Centre could potentially make similar arrangements, which would promote ICSID and their own centre.

[36] The Additional Facility Rules allow the ICSID Secretariat to administer certain types of proceedings between States and foreign nationals which fall outside the scope of the Convention. These include conciliation and arbitration proceedings where either the

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State party or the home State of the foreign national is not a member of ICSID. When parties have recourse to the Additional Facility Rules, they are not covered by the Convention and therefore they do not benefit from the same enforcement rules ICSID awards have.

[37] Although the vast majority of our trading partners have ratified the *ICSID Convention* - 143 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. Therefore, the federal government has been actively promoting the Convention in recent years 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. There were discussions among federal and provincial/territorial governments in the 1990s regarding the possibility of adopting the Convention following signature of the Free-Trade Agreement and NAFTA. However these exchanges did not result in concrete legislative action by governments at that time. In 1999, the province of Ontario adopted the *Settlement of Investment Disputes Act* (S.O. 1999, c.12, Sch. D) and became the first jurisdiction to have adopted implementing legislation for the Convention.

[38] A uniform act for the implementation of the *ICSID Convention* was adopted by the ULCC in 1997. The uniform act is still considered suitable for implementing the Convention. The proposed legislation is relatively simple since the obligations of States under the Convention are essentially for States to recognize and enforce ICSID arbitral awards. The arbitration proceedings, the conduct of the arbitration, and the appeal mechanism fall under the responsibility of ICSID.

[39] 2006 has been very fruitful in Canada in terms of progress made toward the adoption of the Convention. Four jurisdictions have adopted legislation to implement the Convention (presented in chronological order of introduction in the Legislative Assemblies):

- Saskatchewan introduced Bill 38 (The Settlement of International Investment Disputes Act) on March 16, 2006. Bill 38 received Royal Assent on May 19, 2006
- British Columbia introduced Bill 19 (Settlement of International Investment Disputes Act) on March 27, 2006. Bill 19 received Royal Assent on March 30, 2006
- Newfoundland and Labrador introduced Bill 12 (Settlement of International Investment Disputes Act) on May 2, 2006. Bill 12 received Royal Assent on May 26, 2006

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- Nunavut introduced Bill 22 (Settlement of International Investment Disputes Act) on June 12, 2006. Bill 22 received Royal Assent on June 15, 2006.

[40] The adoption of these bills represents the most significant development in Canada for the adoption of the *ICSID Convention*. With Ontario, there are now five jurisdictions that have adopted implementing legislation. We are grateful to those jurisdictions and to those that are currently taking steps for the adoption of ICSID implementing legislation.

[41] The Minister of Justice Canada had sought provincial and territorial agreement for the adoption of implementing legislation by June 2006 in time for the International Council for Commercial Arbitration (ICCA) Annual Congress in Montreal. An announcement of Canada's ratification of the ICSID Convention at the Congress, it was believed, would have sent a signal to the world investment and arbitration communities that Canada is a good place to do business. This announcement was not possible at the time of the Congress given that not all jurisdictions had adopted implementing legislation. However, Canada's significant progress toward ratification was noted by those attending the Conference. With five jurisdictions out of thirteen provinces and territories to having taken legislative action, it is fair to say that implementation is well underway.

[42] The Department maintains the adoption of the ICSID Convention as a top priority. We will continue to work closely with our provincial and territorial colleagues to answer their questions and to seek to resolve any issues they may have with the Convention or how the Convention would apply in their jurisdiction. We have had federal-provincial-territorial meetings and discussions in the last year at various levels. We will continue to seek a productive dialogue with our colleagues in the coming year, with a view to taking steps for ratification in the near future.

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

[43] The Convention provides a framework for the creation and effects of an international interest in mobile equipment 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. There are no limitations on the categories of mobile equipment for which a protocol could be adopted. In addition to aircraft equipment, the Convention could apply to registered ships, oil rigs, containers, railway rolling stock, agricultural equipment, mining equipment, space property, and other objects that could be identified in the future.

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[44] The Convention entered into force internationally on April 1, 2004, after its third ratification. It only enters 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. The Aircraft Protocol entered into force at the international level on March 1, 2006 after the eighth instrument of ratification or accession required for its entry into force was deposited. The eighth instrument of ratification or accession was deposited by Malaysia on November 2, 2005. Canada signed the Convention and Aircraft Protocol in March 2004.

[45] 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. Alberta adopted the *International Interests in Mobile Aircraft Equipment Act* (S.A., chap. I-6.5) on May 16, 2006. Quebec, as required under article 22.3 of the *Act Respecting the Ministère des Relations Internationales*, presented the Convention and Protocol to the National Assembly for its approval on June 7, 2006. The tabling of the instruments is a step under Quebec law which is required prior to the tabling of the bill implementing the Convention and Protocol.

[46] The federal government will be in a position to 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.

[47] *Action required in Canada:* Continue to encourage provinces and territories to consider adopting legislation to implement the instruments.

c. Draft Legislative Guide on Secured Transactions (UNCITRAL)

[48] 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 was 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.

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[49] 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.

[50] 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 Insolvency Law to ensure consistency with the Insolvency Guide. A joint experts meeting with the Hague Conference reviewed conflicts of law issues in the Secured Transactions Guide. The Commission, at its 39th Session in June-July 2006, approved the Guide in principle. The Working Group will hold two sessions this year, one in December 2006 and one in February 2007. It is now expected that the work will conclude at the Commission session in 2007.

[51] The Guide is nearly complete, with recommendations covering general issues of a secured transactions regime as well as creation, effectiveness, the registry, priority, rights and obligations, default and enforcement, insolvency, conflict of laws, transition and special provisions for acquisition financing devices. The Working Group has also prepared particular recommendations for specific types of assets including bank accounts, negotiable instruments and negotiable documents. In collaboration with WIPO, UNCITRAL is studying the issue of security rights in intellectual property, an area that remains to be developed.

[52] 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.

[53] *Action required in Canada:* Ensure links are made with ULCC work on security interests.

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

[54] 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 on Private International Law in December 2002.

[55] 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, Maxime Paré, Senior Legal Counsel with the Ontario Securities Commission, and 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.

[56] The second governmental meeting of experts for the Unidroit Project on Harmonised Substantive Rules Regarding Indirectly Held Securities took place March 6-17, 2006. The Canadian delegation was composed of Kathryn Sabo, General Counsel, IPLS, Maxime Paré, and Michel Deschamps. Mr. Paré is co-Chair of the Working Group and Me Deschamps is co-Chair of the drafting committee.

[57] At the session some progress was made, but there appears to be divergent views on many issues, some of which seem quite fundamental. A number of questions remain outstanding, including the form of the instrument. The project seemed initially to be

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aimed at model legislation but in its current form is leaning strongly toward a convention. The Unidroit Secretariat has scheduled a third session for November 6-15, 2006.

[58] Given the recent activity in Canada toward adopting the Uniform Securities Transfer Act, it will continue to constitute the main point of reference for Canada's position on the substance. Additional consultations will be useful to address substantive and other issues, such as the form the instrument should take.

[59] Those invited to participate in the consultations will include provincial and territorial authorities, the Uniform Law Conference of Canada (ULCC) Working Group on the Uniform Securities Transfers Act, federal departments and agencies, private bar, academics and non-governmental organizations.

[60] *Action required in Canada:* Consultation on the preliminary draft convention in preparation for the third intergovernmental session in November 6-15, 2006.

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

[61] 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.

[62] 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.

[63] 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.

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[64] In 2004, the ULCC agreed that the Canadian Securities Administrators (CSA) authorize the Task Force to prepare a uniform implementing statute for the Convention once the Explanatory Report for the Hague Convention was finalized, which it was in late 2004. Securities Administrators approved the CSA Task Force pursuing Convention implementation work in April 2005.

[65] Since then, Canadian experts have continued to focus on USTA implementation as a priority with the result that no progress has been made on a uniform act to implement the Convention. However, with USTA legislation moving forward in several jurisdictions, we should expect to see a convention implementation Working Group making progress on uniform implementing legislation over this coming year. Note that the United States and Switzerland signed the Convention on July 5, 2006.

[66] *Action required in Canada:* The ULCC with the CSA Task Force is to prepare uniform implementing legislation.

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

[67] 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.

[68] A preliminary implementation study was prepared through the ULCC's Commercial Law Strategy and the Department of Justice by two leading experts in the field in Canada, Catherine Walsh for the common law perspective and Michel Deschamps for the civil law perspective. The study was presented at the ULCC meeting in August 2005.

[69] The ULCC Working Group on Assignments of Receivables was established to prepare a draft uniform implementation act and a final report, to be presented at this year's annual meeting of the ULCC. This work is part of a joint project with the US National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Mexican Uniform Law Centre. Most of the work of the Working Group was completed through conference calls. Three in-person meetings took place. The first took place in Detroit in April 2006 with NCCUSL and the Mexican Uniform Law Centre, the second

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in Ottawa in May 2006, and a third in New York City in June 2006, again with NCCUSL and the Mexican Uniform Law Centre.

[70] Internationally, the Convention's importance continues to be recognized. At the 39th session of UNCITRAL in June 2006, the United States indicated that it anticipates taking the steps necessary for ratification. The European Commission, by letter of June 22, 2006 to UNICTRAL, stated its intention to ensure coherence between the Convention and the future Rome I Regulation and to facilitate the ratification of the Convention by EU Member States.

[71] *Action Required in Canada:* Presentation of the draft uniform act and final Working Group report.

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

[72] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 26 States party to the *Limitation Convention* of 1974, and 19 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico.

[73] 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.

[74] 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.

[75] 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*

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Goods, already in force in Canada, and the *Conventions on the Limitation Period in the International Sale of Goods*.

[76] 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.

[77] *Action required in Canada*: Consider the adoption of federal implementing legislation, which would apply to contracts for the sales of goods involving the Crown in right of Canada.

2. MEDIUM PRIORITIES

a. *Convention on the Use of Electronic Communications in International Contracts* (UNCITRAL)

[78] The *2005 Convention on the Use of Electronic Communications in International Contracts* removes obstacles to the 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.

[79] 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.

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

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b. Model Law on International Commercial Conciliation (UNCITRAL)

[81] 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).

[82] In August 2004, the ULCC 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. The Uniform Act on International Commercial Conciliation was adopted in 2005 by the ULCC, and is now recommended for adoption by jurisdictions. Nova Scotia has adopted the *Commercial Mediation Act* (2005 SNS, C. 36).

[83] *Action required in Canada:* Implement the uniform act.

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

[84] This draft Protocol takes into account 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.

[85] 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.

[86] 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.

[87] Discussions are also ongoing at the Subcommittee of the United Nations Committee for the Peaceful Utilisation of Outer Space (UNCOPUOS). The Subcommittee discusses

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the role of the UN as a possible supervisory authority, the authority responsible for overseeing the registrar's activities under the Convention and Protocol.

[88] *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.

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

[89] 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.

[90] The Working Group met for two sessions over the last year, one from November 7-11, 2005, the other from April 24 - 28, 2006. The Canadian delegation comprised representatives of the Department of Justice and the Department of International Trade and provincial experts in civil and common law. Canada was represented by Dominique D'Allaire (IPLS, Justice Canada), Eleanor Andres (Manitoba Justice), Collin G. Barker (International Trade Canada), Marie-Andrée Gauthier (Justice Québec) and Margaret-Amanda MacDonald (Justice Ontario). The work is progressing on the three main work topics: (1) how to accommodate electronic procurement in the Model Law; (2) electronic reverse auctions; and (3) abnormally low tenders.

[91] The Department of Justice's Advisory Group on Private International Law has given a medium priority level to this project.

[92] *Action required in Canada:* Conduct relevant consultations and establish the Canadian position for the upcoming session of the Working Group from September 25-29, 2006.

e. UNCITRAL Working Group on International Arbitration

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

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[94] To date, the Working Group has examined the first three subjects. The Model Law on International Commercial Conciliation was adopted in June 2002. The Commission also adopted in June 2006 legislative provisions on the written form of the arbitration agreement and 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.

[95] The Model Law on International Commercial Arbitration was adopted in 1985 and did not include provisions on interim measures. It was generally understood that, in the absence of specific provisions, parties to a dispute would revert to a court for interim measures, including preliminary orders. The text on interim measures and preliminary orders adopted by UNCITRAL provide that the parties may derogate from any of the provisions in their agreement if they so wish. The draft provisions relating to the requirement of written form for arbitration agreements were also adopted removing any uncertainty regarding the validity of using electronic communications among other things.

[96] The experts, Professor Guy Lefebvre (civil law) and Robert Cosman (common law) contributed to establishing the Canadian position during the negotiations. Manon Dostie and Dominique D'Allaire from the Department led the negotiations.

[97] At its 39th Session, the Commission considered new areas of work even if, item IV) above regarding the enforceability of an award that had been set aside in the State of origin, had not yet been addressed. It was agreed that the Working Group on Arbitration would consider revisions to the UNCITRAL Arbitration Rules adopted in 1976 to bring them up to current standards and practices.

[98] *Action required in Canada:*

- Consult with federal, provincial and territorial governments, private sector, academics, arbitration, organizations and other interested parties in preparation for the next Working Group session scheduled for September 11-15, 2006.
- Explore provincial and territorial interest for the adoption of provisions on interim measures and preliminary orders in the *International Commercial Arbitration Act*, or any similar Act incorporating the UNCITRAL Model Law on International Commercial Arbitration in each jurisdiction.

f. CIDIP VII – Project on Electronic Registries for Secured Transactions (OAS)

[99] The electronic registries project is a continuation of the CIDIP-VI Model law on Secured Transactions. The first subject to be studied by States are asked in the context of this project is electronic forms. The OAS has prepared five model forms (registration, continuation, amendment, cancellation, and enforcement), all based on forms from Canada, the United States and Mexico.

[100] In Canada, a Canadian working group on the electronic registries project has been set up, with experts in security law and in electronic security registries, all of whom have been suggested by the Advisory Group. The working group will soon begin a review of the forms and make recommendations and comments. It will also prepare a proposal for registry guidelines based on Canadian law and the UNCITRAL Legislative Guide on Secured Transactions.

[101] The Department of Justice's Advisory Group on Private International Law has given a medium priority level to this project.

[102] *Action required in Canada:* Continue consultations and prepare the Canadian negotiating position in collaboration with the Canadian working group.

g. CIDIP VII- Project on Jurisdiction and Law Applicable to Consumer Contracts (OAS)

[103] The Inter-American Specialised Conference on Private International Law (CIDIP) is considering consumer protection from the perspective of applicable law and court jurisdiction.

[104] Preliminary discussions have taken place among States and it became apparent that a certain number of States would rather work on a convention than a model law. Canada expressed a preference for the adoption of a model law, which would be based on the ULCC uniform act on consumer protection (Uniform Jurisdiction and Choice of Law Rules for Consumer Contracts, 2004).

[105] Federal-provincial-territorial consultations have just started and will be ongoing through the process.

[106] The Department of Justice's Advisory Group on Private International Law has given a medium priority level to this project.

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[107] *Action required in Canada:* Continue consultations and prepare the Canadian position for the next CIDIP session for which a date is yet to be set.

3. LOW PRIORITIES

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

[108] This Convention was finalised in 1995 and is in force with 8 States party. It aims at establishing greater uniformity in the law relating to independent guarantees and stand-by letters of credit in international transactions. A study reviewing the Convention rules in relation to current law in Canada has been prepared for the ULCC.

[109] *Action required in Canada:* If there is interest, prepare uniform implementing legislation through the ULCC.

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

[110] 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, Guinea and Liberia have acceded to it. The Convention will enter into force after ten ratifications or accessions. Canada signed the Convention on December 7, 1989. In order to implement it in Canada, federal legislation would be required.

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

[112] 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

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will therefore introduce more predictability for financial institutions and businesses that use these methods of payment for international transactions.

[113] *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)*

[114] The Sales Convention to which 67 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.

[115] 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.

[116] The ULCC has recommended that the Sales Convention implementing legislation be amalgamated with legislation on other conventions on the international sale of goods. To that end, it adopted the Uniform International Sales Conventions Act in 1988.

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

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

[118] 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.

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[119] 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.

[120] 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.

[121] 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.

[122] *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)

[123] 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.

[124] 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 finalized in May 1997. Since then, Eritrea, Japan, Mexico, Poland, Romania, Montenegro, Serbia, South Africa, the United Kingdom, and the United States have adopted the Model Law or provisions based on the model law.

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[125] Canada adopted amendments to its insolvency legislation that incorporate some aspects of the Model Law on Cross-Border Insolvency with Bill C-55. However, these new provisions have not been given force of law. The government is currently reviewing the legislation that implemented those aspects of the Model Law taking into account comments made by stakeholders and the committee of insolvency experts, which was created by the Minister of Industry to advise department officials.

f. Case Law on UNCITRAL Texts (CLOUT)

[126] 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, which can be found on 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.

[127] UNCITRAL is also preparing a case law digest for international sales cases and arbitration cases.

[128] *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)

[129] 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.

[130] *Action required in Canada:* Provide information on the Model Law where required.

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

[131] 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 nine States and the *Factoring Convention* is in force in six States. They provide uniform international rules to facilitate the financing of international commercial transactions.

[132] 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.

[133] Moreover, the Uniform Law Conference has prepared draft uniform legislation that may be adopted by interested jurisdictions.

[134] *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 / OTIF)*

[135] The Railway Rolling Stock Protocol adapts to railway rolling stock equipment the mechanisms set out in the *Convention on International Interests in Mobile Equipment*.

[136] Given the integration of the rail industry on the North American continent and the existence of national security interest regimes for rolling stock, solutions are usually found on the continental level and not at the international level. However, an electronic 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.

[137] The development of the regulations to the Protocol is well underway and the Rail Registry Task Force work has been shared with member States. Transport Canada

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maintains ongoing consultations with stakeholders on this project. Unidroit now considers the organization of a diplomatic conference to finalize the Protocol which would take place in early 2007.

[138] *Action required in Canada:* Prepare the Canadian position for the diplomatic conference.

j. Draft Model Law on Leasing (Unidroit)

[139] Unidroit is currently preparing a model law on leasing. The proposed text is intended to cover both what are commonly referred to as financial leases and operating leases. It provides uniform rules governing the effects of the leasing agreement, the performance of the leasing agreement and remedies in the case of default. The parameters of this project are to be set with reference to the needs of developing countries and countries in transition.

[140] A group of experts has drafted the proposed text which was sent to governments of Member States and made available to the public over the summer of 2006. This project, undertaken by Unidroit without any consultation with Member States, may be reviewed by them eventually at a brief meeting of governmental experts.

[141] *Action required in Canada:* Consult on the proposed text.

B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS

1. HIGH PRIORITIES

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

[142] 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.

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

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- 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.

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

[145] 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.

[146] The final text of the Convention is available at: www.hcch.net. The Permanent Bureau is finalizing the draft explanatory report with input from delegations.

[147] *Action required in Canada:* When the Explanatory Report is 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)*

[148] This Convention, which does not yet apply to Canada, is in force in 88 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 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.

[149] 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 Justice Québec. The conclusions and recommendations adopted by the Special Commission are available on the Hague Conference website.

[150] 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.

[151] Following the Special Commission, a sub-group of the Advisory Group on Private International Law composed of John Gregory and Vincent Pelletier, as well as officials from the Department of Foreign Affairs and the IPLS, worked out a proposal for implementation and identified scenarios to address eventual difficulties.

[152] The Department of Foreign Affairs has undertaken consultations with states party to the Convention in order to identify different approaches to implementation.

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

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2. LOW PRIORITIES

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

[154] This Convention, which does not yet apply in Canada, is in force in 43 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.

[155] 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 Justice Québec. The Conclusions and Recommendations adopted by the Special Commission are available on the Hague Conference website.

[156] 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.

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

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

[158] 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. 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

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modification is in addition to the protection with respect to judgments from countries party to the 1968 *Brussels Convention* already included in the text.

[159] The 1984 Convention is used from time to time by parties in order to obtain from the courts of one of the State party 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.

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

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

[161] 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.

[162] 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.

[163] 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 1999 and August 2000 respectively, Ontario and Manitoba enacted legislation to implement the Convention also based on the Uniform Act.

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

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d. *Convention on Service Abroad (Hague Conference)*

[165] This Convention is in force across Canada. It also applies in 53 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.

[166] In Canada, Central Authorities have been designated in each province and territory. At the federal level, the Criminal, Security and Treaty Law Division of the Department of Foreign Affairs 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 the territories, as well as at the federal level, have been amended to comply with the Convention.

[167] The Permanent Bureau of the Hague Conference on Private International Law published a Practical Handbook on the operation of the Convention which is available on the Conference's website.

[168] 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 Justice 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.

[169] *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)*

[170] This Convention creates global legal solutions to address the problems raised by increased cross-border movement of adults in need of protection. 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.

[171] The Department of Justice in collaboration with the ULCC prepared a Uniform Act for the implementation of the 2000 *Hague Convention on the International Protection of Adults*. The Act was adopted by the ULCC in November 2001. Saskatchewan adopted the ULCC Uniform Act in May 2005.

[172] In October 2005, Justice Canada made a presentation on the Convention to the Biennial Conference of the National Association of Public Trustees and Guardians in Regina, Saskatchewan. Following that meeting, a small, informal group of public trustees from British Columbia, Ontario, Saskatchewan and the Northwest Territories has met by conference call with Justice Canada to work on promoting the Convention. During the year, the Department raised the Convention with senior officials in all jurisdictions.

[173] The final explanatory report of the Convention is available on the Hague Conference website.

[174] *Action required in Canada:*

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- Continue working with the National Association of Public Trustees. In the fall, the informal group will undertake operational planning in view of accession and aims to organize a broader FPT meeting to discuss Central Authority roles and responsibilities.
- Encourage jurisdictions to adopt the Uniform Act.

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)*

[175] The 1996 *Hague Convention on the Protection of Children* creates global legal solutions to address the problems raised by the increase in the trans-border movement of children and adults in need of protection. More specifically, the Convention 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.

[176] The Department of Justice is currently working with FPT groups to promote the implementation of the Convention. Over the past year, the Coordinating Committee of Senior Officials-Family Justice (CCSO) Working Group on Parenting and Contact Enforcement and Jurisdiction examined the Convention's conflict of law rules and their application to international as well as inter-provincial situations in view of harmonizing domestic rules. A report will be tabled before provincial deputy ministers of justice in early 2007. In November 2005, Manon Dostie met with FPT directors of child welfare and formed and it was agreed that there would be collaboration to address potential issues in the Convention in view of eventual implementation. Directors of child welfare are kept informed of the progress of the work of the CCSO WG in order to facilitate this collaboration on intersecting issues and preparedness for implementation.

[177] The Department of Justice in collaboration with the ULCC prepared a uniform act for the implementation of the 1996 Convention. This act was adopted by the ULCC in November 2001. The CCSO Working Group is now identifying important consequential amendments that would be required in provincial family law in order for Canada to properly apply the Convention. The position of the Working Group is that the Convention could serve as a model for inter-provincial harmonization in order to ensure

more uniform inter-jurisdictional operation in these matters, in addition to the proper functioning of the Convention in Canada in actual international cases.

[178] *Action required in Canada:* Continue the work with FPT working groups. Active promotion of implementation of the Convention in Canada.

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

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

[180] 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.

[181] 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.

[182] In June 2001, the Hague Conference decided to include the project as a priority. Four Special Commissions have been held: from May 5 to 16, 2003, June 7 to 18, 2004, April 4 to 15, 2005 and June 19 to 28, 2006. All existing documents relevant to those Special Commissions are available on the Hague Conference website.

[183] The Canadian delegation to the fourth 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.

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[184] The fourth session was set up primarily to deal with crucial issues left from other special commissions and that needed to be addressed before the Hague Conference convenes a Diplomatic Conference. The issues that were discussed were:

- Scope of application
- Functions of the Central Authorities
- Applications directly made by the applicant to the competent authority for the recognition of maintenance decisions
- Use of the expression “habitual residence” in all the chapters of the Convention
- Possibility for the debtor to ask for the establishment of a maintenance decision
- Conditions and framework for a free and effective access to procedures
- Possible reservations on certain basis for recognition and enforcement of maintenance decisions
- Conditions in order to recognize and enforce private agreements and authentic instruments under the convention
- Interpretation clause for the application of the Convention to non-unified legal systems
- Optional chapter on applicable law.

[185] It was decided at the end of the Special Commission that most of these subjects are ready to be discussed at a Diplomatic Conference except the optional Chapter on applicable law and the issue of free and effective access to procedures under the Convention. Therefore, an additional special commission will be convened in May 2007 on these two subjects. The Diplomatic Conference would likely be convened in the fall 2007.

[186] *Action required in Canada:* Consultations in preparation for the next Special Commission in May 2007 and for the Diplomatic Conference.

d. Convention on Intercountry Adoption (Hague Conference)

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

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[188] 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 and Labrador on December 1, 2003. In April 2004, Quebec adopted implementing legislation and the Act entered into force on February 1st, 2006.

[189] The Hague Conference convened a Special Commission from September 17-23, 2005 in order to discuss the practical operation of the Hague Convention. The Canadian delegation was composed of Manon Dostie (IPLS, Justice Canada), Luce de Bellefeuille (Central Authority for Quebec), Tamara Leonard-Veil (Central Authority for British Columbia) and Patricia Paul-Carson (Federal Central Authority, Social Development Canada).

[190] The Special Commission adopted a set of conclusions and recommendations on the practical operation of the Hague Convention. These conclusions and recommendations are available on the Hague Conference's website.

[191] *Action required in Canada:* Follow-up on the recommendations and conclusions adopted at the Special Commission of September 2005.

2. MEDIUM PRIORITIES

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

[192] 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.

[193] 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 Department

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of Foreign Affairs. A transportation program facilitates the repatriation of children who have been abducted by a parent; the program operates domestically and as well as internationally. The program is co-ordinated by the Royal Canadian Mounted Police (RCMP) Missing Children's Registry, (tel.: 1-877-318-3576) in cooperation with the national airlines and Via Rail.

[194] A database of judicial decisions taken under the *Hague Convention on the Civil Aspects of Child Abduction* is available at: 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.

[195] 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.

[196] The Hague Conference has convened a Special Commission to be held from October 30 to November 9, 2006 to review the practical operation of the Convention. A questionnaire has been sent to governments in April 2006 in preparation for the Special Commission. A Canadian response to the questionnaire is being prepared by federal, provincial and territorial authorities.

[197] *Action required in Canada:* Follow-up on the accession process and prepare for the Special Commission in October/November 2006.

D. PROTECTION OF PROPERTY

1. HIGH PRIORITY

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

[198] This Convention applies to 12 States, including Canada, where it has been extended to 8 provinces and territories (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan). To facilitate implementation of the Convention, the ULCC has prepared a Uniform Act.

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[199] 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.

[200] *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)*

[201] 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.

[202] This Convention is now in force in 10 States, including five exclusively civil law jurisdictions. It entered into force in Canada on January 1, 1993 and now applies to eight jurisdictions: Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Nova Scotia, Manitoba and Saskatchewan. Nova Scotia is the most recent province to have adopted implementing legislation for the Convention, which applies there as of May 1, 2006.

[203] *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)*

[204] 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.

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[205] 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.

[206] 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.

[207] *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)**

[208] This Convention, to which 27 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.

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

CONCLUSION

[210] In this report, we have described the activities of the Department of Justice in private international law over the past year. Significant progress has been made in terms of implementation of existing international instruments at the provincial/territorial and at the federal levels. Four jurisdictions adopted bills for the implementation of the *ICSID Convention*. Two jurisdictions either adopted or have taken measures in the legislature for the adoption of the *International Interests in Mobile Equipment Convention* and its *Aircraft Protocol*. One jurisdiction legislated the International Mediation Act. One jurisdiction enacted implementation legislation for the *Convention on the Law Applicable to Trusts and their Recognition*. The federal government has enacted provisions relating to international insolvency that incorporate some aspects of the *Model Law Cross border Insolvency*. 2006 saw the *Hague Convention on Intercountry Adoption* extended to all provinces and territories. Progress has been significant both in the number of bills adopted and in terms of the variety of subjects for which they were adopted. While IPLS has put emphasis on implementation, results are essentially due to the efforts of the provinces and territories that adopted these instruments. Without them, it would not have been possible to achieve these results.

[211] The Department of Justice proposes to continue focusing on implementation in the medium term. We suggest that particular attention be given to implementing the following conventions:

- (1) *Convention on the Law Applicable to Trusts and their Recognition* (The Hague)
- (2) *Convention Providing a Uniform Law on the Form of an International Will* (Unidroit)
- (3) *International Interests in Mobile Equipment Convention* and its *Aircraft Protocol* (Unidroit/ICAO)
- (4) *Conventions on the Limitation Period in the International Sale of Goods* (UNCITRAL)
- (5) *ICSID Convention* (World Bank)
- (6) *Convention on the Protection of Adults* (The Hague)
- (7) *Convention on the Protection of Children* (The Hague)
- (8) *Convention Abolishing the Requirement of Legalization for Foreign Public Documents* (The Hague)

Suggestions for additions to this list are welcome. While we propose a collective effort for the implementation of these conventions, we recognise that other instruments may be of particular interest to jurisdictions and we look forward to considering them.

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[212] To maintain our emphasis on implementation, we hope to be able to devote greater resources to implementation activities. It is clear that collaboration between the Department of Justice and the ULCC in matters of private international law is key to achieving this objective and we look forward to continuing private international law work with the Conference.

[213] 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 any of IPLS officials (see contact list in Annex A).

ANNEX A

INTERNATIONAL PRIVATE LAW SECTION CONTACTS (2006)

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ANNEX B

Overview Chart of Private International Law Priorities



OVERVIEW CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES

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

ORGANIZATIONS:

Hague: Hague Conference on Private International Law
OAS: Organization of American States
UNCITRAL: United Nations Commission on International Trade Law
Unidroit: International Institute for the Unification of Private Law
World Bank

18/08/2006

Priority Level	International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
1	<p>Negotiation</p> <ul style="list-style-type: none"> • 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) • Convention on the Civil Aspects of International Child Abduction (Hague) (Special Commission on operations) 	
	<p>Implementation</p> <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) • Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit) • Revision to the Model Law on Procurement of Goods, Construction and Services (UNCITRAL) • CIDIP-VII – Project on jurisdiction and applicable law for consumer contracts (OAS) • CIDIP-VII – Electronic registries for secured transactions project (OAS) 	<ul style="list-style-type: none"> • Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague) • Convention on Choice of Court Agreements (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	<p>Negotiation</p> <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 on International Commercial Mediation • Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL) 		<ul style="list-style-type: none"> • Convention on Intercountry Adoption (Hague) 	<ul style="list-style-type: none"> • Convention on the Law Applicable to Successions (Hague)
	<p>Implementation</p> <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) • Convention on Independent Guarantees and Standby Letters of Credit (UNCITRAL) • Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL) • Model Law on Cross-border Insolvency (UNCITRAL) • Conventions on International Leasing and on International Factoring (Unidroit) 	<ul style="list-style-type: none"> • Convention on the Taking of Evidence Abroad (Hague) • 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)
3	<p>Negotiation</p>			
	<p>Implementation</p>			

ANNEX C

Chart of Private International Law Priorities

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	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 at the ULCC
1	Project on Harmonised Substantive Rules Regarding Indirectly Held Securities (Unidroit)		Instrument not finalized yet	<ul style="list-style-type: none"> - Consultation on the preliminary draft convention in preparation for the next intergovernmental session
1	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) - (World Bank)	<ul style="list-style-type: none"> - implementing legislation adopted (but not yet in force) in: Ontario (1999), British Columbia (2006), Newfoundland (2006), Saskatchewan (2006) and Nunavut (2006) - The ULCC adopted uniform implementing 	<ul style="list-style-type: none"> - In force on October 14, 1966 - 143 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



International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)	legislation (1998) - Implementing legislation adopted in Alberta (2006), Canada (2005), Nova Scotia (2003) and Ontario (2001) but not yet in force - The ULCC has adopted uniform implementing legislation	- Convention in force at the international level (April 1, 2004); Aircraft Protocol in force (March 1, 2006) - Canada has signed both instruments in March 2004	- Seek wider support from provinces and territories in terms of implementation before recommendation for ratification is made - Input from jurisdictions to prepare for declarations
1	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	- Concluded at The Hague on 02-11-13 - Not yet in force	- Establish a ULCC Working Group to draft uniform implementing legislation
1	Conventions on the Limitation Period in the International Sale of Goods (UNCITRAL)	- The ULCC adopted uniform implementing legislation (1998)	- In force on August 1 st , 1988 - 25 States party	- Consideration by the federal government to adopt an implementing legislation

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
		<ul style="list-style-type: none"> - 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"> - Obtain provincial and territorial support, including by the adoption of implementing legislation such as the ULCC International Sales Conventions Act
1	Convention on the Assignment of Receivables in International Trade (UNCITRAL)	<ul style="list-style-type: none"> - Preliminary implementation study approved by ULCC, August 2005 - ULCC-NCCUSL-Mexican Uniform Law Centre joint project underway 	<ul style="list-style-type: none"> - Not in force - 3 signatures: Luxembourg, Madagascar, U.S. + 1 accession (Liberia) - requires 5 ratifications or accessions 	<ul style="list-style-type: none"> - Consult with the private sector, federal, provincial and territorial authorities on implementation - Uniform implementing legislation in preparation
2	Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit)		Instrument not finalized yet	Preparation for the next Session of Governmental Experts
2	Revision to the Model Law on		Instrument not	Preparation for the next



International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
	Procurement of Goods, Construction and Services (UNCITRAL)		finalized yet	session of negotiations
2	CIDIP-VII – Electronic registry for secured transactions project (OAS)		Instrument not finalized yet	Preparation for the CIDIP VII session (dates to be confirmed)
2	CIDIP-VII – Project on jurisdiction and applicable law for consumer contracts (OAS)		Instrument not finalized yet	Preparation for the CIDIP VII session (dates to be confirmed)
2	Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)		As per signature from January 16 2006 to January 16, 2008	Consultation with provinces, territories, stakeholders and experts on implementation in Canada
2	Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation	N.S. (2005) -Uniform Act adopted by ULCC in August 2005	Model Law adopted by UNCITRAL in June 2002	- Adoption of Uniform Act at federal level - Encourage adoption of Uniform Act by provinces and territories
2	Model Legislative Provisions on the Recognition and		Instrument finalized in June	Consult to seek interest for the project and incorporation into

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
	Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL)		2006 by the Commission	Canadian law
3	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	Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)		<ul style="list-style-type: none"> - Adopted and opened for signature in December 1995 - Not yet in force 	<ul style="list-style-type: none"> - Presentation of preliminary study to ULCC - Consultation with provinces and territories on Canada becoming a party
3	Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		<ul style="list-style-type: none"> - Open for signature in 1988 - Not yet in force 	<ul style="list-style-type: none"> - Consultation with provinces and territories on Canada becoming a party
3	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

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
3	Model Law on Cross-border Insolvency (UNCITRAL)	Provisions based on the Model Law have been adopted but are not yet in force	Adopted by UNCITRAL in 1997	<ul style="list-style-type: none"> - Provide information when requested - Industry Canada is consulting prior to giving force of law to the provisions
3	Model Franchise Disclosure Law (Unidroit)		Adopted by Unidroit in 2002	Provide information when requested
3	Conventions on International Leasing and on International Factoring (Unidroit)	<ul style="list-style-type: none"> - Consultation with provinces, territories and industries in 1991 indicated support for implementation - The ULCC has drafted and adopted implementing legislation 	Entry into force on May 1 st , 1995 for both conventions	Confirm the views of the industry and of the provinces and territories to determine Canada's interest in becoming party to the Conventions.
3	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

International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
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	A recommendation on the scope of Art. II(2) of the Convention will be presented this fall to the UN General Assembly
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	
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	- New legislative provisions have been adopted regarding interim measures - Consult to determine interest for their adoption

Judicial Cooperation and Enforcement of Judgments

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)		In force in 89 States	Consult provinces and territories on the interest of implementing the Convention
1	Convention on 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	Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (Hague)		In force in 43 States	Consultation on accession to the Convention when appropriate
3	Canada-U.-K. Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters (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 Convention entered into force January 	Extend the Convention to Québec once implementing legislation adopted

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)	12, 1995	
3	Canada-France Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)	- Implementing legislation adopted but not yet in force in SASK(1998); ONT (1999); MAN (2000) - Uniform Act adopted by the ULCC in 1997	- Convention signed in Ottawa on June 10, 1996 - Not yet in force	Consultation with France on ratification
Instrument already implemented in Canada	Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)	- In force in all provinces and territories. - 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.ccch.net (2006 version)	Provide information when requested

Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	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 fifth Special Commission in May 2007
1	Convention on the Civil Aspects of International Child Abduction (Hague)	Implementing legislation adopted in all provinces and territories	<ul style="list-style-type: none"> - In force for Canada in 1983 - 75 States party 	FPT consultation in view of the Hague Special Commission on the operation of the Convention in November 2006
1	Convention on the International Protection of Adults - (Hague)	<ul style="list-style-type: none"> - Uniform implementing legislation was adopted by ULCC (December 1st, 2001) - Sask. (2005) 	<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	Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and	<ul style="list-style-type: none"> - Uniform implementing legislation was adopted by ULCC (December 	<ul style="list-style-type: none"> - Concluded at The Hague on October 19, 1996 - Not yet in force 	<ul style="list-style-type: none"> - Working and consulting with provincial and territorial jurisdictions on implementation issues

Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
	Measures of Protection of Children (Hague)	1 st , 2001) - CCSO WG on inter-provincial harmonization	- 10 states party	- FPT consultations in view of a Special Commission in November 2006 (access issues)
Implementation or monitoring	Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague)	- Implementing legislation adopted and in force in P.E.I. (1994), SASK., B.C., MAN. (1995), N.B. (1996), ALTA (1997), YT, N.S., ONT (1998), N.W.T., Nunavut (1999), Nfld (2003), Qc (2006)	- In force for Canada (1994), B.C., MAN., N.B., P.E.I., SASK., ALTA (1997), YT (1998), NS, ONT (1999), NWT (2000), Nunavut (2001), Nfld (2003) and Qc (2006) - 66 States party	- Provide information on the Convention where required

Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Convention Providing a Uniform Law 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	Convention on the Law Applicable to Trusts and their Recognition - (Hague)	- Implementation legislation adopted: 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) - declaration for N.S. filed on February 17, 2006 - in force for N.S. May 1, 2006 - 10 States party	Adopt implementing legislation in QUÉ., ONT., Y.T., N.W.T. and Nunavut
2	Convention on the Law Applicable to Successions to the Estates of Deceased		- Concluded at the Hague on August 1st, 1989	Consult with provinces and territories when appropriate

Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
	Persons (Hague)		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 - 27 States party	Consultation with provinces and territories on Canada becoming a party when appropriate

ANNEX D

2006-2007 IPLS Provisional Travel Schedule

Mobile
Equipment

Foreign
Matters
check list

BCLL { Will
Commit

PROVISIONAL SCHEDULE FOR INTERNATIONAL PRIVATE LAW MEETINGS

August 2006 – November 2007

Meeting		Travel Dates	Place
1	UNIDROIT – Space Protocol – Third Intergovernmental Session	September / October 2006 (to be confirmed)	Rome
2	UNCITRAL Working Group II – Arbitration	September 11-15, 2006	Vienna
3	UNCITRAL – Working Group I – Procurement	September 25-29, 2006	Vienna
4	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>	October 30 to November 9 2006	The Hague
5	UNCITRAL Working Group III – Transport Law	November 6-17, 2006	Vienna
6	Third meeting of governmental experts for the draft Convention on Harmonised Substantive Rules regarding Securities Held with an Intermediary	November 6-15, 2006	Rome
7	UNCITRAL Working Group VI – Security Interests	December 4-8, 2006	Vienna
8	UNCITRAL Working Group IV – Insolvency Law	December 11-15, 2006	Vienna
9	Diplomatic Conference – UNIDROIT Railway Protocol	Winter 2006 (To be confirmed)	Luxemburg (place to be confirmed)
10	UNCITRAL Working Group II – Arbitration	February 5-9, 2007	New York
11	UNCITRAL Working Group VI – Security Interests	February 12-16, 2007	New York
12	UNCITRAL Working Group III – Transport Law	April 16-27, 2007	New York
13	Special Commission on General Affairs and Policy of the Hague Conference	April-May 2007 (dates to be confirmed)	The Hague
↓ 14	Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance	Spring 2007 (tentative)	The Hague
15	UNCITRAL Working Group V – Insolvency Law	May 14-18, 2007	New York
16	UNCITRAL – Working Group I – Procurement	May 21-25, 2007	New York
17	UNCITRAL 40 th Session	June 18 to July 13, 2007	Vienna
18	UNCITRAL Congress 40 th Anniversary	July 9-13, 2007	Vienna
19	Diplomatic Session on the International Recovery of Child Support and other Forms of Family Maintenance	Fall 2007	The Hague
20	UNCITRAL Working Group I – Procurement	September 3-7, 2007	Vienna

Part
y
Adult

		(tentative)	
21	UNCITRAL Working Group II – Arbitration	September 10-14, 2007 (tentative)	Vienna
22	UNCITRAL Working Group VI – Security Interests	September 24-28, 2007 (tentative)	Vienna
23	UNCITRAL Working Group III – Transport Law	October 15-25, 2007 (tentative)	Vienna
24	UNCITRAL Working Group IV - E-commerce or Working Group V - Insolvency Law	November 5-9, 2007 (tentative)	Vienna

