

**UNIFORM LAW CONFERENCE OF CANADA**

**CIVIL SECTION**

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

**REPORT OF THE DEPARTMENT OF JUSTICE CANADA  
2010**

**Halifax, Nova Scotia  
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# Report of the Department of Justice Canada

August 2010

## INTRODUCTION

[1] This report sets out the status of implementation of certain international private law instruments, describes measures that have been taken by Canadian jurisdictions in the past year for their implementation, describes projects currently under negotiation 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] In 2009-2010, implementation activity continued in Canada. Again this year, efforts were devoted to the implementation of the *ICSID Convention for the Settlement of Investment Disputes between States and Nationals of Other States*, signed by Canada in December 2006, and to the possible implementation in Canada of the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, among others. In addition, through the Uniform Law Conference of Canada (ULCC), the Department of Justice and other federal, provincial and territorial (FPT) partners have continued their work on important projects, including efforts aimed at implementation of the *UN Convention on Independent Guarantees and Stand-by Letters of Credit*

[3] Progress has also been made in terms of developing new international instruments. For example, in October 2009, the *Unidroit Convention on Substantive Rules regarding Intermediated Securities* was finalized and adopted at the second Session of the Diplomatic Conference in Geneva. Negotiations continued at Unidroit and UNCITRAL on projects that will culminate in new international private law instruments.

[4] The Department of Justice has continued to allocate resources over the last year to improve and develop the international and national legal framework in international private law. In October 2009, the International Private Law Section (IPLS) of the Department of Justice hosted a one-day Seminar that focused on the efforts by the international community to harmonize private law and on Canada's participation over 40 years in the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (Unidroit), the United Nations Commission on International Trade Law (UNCITRAL) and the Organisation of American States' (OAS) Inter-American Specialized Conference on Private International Law (CIDIP). Canadian experts discussed current international topics in the areas of commercial law, judicial cooperation and the protection of vulnerable persons. The Seminar provided an overview of emerging issues internationally and closed with a discussion on topics for future work of interest to Canada.

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[5] The first part of this report deals with the various Canadian actors in international private law. In the course of its activities, the International Private Law Section of 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 IPLS are set out in Annex A.

[6] The international and regional organizations involved in international private law and the projects in which Canada has participated will be briefly described in the second part of the report. A list of the principal conventions, protocols and model laws in the area of international private law adopted by the Hague Conference on Private International Law, UNCITRAL, Unidroit and the OAS is set out in Annex B.

[7] Finally, the third part of the report presents the activities of the Department of Justice in international private law under the following themes:

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

[8] Projects are also ranked with respect to their level of priority (high, medium, low). To evaluate priority, IPLS, in collaboration with the Advisory Group on Private International Law, considers the following: the interest of the international community, Canada's interest and the interest of national actors; the project's costs and benefits; and the challenges and difficulties related to implementation.

[9] Key projects are displayed in similar order in the Overview Chart of International Private Law Priorities (Annex C) which provides an outline of IPLS's activities in the field of international private law. Information on the status of existing instruments is found in Annex D.

[10] This year we have included a summary of the work programmes of the three global organizations as Annex E. A provisional list of international meetings for the coming year is provided in Annex F.

### **I. NATIONAL ACTORS**

[11] As matters dealing with international private 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 closely to their interests.



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**A. ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW**

[12] 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. The Group provides the Department with continuing advice on the provincial aspects of the international private law projects in which Canada is involved. Since the last report, the Group met by conference call in February 2010. The Group is generally referred to as the “Advisory Group” in this text.

**B. FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION**

[13] In addition to federal-provincial (FP) cooperation through the Advisory Group, the Department also communicates directly with provincial and territorial authorities to obtain their official views on international instruments. These exchanges take place through written and oral communications among 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)**

[14] Instituted in 1918 with a view to ensuring uniformity in provincial legislation, the ULCC today participates actively in the implementation of international conventions and other international private 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 international private law instruments through the development of uniform implementing legislation.

**2. Civil Justice Committee**

[15] 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 AND LAW FACULTIES**

[16] The Department of Justice maintains contacts with the Canadian Bar Association (CBA) as well as with private sector groups. In 2008, the Department established its Academic Liaison Committee (ALC) aimed at facilitating the exchange of information between Departmental officials and law professors on international private law matters. The

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first meeting of the ALC took place in Ottawa in December 2008. It allowed for a broad exchange on the mandate of the ALC, the involvement of the Department of Justice in the area of international private law and the priority projects of the Department. It was agreed that future meetings would focus mainly on specific projects thus allowing for more extensive substantive discussions. The date of the next meeting of the ALC has not been determined.

## **II. INTERNATIONAL ORGANIZATIONS AND RELATIONS**

### **A. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW**

[17] The Hague Conference on Private International Law, which held its first session in 1893, has 70 Members, including Canada since 1968 and the European Community since 2007. 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 Members. Members 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 including instruments adopted by the Conference, status of ratifications and adoption can be found at: [www.hcch.net](http://www.hcch.net).

[18] The Conference’s work programme is reviewed each year at a meeting of the Council on General Affairs and Policy. At this year’s meeting, held April 7-9, 2010, the Council approved a work programme which does not include the negotiation of a new international instrument. It does, however, include preliminary work on a range of subjects, including cross-border mediation in family matters, choice of law in international contracts, access to foreign law, the use of private international law techniques in the context of international migration, the status of children focussing on the recognition of parent-child relationships and the desirability and feasibility of a protocol to the 1980 Child Abduction Convention containing auxiliary rules aimed at improving the operation of the Convention. The conclusions of the Council’s meeting are available on the Hague Conference website. An outline of the work programme is found in Annex E to this report.

[19] Over the last year, Canada participated in the following activities of the Conference: expert and drafting group meetings, the Special Commission on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations (10 - 17 November 2009), the Third Meeting of the Special Commission on the practical operation of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (17-25 June, 2010), the

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Working Party on Mediation in the Context of the Malta Process and the meeting of the Council on General Affairs and Policy of the Conference (April 7-9, 2010).

[20] Canada is party to four Hague Conference Conventions in private international law: the *Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters* (1965, in force for Canada 88/05/01); the *Convention on the Civil Aspects of International Child Abduction* (1980, in force for Canada 83/12/01); the *Convention on the Law Applicable to Trusts and on their Recognition* (1985, in force for Canada 93/01/01); and the *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993, in force for Canada 97/04/01). Not all jurisdictions in Canada have implemented all four Conventions.

**B. UNCITRAL**

[21] 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, 8 model laws, uniform rules and a number of legal and legislative guides. Further information on UNCITRAL, including instruments adopted by the Commission, status of ratifications and adoption of instruments, and working group reports, can be found at: [www.uncitral.org](http://www.uncitral.org).

[22] UNCITRAL comprises 60 Member States representing various geographic regions and the principal economic systems and legal traditions of the world. Members are elected for a six-year term by the General Assembly. Other States and international governmental and non-governmental organizations may participate as observers in meetings of the Commission and its working groups, which operate by consensus. Canada was a member of UNCITRAL from 1989 to 1995, participated actively as an observer from 1995 to 2001, and was elected to the Commission for a term commencing in June 2001 and ending in June 2007. Canada was re-elected in 2007 until 2013.

[23] At the 43rd Session held from June 21 to July 9, 2010 in New York, the Commission finalized and adopted a revised version of the UNCITRAL Arbitration Rules, a supplement to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property and Part III of the UNCITRAL Legislative Guide on Insolvency Law on the treatment of enterprise groups in insolvency. These subjects are discussed later in this report. The Commission decided to undertake work in areas including registries for security interests and on-line dispute resolution. See Annex E for a summary list of UNCITRAL Work Programmes. Further information on UNCITRAL's work programme is available on its website.

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[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 for Canada 86/08/10) and the *U.N. Convention on Contracts for the International Sale of Goods* (Vienna Convention of 1980, in force for Canada 92/05/01).

[25] Canada has also enacted domestic legislation implementing UNCITRAL's *Model Law on International Commercial Arbitration* (1985). Legislation drawing on UNCITRAL's *Model Law on Cross-Border Insolvency* (1997) has been adopted by the federal government and legislation drawing on UNCITRAL's *Model Law on Electronic Commerce* has been adopted by the federal government, the provinces and two territories.

### C. UNIDROIT

[26] The International Institute for the Unification of Private Law, known as Unidroit, was created in 1926 as an organ of the League of Nations. Since 1940 it has been an independent inter-governmental organization based in Rome. There are 63 Member States, including Canada since 1968 and Indonesia and Saudi Arabia since January 2009. 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 including instruments adopted by the Institute, status of ratifications and adoption can be found at: [www.unidroit.org](http://www.unidroit.org).

[27] Kathryn Sabo, General Counsel of the International Private Law Section of the Department of Justice has been a member of the Governing Council of Unidroit since January 1, 2009. In practice, the Governing Council is the principal decision-making body of the organization. It sets up the work programme, provides advice on the organization's draft budget and is responsible for the Secretariat's activities.

[28] 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. Its current work programme includes ongoing work on the Unidroit Principles of International Commercial Contracts, with a new edition to be published in the coming months, and additional protocols to the *Convention on International Interests in Mobile Equipment*. In the area of capital markets, in October 2009, Unidroit held the second Session of the Diplomatic Conference and adopted the *Convention on Substantive Rules regarding Intermediated Securities*. See Annex E for a summary of Unidroit's work programme. Details are available on its website.

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[29] Canada is party to only one of the ten Unidroit conventions, the *Convention Providing a Uniform Law on the Form of an International Will* (1973) (in force for Canada since 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**

[30] The World Bank's role in the field of international private law stems in part from the creation of the International Centre for the Settlement of Investment Disputes (ICSID) under the *Convention for the Settlement of Investment Disputes between States and Nationals of Other States* (1965). Canada signed this Convention in December 2006. To facilitate ratification, the ULCC has adopted a uniform act to implement the Convention (1997). Further information on the World Bank and the *ICSID Convention* can be found at: [www.worldbank.org](http://www.worldbank.org).

**E. COMMONWEALTH**

[31] From May 19 – 21, 2009, the Department of Justice Canada hosted a Commonwealth Seminar on the Recognition and Enforcement of Foreign Judgments. The purpose of the Seminar was to discuss a proposed new approach to the recognition and enforcement of foreign judgments that could replace obsolete intra-Commonwealth arrangements.

[32] Work on this subject began in 2005 with the Commonwealth Secretariat reviewing the history of the legislation in the Commonwealth and noting recent developments in some Commonwealth countries, in the European Community and at the Hague Conference on Private International Law. The Saskatchewan 2005 *Enforcement of Foreign Judgments Act* and the ULCC's 2003 *Uniform Enforcement of Foreign Judgments Act* (on which Saskatchewan's statute is based) figured prominently in the Secretariat's review as examples well worth considering.

[33] The Secretariat collected information via a questionnaire sent to Commonwealth countries. Replies to the questionnaire indicated support for modernization of the law, albeit with differences of degree on particular aspects. Canada expressed its support for such an exercise and offered its expertise.

[34] International participants in the Seminar included Professor David McLean and Margaret Bruce, Acting Head of Law Development Section from the Commonwealth Secretariat, as well as representatives from India and Trinidad and Tobago.

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Representatives from South Africa, Singapore and Nigeria were not able to attend. Canadian participants included Kathryn Sabo, General Counsel IPLS, Manon Dostie, Senior Counsel IPLS and 2 provincial law experts: Darcy McGovern, Senior Crown Counsel, Saskatchewan Justice, and Frédérique Sabourin, Counsel, ministère des Relations internationales du Québec. Peter Lown, Director of the Alberta Law Reform Institute (ALRI), participated in preparations.

[35] Canada's objective for the Seminar was to obtain agreement to the extent possible on an approach that tracks the 2003 *Uniform Enforcement of Foreign Judgments Act* to facilitate the recognition and enforcement of Canadian judgments abroad.

[36] The Commonwealth Secretariat will be reporting to a meeting of Senior Officials of Commonwealth Law Ministries this fall. Senior officials will decide on a process for the preparation of draft model legislation. The Department will monitor developments and assist where possible.

### **F. REGIONAL ORGANIZATIONS: THE ORGANIZATION OF AMERICAN STATES**

[37] The Organization of American States, with 35 member States, provides a 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 CIDIP which meets approximately every four or five years to deal with technical matters and further cooperation in the area of international private law. Further information on the OAS including instruments adopted by the Organization, status of ratifications and adoption can be found at: [www.oas.org](http://www.oas.org).

[38] Canada is not party to any of the 21 OAS conventions in international private law, and had only observer status for the first four CIDIP meetings. Since becoming a member of the OAS in 1990, Canada has been exploring ways of enhancing legal cooperation with other OAS countries. 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. Two topics were selected for CIDIP VII: one on consumer protection, and the other on secured transactions and electronic registries. The Model Registry Regulations under the Model Inter-American Law on Secured Transactions were adopted at a Diplomatic Conference held from October 7-9, 2009, in Washington.

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[39] In June 2009, the General Assembly of the OAS resolved to convene a working group with a view to finalizing the preparation of the instrument(s) on consumer protection before scheduling the dates for a Diplomatic Conference. Consultations with stakeholders will continue. A Canadian working group comprised of representatives of the Department of Justice Canada (IPLS) and of federal and provincial/territorial experts is participating in this project.

**G. BILATERAL RELATIONS**

[40] Canada has 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.

[41] 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.

[42] Canada is also party to bilateral treaties on judicial cooperation (service and taking of evidence abroad) with 25 States. These treaties are available on the website of the Department of Foreign Affairs and International Trade at <http://www.accord-treaty.gc.ca/> (under the headings “Bilateral” and “Judicial Co-operation (civil and commercial)”).

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

**A. INTERNATIONAL COMMERCIAL LAW**

**1. HIGH PRIORITIES**

**a. Supplement on Security Rights in Intellectual Property (UNCITRAL)**

[43] In 2007, the Commission entrusted a Working Group with the preparation of an annex to the *UNCITRAL Legislative Guide on Secured Transactions* (which was finalized and adopted in December 2007) on security rights specific to security rights in intellectual property rights. The purpose of the annex is to provide assistance to States with respect to legislative adjustments that might be needed to avoid inconsistencies between secured financing and intellectual property law.

[44] The Working Group comprised experts on secured financing and intellectual property law. At its 43<sup>rd</sup> session in July this year, the Commission finalized and adopted the Supplement on Security Rights in Intellectual Property which addresses the creation of a security right in intellectual property, its effectiveness against third parties, the registry system, priority of a security right in intellectual property, the applicable law and enforcement.

[45] *Action Required in Canada:* Bring the supplement to the attention of Canadian stakeholders.

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

[46] The Unidroit *Convention on Substantive Rules regarding Intermediated Securities* (“the Geneva Securities Convention”) was finalized and adopted during a Diplomatic Conference held in Geneva in October 2009. The Convention creates clear and consistent rules for the taking of securities as collateral, especially securities held indirectly through intermediaries in multi-tiered holding patterns and evidenced by book entries in the investor’s account. It 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.

[47] Four meetings of governmental experts (May 2005, March 2006, November 2006 and March 2007) and two diplomatic sessions (September 2008 and October 2009) were held on this project. At the last session of the Diplomatic Conference, States agreed that given the complexities of the subject-matter, the preparation of an official commentary on the text of the Convention should continue in consultation with States. The draft commentary was recently distributed to States for comments.

[48] *Action required in Canada:* Review the draft commentary and provide comments if necessary. Consult stakeholders on the possible implementation of this Convention in Canada.

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

[49] 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.



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[50] 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 the 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.

[51] The Convention creates an organization, the International Centre for Settlement of Investment Disputes, 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.

[52] 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 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.

[53] The vast majority of our trading partners have ratified the *ICSID Convention* – 144 States are party to the Convention – and Canada has signed it. 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.

[54] A uniform act for the implementation of the *ICSID Convention* was adopted by the ULCC in 1998. The uniform act is still considered suitable for implementing the Convention and is relatively simple since the obligations of States under the Convention are essentially 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.

[55] 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. In 2006 four jurisdictions adopted legislation implementing the Convention: Saskatchewan, British Columbia, Newfoundland and Labrador and Nunavut. Last year, the Northwest Territories followed suit. Federal legislation was adopted in March 2008.

[56] The adoption of these bills represents a significant development in Canada for the adoption of the *ICSID Convention*. We are grateful to those jurisdictions that have adopted implementing legislation and to those that are currently taking steps to do so. We would invite all jurisdictions to adopt implementing legislation and to consider whether they wish to be designated constituent subdivisions.

[57] The Department maintains the adoption of the *ICSID Convention* as a high priority. We will continue to work closely with the Department of Foreign Affairs and International Trade as well as 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. The federal government intends to ratify the Convention in the near future.

[58] *Action required in Canada:* Continue to work with the Department of Foreign Affairs and International Trade towards ratification. Continue to encourage provinces and territories to adopt implementing legislation.

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

[59] The Convention provides a framework for the creation of international interests in mobile equipment and an international registry in which these interests can be registered. 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, agricultural equipment, mining equipment, space property, and other objects that could be identified in the future.

[60] 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. Canada signed the Convention and Aircraft Protocol in March 2004. The Convention has been adopted in 37 States and the Protocol in 32 States including the United States (2006), Mexico (2007) and the European Community (2009).

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[61] 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, Saskatchewan, Nova Scotia, Alberta, Newfoundland and Labrador, Quebec and the Northwest Territories.

[62] The federal government is in a position to consider ratifying the Convention and Aircraft Protocol given the support for ratification that has been expressed by the adoption of implementing legislation in the provinces and territories. The Department has worked with provinces and territories to develop a proposed list of uniform declarations. Although it is up to each province and territory to determine the nature of the declarations it wishes Canada to make with respect to its jurisdiction, there is a consensus on almost all of the proposed declarations at this time.

[63] Recently, it has become clear that there have been several developments since federal implementing legislation was adopted in 2005. In order to make all necessary declarations allowing Canadian stakeholders to fully benefit from the Convention and Protocol, amendments could be required to insolvency statutes (i.e., *Bankruptcy and Insolvency Act*, *Companies' Creditors Arrangement Act*, *Winding-Up and Restructuring Act*). A number of amendments could also be required to federal implementing legislation to ensure that the *Special Economic Measures Act*, the *United Nations Act*, and the *Criminal Code* supersede some of its provisions. Changes to the regulations and employee directions that govern Transport Canada's Civil Aircraft Register could be required as well.

[64] Some proposed legislative amendments could conflict with other important priorities in insolvency (e.g., the protection of pensions in bankruptcy). Taking into account the fact that large Canadian airlines have deferred aircraft orders for the foreseeable future, ratification could be delayed for some time.

[65] *Action required in Canada:* Continue to work with the Department of Transport Canada towards ratification. Continue to encourage provinces and territories that have not yet done so to consider adopting implementing legislation.

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

[66] The electronic registries project results from the adoption of the *Model Law on Secured Transactions* by the CIDIP-VI and comprises three components: uniform registration forms, the development of electronic registry guidelines and the development of an instrument on registry interconnectivity. Regarding the first component, the OAS

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has prepared five model forms (registration, continuation, amendment, cancellation, and enforcement), all based on forms from Canada, the United States and Mexico.

[67] In Canada, a Canadian working group on the electronic registries project was set up, with experts in secured transactions law and in electronic secured transactions registries. The working group determined that it was not possible to provide comments on the forms without using some policy decision as a point of departure. It was agreed that Canada could usefully propose draft registry guidelines that, if acceptable, would constitute the basis for the forms.

[68] Draft registry guidelines were finalised and circulated to members of an informal OAS Drafting Group for consideration. The United States also circulated a paper dealing with similar issues. The Drafting Group was composed of both experts and government officials from Canada, the United States, Mexico, Brazil, Argentina and representatives from the National Law Centre for Inter-American Free Trade.

[69] The Drafting Group developed joint Mexico/Canada/United States Model Registry Regulations and an accompanying commentary, based on both the Canadian and United States proposal. The Model Registry Regulations provide the legal foundation for implementing and operating the registry regime contemplated by the Model Law in both civil and common law systems.

[70] The Model Registry Regulations were adopted at a diplomatic conference from October 7-9, 2009 in Washington. Canada was represented by Mireille-France LeBlanc, Counsel, IPLS, Department of Justice, Ronald Cuming, Professor, University of Saskatchewan (common law expert) and Louis Payette, Partner, Lavery, de Billy, S.E.N.C.R.L. (civil law expert).

[71] *Action required in Canada:* Monitor developments.

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

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

[73] Three proposals have been submitted on this topic: the Canadian Draft Proposal for a Model Law on Jurisdiction and Applicable Law for Consumer Protection, which is substantially consistent with the Conference's Uniform Rules for Consumer Contracts; the United States Draft Legislative Guidelines and Model Laws on Monetary Redress, which was amended in February 2010 to introduce a cooperative framework for a state-

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sponsored initiative to help resolve cross-border e-commerce consumer disputes using online dispute resolution (“ODR Initiative”) and a model law on chargebacks; the Joint Proposal by Brazil, Argentina and Paraguay for a Draft Inter-American Convention on the Law Applicable to Some International Consumer Contracts and Transactions, which includes three optional protocols dealing with definitions, the application of the Draft Convention and minimum rules on international jurisdiction. This latter proposal was submitted in October 2009 and replaces the proposal for an Inter-American Convention initially presented by Brazil.

[74] In accordance with the June 2009 Resolution of the General Assembly of the OAS, an informal working group to draft the final documents on consumer protection was established. It held 5 meetings by teleconference (from October 2009 to April 2010) and a one-half day meeting in Washington (May 6, 2010). Canada was represented on the working group by Marie Riendeau, Counsel, IPLS, Department of Justice Canada, Karen Pflanzner, Senior Counsel, Ministry of Justice, Saskatchewan, Geneviève Duchesne, Counsel, Office de la protection du consommateur du Québec and David Clarke, Economic Analyst, Office of Consumer Affairs, Industry Canada.

[75] At the May 2010 meeting, Brazil offered to host the diplomatic conference on consumer protection in Brasilia from November 23 to 26, 2010. This proposal was supported by several Latin American States. Although the working group had provided a setting that allowed for some work to be done, Canada expressed the view that significantly more work was required on all three proposals. Consequently, it could not support Brazil’s proposal which it deemed to be premature. The United States and Mexico expressed similar positions.

[76] In June 2010, in the absence of consensus on dates for, or on the next steps leading to, the diplomatic conference, the General Assembly did not adopt any new resolution on CIDIP VII. The next steps in the negotiating process will be determined by the Permanent Council of the OAS.

[77] *Action required in Canada:* Continue involvement in the preparatory work for the next CIDIP session, including necessary consultations.

**g. *Convention on the Law Applicable to Securities Held by Intermediaries (Hague) – ULCC Uniform Act***

[78] The *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary* was adopted by the Hague Conference in December 2002. 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

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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. Canada actively participated in the negotiations relating to this Convention.

[79] In 2004, the ULCC agreed that the Canadian Securities Administrators' (CSA) Uniform Securities Transfer Act (USTA) Task Force prepare a uniform implementing statute for the Convention. 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 apart from informal discussion suggesting that implementation might be accomplished via a small addition to USTA legislation.

[80] At its annual meeting in September 2007, the ULCC resolved that a Working Group be established to prepare a uniform implementing amending act and commentaries. Note that the Convention was ratified by Switzerland and Mauritius in 2009 and signed by the United States in 2006.

[81] *Action required in Canada:* Form a ULCC working group to prepare uniform implementing legislation and commentaries for presentation at the ULCC for adoption in 2011.

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

[82] These Conventions, which entered into force August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. There are 28 States party to the Limitation Convention of 1974, and 20 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico.

[83] 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.

[84] 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

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long limitation periods. The Conventions establish a uniform prescription period of four years for commercial litigation.

[85] In 1975-76, the ULCC adopted a uniform act to implement the 1974 *Limitation Convention (An Act to Amend the Uniform Limitation of Actions Act)* and recommended it to provinces and territories for enactment. This recommendation was made on the grounds that, given the importance of international trade to Canada as a whole, the *Limitation Convention* warranted a close consideration of the Conference as it was to become the basis of international uniformity on limitation in disputes involving the international sale of goods. This argument remains valid.

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

[87] Since then, the federal Minister of Justice has undertaken consultations with provincial and territorial counterparts on the desirability of implementing the Limitation Conventions. Some provinces have expressed support for implementation and a further consultation of provincial and territorial Deputy Ministers took place in 2005.

[88] *Action required in Canada:* Follow-up on the consultations with provinces and territories and determine whether a simpler approach to implementation would be appropriate. Consider the adoption of federal implementing legislation, which would apply to contracts for the sales of goods involving the Crown in right of Canada.

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

[89] 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.

[90] 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

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Deschamps for the civil law perspective. The study was presented at the ULCC meeting in August 2005.

[91] The ULCC Working Group on Assignments of Receivables prepared a draft uniform implementation act and a final report, presented at the annual meeting of the ULCC in 2006. This work was part of a joint project with the then United States National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Mexican Uniform Law Centre. At the 2006 annual meeting, the adoption of the draft uniform act was postponed to allow the joint project to proceed. The Uniform Act was adopted by the Conference in 2007.

[92] The Convention has been signed by the United States, Luxembourg and Madagascar, and was acceded to by Liberia. The United States has indicated that it anticipates taking the steps necessary for ratification. The European Commission, by letter of June 22, 2006 to UNCITRAL, stated its intention to ensure coherence between the Convention and the Rome I Regulation and to facilitate the ratification of the Convention by EU Member States. There have been no developments since then.

[93] *Action Required in Canada:* Monitor developments toward ratification in the United States and other countries. Encourage the provinces and territories to consider adopting implementing legislation.

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

[94] The Convention aims at establishing greater uniformity in the law relating to independent guarantees and stand-by letters of credit in international commercial transactions. It was finalised in 1995 and has been in force since 2000. Eight States are currently party to the Convention.

[95] A study reviewing the Convention rules in relation to current law in Canada was prepared for the ULCC in 2006 and a ULCC Working Group was established in 2007. The Working Group developed a draft uniform act and commentaries to implement the Convention as well as parallel domestic legislation in the area of letters of credit along the lines of the Convention rules, taking into account existing common law and civil law rules. The Working Group has been working in co-operation with the Uniform Law Commission (ULC) in the United States and the Mexican Uniform Law Centre to attempt to bring about a harmonized approach to implementing the Convention across the Americas.



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[96] The Working Group has consulted stakeholders, including major Canadian banks, the Canadian Bankers Association, the CBA and Canadian Manufacturers and Exporters, on the merits of this project. Support of the project has been expressed.

[97] The Working Group is currently working with legislative drafters from the Department of Justice and hopes to complete a draft uniform act and commentaries to implement the Convention as well as domestic legislation in the area of letter of credit for presentation at the ULCC Annual Meeting in 2011.

[98] *Action required in Canada:* Complete uniform implementing legislation as well as parallel domestic legislation for 2011.

**2. MEDIUM PRIORITIES**

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

[99] In 2004, UNCITRAL mandated a Working Group to 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.

[100] The Working Group met for two sessions over the last year: from December 7-11, 2009 and from April 12-16, 2010. The Canadian delegation comprised representatives of the Department of Justice as well as provincial experts in civil and common law. Canada was represented by Mireille-France LeBlanc, IPLS, Department of Justice, Eleanor Andres, Manitoba Justice, Margaret A. MacDonald, Ministry of Natural Resources Ontario, and Marie-Andrée Gauthier, Centre de services partagés du Québec.

[101] The revised text of the Model Law has almost been completed and work has already begun on the Guide of Enactment. The revised Model Law and Guide to Enactment should be finalized and presented to the Commission for adoption at its session in 2011.

[102] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from November 1-5, 2010.

**b. Treatment of enterprise groups in insolvency (UNCITRAL)**

[103] The subject of enterprise groups in insolvency law arose in the context of the development of the UNCITRAL Legislative Guide on Insolvency (Insolvency Guide). The treatment of this topic in the Insolvency Guide was limited to a brief introduction. Therefore, at its 39<sup>th</sup> session in July 2006, the Commission agreed that the subject of enterprise groups in insolvency law should be referred to the Working Group on Insolvency Law for consideration and that the Working Group should be given the flexibility to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take. The Commission agreed that the topic of post-commencement financing should initially be considered as a component of work to be undertaken on insolvency of enterprise groups. It also agreed that initial work should be done to compile practical experience with respect to negotiating and using cross-border insolvency protocols. The Working Group was given sufficient flexibility to consider proposals for work on additional aspects of post-commencement financing.

[104] At the 31<sup>st</sup> session of the Working Group in December 2006, initial discussions took place with respect to enterprise groups on such issues as definitions, commencement proceedings, effects of commencement, reorganization, remedies and international issues (e.g., centre of main interest, jurisdiction, recognition, harmonization).

[105] The Working Group continued its work at its 32<sup>nd</sup> to 38<sup>th</sup> sessions, with much of the same issues being discussed as listed above. At the Commission's 42<sup>nd</sup> session in June and July 2009, a Practice Guide on cooperation, communication and coordination in cross-border insolvency proceedings was finalized and adopted. It is a complete, comprehensive and useful document in understanding how different jurisdictions deal with cooperation, communication and coordination in cross-border insolvency proceedings.

[106] At the Commission's 43<sup>rd</sup> session in June and July 2010, part III of the *UNCITRAL Legislative Guide on Insolvency Law* on the treatment of enterprise groups in insolvency was finalized and adopted. Future work topics were also referred to Working Group V: the concept of the centre of main interests (COMI) and the liability of directors and officers in insolvency. Working Group V is expected to begin work on these topics this fall.

[107] *Action required in Canada:* Conduct consultations and establish the Canadian position for the upcoming session of the Working Group from December 6-10, 2010.

**c. Revision of UNCITRAL Arbitration Rules (UNCITRAL)**

[108] In July 2010, the 43<sup>rd</sup> session of UNCITRAL adopted a revised version of the 1976 UNCITRAL Arbitration Rules.

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[109] The revision of the Rules is intended to modernize the 1976 Rules. The most notable modifications include the following:

- **Article 2** provides rules for notice and calculation of periods of time which take into account electronic means of communications.
- **Article 6** provides a framework for parties to designate an appointing authority as soon as possible during the arbitration and improves the provisions for challenging and replacing arbitrators.
- **Article 11** includes a model "statement of independence" for arbitrators.
- **Article 16** is a new rule which codifies the practice excluding liability of arbitrators, appointing authority or any person appointed by the arbitral tribunal for any act or omission in connection with the arbitration unless they committed "intentional wrongdoing" but only to the extent permitted under the applicable law.
- **Article 17** includes the requirement for arbitrators to conduct the arbitration in such manner as to avoid unnecessary delay and expense.
- **Article 41** is also a new rule which states that fees and expenses of the arbitrators must be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. It includes an obligation by the arbitral tribunal to inform the parties how the fees and costs will be calculated and includes a mechanism for the review of such fees.

[110] Canada was represented by Manon Dostie, Senior Counsel, IPLS, Department of Justice; Shane Spelliscy, Counsel, Trade Law Bureau, Department of Justice; Stephen L. Drymer, Ogilvy Renault, Montreal and Gerry W.J. Ghikas, Borden Ladner Gervais, Vancouver.

[111] *Action required in Canada:* Disseminate information about the new UNCITRAL Arbitral Rules. Begin informal work on the topic of transparency in treaty-based investor-State arbitration in preparation for the next Working Group session.

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

[112] 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-

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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.

[113] 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.

[114] Consultation with representatives of the CBA has indicated that there is a substantial degree of interest in this convention. In August 2008, the Department of Justice submitted to the Conference pre-implementation reports reviewing the *Convention on Electronic Communications* in light of both Canadian civil law and common law, which included recommendations as to the possible accession to the Convention by Canada. Due to opposing views expressed on the relevance of pursuing work on the development of uniform implementation legislation for the Convention, it was resolved that the Civil Section Steering Committee continue to monitor developments in the area of electronic commerce in international contracts and, if appropriate, make recommendations to the New Projects Committee.

[115] In 2009, a report on the recent progress regarding the Convention was presented to the Conference. It resolved that the report be considered and, if appropriate, a working group be established and directed to report back to the Conference in 2010. Thereafter, a uniform act and commentaries on the implementation of the Convention was developed for consideration at the 2010 meeting.

[116] *Action required in Canada:* Monitor developments including the possible adoption by the Conference of a draft uniform act and commentaries on the implementation of the Convention.

### 3. LOW PRIORITIES

#### **a. Draft Protocol on Matters Specific to Space Assets to the *Convention on International Interests in Mobile Equipment (Unidroit)***

[117] Unidroit's Space Working Group, a group of representatives of the aerospace industry, satellite operators and the financial community, prepared an initial draft

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Protocol. A Committee of Governmental Experts (Committee) reviewed the text at sessions in 2003 and 2004. Key issues, including the criteria to be used in identifying spaces assets, default remedies in relation to components and limitation of remedies with respect to space assets used for public services were identified but not resolved, such that no further formal work was done until two special government/industry meetings were held in 2006 and 2007. A Steering Committee was established in November 2007 to build consensus around the key issues identified during the two government/industry meetings. The Steering Committee prepared an alternative new draft Protocol (new draft Protocol) addressing some of these issues.

[118] A new draft Protocol was circulated and discussed at the third and fourth session of the Committee of Governmental Experts from December 7-11, 2009 and May 3-7, 2010 respectively. In preparation for these sessions, the Department consulted with industry stakeholders and other federal departments to establish the Canadian position.

[119] Progress has been made on key policy issues: possible solutions to address the limitation of remedies in the case of space assets used for a public service have been identified, essential elements of a solution to the problem of the identification of space assets for the purposes of registration have been discussed and a basis for a compromise on the issue of default remedies in relation to components is being developed. However, there is still much work to be done on these issues.

[120] The fifth session of the Committee of Governmental Experts is scheduled from February 21-25, 2011. Intersessional meetings have been scheduled this fall in an effort to advance the work on the remaining key policy issues. Subject to the progress made between now and the end of the fifth session of the Committee of Governmental Experts, the Secretariat may recommend that a diplomatic conference be held late in 2011.

[121] The Department has developed a strategy to consult stakeholders and other federal government departments throughout the process to ensure that the draft Protocol addresses their concerns and meets their particular needs.

[122] *Action required in Canada:* Consultations on the draft Protocol including the remaining key policy issues to develop the Canadian position for the next meeting of the Committee of Governmental Experts.

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

[123] 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, IPLS, Department of Justice Canada, Professor Guy Lefebvre, civil law expert and Robert Cosman common law expert.

[124] 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 it as the *Commercial Mediation Act* (2005 SNS, C. 36).

[125] *Action required in Canada:* Promote adoption of the ULCC's *Uniform Act on International Commercial Conciliation*.

**B. JUDICIAL COOPERATION AND ENFORCEMENT OF JUDGMENTS**

**1. HIGH PRIORITIES**

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

[126] This Convention is in force across Canada. It also applies in 61 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.

[127] 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 and International Trade serves as the Central Authority and is monitoring the application of the Convention with the input of provincial and territorial Central Authorities. The courts' rules of practice in all provinces and territories, as well as at the federal level, have been amended to comply with the Convention.

[128] In view of facilitating and harmonising States' practice under the Convention, the Permanent Bureau of the Hague Conference on Private International Law published in

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2006 a Practical Handbook on the operation of the Convention which is available on the Conference's website.

[129] In 2009, the Hague Conference held a Special Commission on the operation of the Hague Conventions on international judicial and administrative cooperation, i.e. the Conventions on Service Abroad, Evidence, Legalisation and Access to Justice. Canada participated in the Special Commission which addressed many issues that States raised in their response to a questionnaire on the operation of the Convention on Service Abroad. The questionnaire and the response of Canada and other States as well as the conclusions and recommendations of the Special Commission are available on the Conference's website.

[130] The Department of Justice Canada has coordinated an exchange of information among provincial and territorial Central Authorities with regard to how the Convention is applied in their respective jurisdictions and on issues they encounter in its application so as to harmonize Canadian practice under the Convention.

[131] *Action required in Canada:* Continue to provide information and respond to requests regarding the application of the Convention. Coordinate the exchange of information among Canadian Central Authorities. Follow-up on the February 2009 Special Commission.

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

[132] This Convention, which does not yet apply to Canada, is in force in 98 States. It aims at replacing the process of legalisation of documents with the simpler method of the "apostille", i.e., a certificate issued in the originating country by a competent authority.

[133] The Special Commission of February 2009, in which Canada participated, highlighted the fact that the Legalisation Convention is one of the most successful Hague conventions, with 18.3 million apostilles issued in the last five years, in the 37 States Party that provided statistics. Among the issues addressed during the Commission were the requirements of the Convention in order for an apostille to be accepted and recent technological developments in the context of the Convention, especially with regard to the electronic apostille. The conclusions and recommendations of the Commission are available on the Conference's website.

[134] Although Canada is not yet a party to the Convention, its participation in the Commission permitted information to be gathered on how other States implement the

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Convention. Such information will be useful in the context of discussions on implementation of the Convention in Canada.

[135] Provinces and territories have indicated support for implementation of the Convention in Canada. Federal officials continue to work to resolve implementation issues and provide answers to questions.

[136] *Action required in Canada:* Follow-up with provinces and territories regarding their interest in implementing the Convention in their jurisdiction. Follow-up on the February 2009 Special Commission in Canada.

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

[137] On June 30, 2005, the Hague Conference on Private International Law closed its 20<sup>th</sup> 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.

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

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

[139] 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



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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.

[140] 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. The final text of the Convention is available at: [www.hcch.net](http://www.hcch.net).

[141] Two reports reviewing the Convention in light of Canadian civil and common law were presented to the ULCC in 2007. The slightly revised uniform implementing legislation should be adopted this year.

[142] *Action required in Canada:* Finalize a draft implementing act and commentaries.

## 2. LOW PRIORITIES

### **a. *Convention between the Government of Canada and the Government of the French Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)***

[143] 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 party 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.

[144] 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.

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[145] 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.

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

### C. FAMILY LAW

#### 1. HIGH PRIORITIES

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

[147] The 2000 *Convention on the International Protection of Adults* creates global legal solutions to address the problems raised by increased transborder movement of adults in need of protection. The ULCC, in collaboration with the Department of Justice, prepared a Uniform Act for the implementation of the Convention. The Act was adopted by the ULCC in November 2001. Saskatchewan adopted the ULCC Uniform Act in May 2005.

[148] In October 2005, DOJ 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 BC, Ontario, Saskatchewan and the Northwest Territories met by conference call with DOJ to work on promoting the Convention. At the February 2006 meeting of Deputy Ministers of Justice the Convention was briefly presented as an information item. Since then, only limited work has been done because of limited resources at the federal level.

[149] Internationally, there have been significant developments. The Convention came into force on January 1, 2009 as between France, Germany and Scotland (as part of the United Kingdom). It applies to Switzerland as of July 1, 2009. The following States, all members of the European Union, have signed the Convention: The Netherlands, Finland, Greece, Ireland, Luxemburg, Poland, Italy, Cyprus and Czech Republic. It should be noted that the subject matter of the Convention does not fall within the competence of the EU. Therefore, EU States are free to decide individually whether or not to adopt the Convention.

[150] *Action required in Canada:* Examine and assess the legislative and operational requirements to implement the Convention in Canada.

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**b. *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (Hague Conference)***

[151] 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 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, or the provision of care by kafala or an analogous institution; the supervision by a public authority of the care of a child by any person having charge of the child; and the administration, conservation or disposal of the child's property.

[152] The ULCC, in collaboration with the Department of Justice, prepared a uniform act for the implementation of the 1996 Convention. This act was adopted by the ULCC in November 2001. The Department of Justice is currently working with FPT groups to promote implementation of the Convention, notably with the Coordinating Committee of Senior Officials-Family Justice (CCSO) Working Group on Parenting and Contact Enforcement and Jurisdiction. The Working Group is pursuing its examination of the necessary consequential amendments to legislation to ensure the proper application of the Convention in international situations. The Department of Justice has commissioned a pre-implementation study of the Convention in regard to the law of a common law jurisdiction to assist provincial and territorial officials in their analysis of the implications of implementing the Convention. The Department is also considering commissioning a similar study in regard to Québec law.

[153] The Department of Justice is also currently consulting with other federal departments on the Convention, as well as reviewing the need for amendments to the *Divorce Act* as part of its implementation efforts.

[154] The Permanent Bureau of the Hague Conference recently circulated a draft Practical Handbook on the operation of the Convention that includes an Implementation Checklist. The purpose of the Handbook and the Checklist is to assist States that are considering becoming party to the Convention. Canada provided written comments on the draft Practical Handbook in March 2010. The Checklist is currently available on the Hague Conference's website at <http://hcch.e-vision.nl/upload/checklist34e.pdf> and the Practical Handbook is expected to be published in the second half of 2010.

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[155] The 1996 Convention is currently in force between nineteen countries. This number is expected to increase given that the member States of the European Union are expected to ratify the Convention in the near future. The United States has also indicated its interest in the Convention.

[156] The next meeting of the Special Commission on the practical operation of the 1996 Convention and the 1980 Convention on the Civil Aspects of International Child Abduction is expected to take place in 2011, possibly in June.

[157] *Action required in Canada:* Continue working with FPT partners. Finalize consultations regarding implementation. Active promotion of implementation of the Convention in Canada. Prepare for the next meeting of the Special Commission on the practical operation of the 1996 and the 1980 Conventions.

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

[158] The *Convention on the Civil Aspects of International Child Abduction* is the first Hague Convention to be ratified by Canada. It is in force in all the Canadian jurisdictions. The Convention provides for an expeditious remedy in order to obtain the return to the State of habitual residence of a child who has been unlawfully removed to, or who is unlawfully retained in, another Contracting State in breach of custody rights. Each State party is required to establish a Central Authority to deal with requests for the return of abducted children or for assistance in the exercise of access rights. There are currently 82 States party to the Convention.

[159] 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 of Foreign Affairs and International Trade Canada. 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 National Missing Children Services in cooperation with national airlines and Via Rail.

[160] A database of judicial decisions taken under the Convention is available at: [www.incadat.com](http://www.incadat.com). It is hoped that this will facilitate a uniform interpretation of the Convention across all Contracting States. Relevant Canadian judicial decisions on the interpretation of the Convention are regularly collected by the Department of Justice, summarised and forwarded to the Permanent Bureau of the Hague Conference to be added to the database.

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[161] On November 6, 2009, Canada deposited a declaration accepting Lithuania, Latvia and Bulgaria's accessions with the depositary of the Convention. As a result, the Convention came into force between Canada and these three States on February 1, 2010. Canada has yet to make decisions on the acceptance of the accessions to the Convention by the following 10 States: Nicaragua, Guatemala, Thailand, Dominican Republic, Ukraine, San Marino, Albania, Armenia, Seychelles and Morocco. The gathering of information regarding these States continues in cooperation with the Federal Central Authority and the Consular Operations Bureau (DFAIT). Communication with the provinces and territories on the possible acceptance of these accessions will follow.

[162] In January 2010, Canada provided written comments to the Permanent Bureau of the Hague Conference on a draft of the fourth part of the Guide to Good Practice under the 1980 Convention dealing with enforcement. The final version of this part of the Guide will be published shortly on the website of the Hague Conference. Canada also contributed to the development of a Country Profile Form for the 1980 Convention. A draft of the Form is expected to be presented to the Special Commission on the practical operation of the 1980 Convention and the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children scheduled for 2011.

[163] The Permanent Bureau has begun consultations with a group of experts on international mediation on the development of a draft Guide to Good Practice on Mediation under the 1980 Convention. It is anticipated that a final draft of the Guide will be circulated to contracting States at the beginning of 2011 for consideration at the Special Commission.

[164] The Permanent Bureau has also begun consultations on the desirability and feasibility of a protocol to the 1980 Convention containing auxiliary rules to improve its operation. A questionnaire will be sent later this year to Member States of the Conference and to States party to the Convention seeking their views on a possible protocol. A report on these consultations will be submitted to the Special Commission in 2011.

[165] As a follow-up to the Third Malta Judicial Conference on Cross-Frontier Family Law Issues held on March 24-26, 2009, a Working Party was established to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children in situations where the 1980 Convention does not apply. The Working Party is made up of representatives from 12 States and is co-chaired by Canada (Consular Policy and Advocacy Bureau, Department of Foreign Affairs and International Trade) and Pakistan. It is developing Draft Principles to guide mediation

that will form the basis of a Memorandum of Understanding that the States involved in the Malta process are expected to signed in 2011. The Principles will also be posted on the website of the Hague Conference for informational purposes.

[166] *Action required in Canada:* Continuation of the acceptance of accessions process and preparation for the Special Commission on the practical operation of the 1980 and the 1996 Conventions scheduled for 2011.

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

[167] The *2007 Convention on Maintenance Obligations* (“Convention”) establishes a complete maintenance recovery co-operation system and sets out rules for establishing, recognizing and enforcing maintenance decisions. The *2007 Protocol on the Law Applicable to Maintenance Obligations* (“Protocol”) determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity.

[168] The text of the Convention and Protocol along with explanatory reports and practical documents are available on the Hague Conference’s website.

[169] A Special Commission on the implementation of the Convention took place in November 2009. The Canadian delegation was composed of Manon Dostie, International Private Law Section, Annick Boulay-Bramley, Family, Children and Youth Section of the Department of Justice Canada, Denise Gervais of the Ministère de la Justice du Québec and Tracy Morrow of the Manitoba Department of Justice.

[170] The Special Commission was a great success, in part, because of the preparatory work initiated immediately after the 2007 Diplomatic Session by the Forms Working Group and the Administrative Cooperation Working Group. As a result, numerous recommended forms including the Country Profile Form were discussed and adopted. In addition, the Practical Handbook for Caseworkers that was developed with the assistance of an expert from British Columbia on secondment to the Permanent Bureau was discussed. The Handbook will be revised by the Permanent Bureau for consistency with the Explanatory Report and the discussions that took place at the Special Commission before it is circulated for comments.

[171] In Canada, the Coordinating Committee of Senior Officials (Family Justice) has set up a Working Group on Possible Implementation of the Convention that will report on the compatibility of the Convention with Canadian law and provide information on operational implications and implementation options of the Convention in Canada. The

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report of the Working Group would serve as a basis for provincial and territorial authorities in their consideration as to the desirability of implementing the Convention in their respective jurisdictions.

[172] *Action required in Canada:* Participate in the Working Group on the potential implementation of the Convention in Canada.

**2. MEDIUM PRIORITIES**

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

[173] The *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* establishes procedural safeguards to ensure that international adoption takes place in the best interests of the child and with respect to his or her fundamental rights. It also establishes a system of cooperation between countries of origin and receiving countries to ensure the respect of those safeguards, and thereby to prevent the abduction, the sale of, or the traffic in children. Finally, it secures the recognition in Contracting States of adoptions made in accordance with the Convention. The Convention entered into force in Canada on April 1, 1997 and its application has been extended to all the provinces and territories.

[174] Canada participated in the Third Meeting of the Special Commission to review the practical operation of the Intercountry Adoption Convention that took place at The Hague from June 17 to June 25, 2010. The Canadian Delegation comprised Marie Riendeau, Counsel, IPLS, Department of Justice Canada; Michèle Salmon, Manager of Intercountry Adoption Services, Department of Human Resources and Skills Development Canada; Roseanne Da-Costa, Senior Program Advisor, Department of Citizenship, Immigration and Multiculturalism Canada; Luce de Bellefeuille, Secretary and Director General of the Secrétariat à l'adoption internationale du Québec; Janice Krumenacker, Director, Service Delivery Support, Ministry of Social Services of Saskatchewan.

[175] The Special Commission brought together more than 80 States and 14 international organizations and was chaired by Canada. The following topics were discussed:

- The abduction, sale, and trafficking in children in the context of intercountry adoption;

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- The draft Guide to Good Practice on Accreditation and Accredited Bodies, a collaborative work between the Permanent Bureau of the Hague Conference, the Secrétariat à l'adoption internationale du Québec and Adoptionscentrum, a Swedish accredited body;
- The review of the operation and implementation of the Convention.

The Special Commission adopted 42 conclusions and recommendations that are available on the Hague Conference's website.

[176] Work resulting from the Special Commission will include:

- The establishment of an informal group coordinated by the Australian Central Authority with the participation of the Permanent Bureau to develop more effective and practical forms of cooperation between States to prevent and address specific situations of abduction, sale or traffic in children, or their illicit procurement;
- The finalisation of the draft Guide to Good Practice on Accreditation in light of discussions within the Special Commission;
- The collection of information on the selection, counselling and preparation of prospective adoptive parents, with a view to the possible development of the next Guide to Good Practice;
- The carrying out of further study of the legal, especially private international law, issues surrounding international surrogacy by the Hague Conference;
- Consultations on options for the future collection of statistical data on intercountry adoption by the Permanent Bureau.

[177] *Action required in Canada:* Follow-up on the recommendations and conclusions adopted at the Special Commission of June 2010.

### **D. PROTECTION OF PROPERTY**

#### **1. HIGH PRIORITIES**

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

[178] This Convention applies to 12 States, including Canada, where it has been extended to 8 provinces (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan). To facilitate



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implementation of the Convention, the ULCC prepared an amendment to the *Uniform Wills Act* in 1974.

[179] 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.

[180] *Action required in Canada:* At appropriate time, consult with the jurisdictions that have not implemented the Convention.

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

[181] 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.

[182] This Convention is now in force in 12 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.

[183] *Action required in Canada:* Consult with the jurisdictions that have not implemented the Convention.

**2. MEDIUM PRIORITIES**

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

[184] 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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[185] Canada actively participated in the negotiation of this Convention. Since 1994, consultation regarding possible support in Canada for its implementation has been suspended to answer questions raised as to its interpretation.

[186] At the request of the Secretary General of the Hague Conference, the Advisory Group 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.

[187] *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)

[188] This Convention, to which 30 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.

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

### CONCLUSION

[190] This report deals only with the activities of the Department of Justice in international private law over the past year and its current priorities. It must be emphasized, however, that the accomplishments of the last year rest on the work carried out over more than 40 years by many Canadians from all levels of government and all sectors. The Department acknowledges with great appreciation the contributions of so many who have given their time and expertise and who have allowed Canada to take a leading role in many international private law activities at the international level.

[191] Further work remains to be done in terms of implementation of existing international instruments at the provincial, territorial and federal levels. The Department's International Private Law Section will continue its efforts over the coming year.

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[192] 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) *ICSID Convention* (World Bank)
- (4) *International Interests in Mobile Equipment Convention and its Aircraft Protocol* (Unidroit/ICAO)
- (5) *Convention on the Protection of Adults* (The Hague)
- (6) *Convention on the Protection of Children* (The Hague)
- (7) *Convention Abolishing the Requirement of Legalization for Foreign Public Documents* (The Hague)
- (8) *Convention on Choice of Court Agreements* (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.

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

[194] 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 is consistent with the priorities of the provincial and territorial governments. Your comments or questions may be directed to any counsel in the International Private Law Section of the Department (see contact list in Annex A).



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**List of principal international private law conventions, protocols and model laws adopted by the Hague Conference on Private International Law, UNCITRAL, Unidroit and the OAS**

**Hague Conference on Private International Law (since 1954)**

**Conventions and Protocols**

- 1954 - Convention of 1 March 1954 on civil procedure
- 1955 - Convention of 15 June 1955 on the law applicable to international sales of goods
- 1955 - Convention of 15 June 1955 relating to the settlement of the conflicts between the law of nationality and the law of domicile
- 1956 - Convention of 1 June 1956 concerning the recognition of the legal personality of foreign companies, associations and institutions
- 1959 - Convention of 24 October 1956 on the law applicable to maintenance obligations towards children
- 1958 - Convention of 15 April 1958 on the law governing transfer of title in international sales of goods
- 1958 - Convention of 15 April 1958 on the jurisdiction of the selected forum in the case of international sales of goods
- 1959 - Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children
- 1961 - Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
- 1961 - Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions
- 1961 - Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents
- 1965 - Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions
- 1965 - Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
- 1965 - Convention of 25 November 1965 on the Choice of Court
- 1971 - Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
- 1971 - Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
- 1970 - Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
- 1970 - Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
- 1971 - Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
- 1973 - Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons
- 1973 - Convention of 2 October 1973 on the Law Applicable to Products Liability
- 1973 - Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- 1973 - Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
- 1978 - Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes

- 1978 - Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages
- 1978 - Convention of 14 March 1978 on the Law Applicable to Agency
- 1980 - Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
- 1980 - Convention of 25 October 1980 on International Access to Justice
- 1985 - Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
- 1986 - Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods
- 1989 - Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons
- 1993 - Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption
- 1996 - Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
- 2000 - Convention of 13 January 2000 on the International Protection of Adults
- 2002 - Convention of 12 December 2002 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary
- 2005 - Convention of 30 June 2005 on Choice of Court Agreements
- 2007 - Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
- 2007 - Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

## **UNCITRAL**

### **Conventions**

- 1958 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention
- 1974 - Convention on the Limitation Period in the International Sale of Goods
- 1978 - United Nations Convention on the Carriage of Goods by Sea - the "Hamburg Rules"
- 1980 - United Nations Convention on Contracts for the International Sale of Goods (CISG)
- 1988 - United Nations Convention on International Bills of Exchange and International Promissory Notes
- 1991 - United Nations Convention on the Liability of Operators of Transport Terminals in International Trade
- 1995 - United Nations Convention on Independent Guarantees and Stand-by Letters of Credit
- 2001 - United Nations Convention on the Assignment of Receivables in International Trade
- 2005 - United Nations Convention on the Use of Electronic Communications in International Contracts
- 2008 - United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - the "Rotterdam Rules"

### **Model Laws**

- 1985 - UNCITRAL Model Law on International Commercial Arbitration (amended in 2006)
- 1992 - UNCITRAL Model Law on International Credit Transfers
- 1993 - UNCITRAL Model Law on Procurement of Goods and Construction
- 1994 - UNCITRAL Model Law on Procurement of Goods, Construction and Services
- 1996 - UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, with additional article 5 bis as adopted in 1998
- 1997 - UNCITRAL Model Law on Cross-Border Insolvency



- 2001 - UNCITRAL Model Law on Electronic Signatures with Guide to Enactment
- 2002 - UNCITRAL Model Law on International Commercial Conciliation

## UNIDROIT

### Conventions and Protocols

- 1964 - Convention relating to a Uniform Law on the International Sale of Goods (The Hague)
- 1964 - Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague)
- 1970 - International Convention on Travel Contracts (Brussels)
- 1973 - Convention providing a Uniform Law on the Form of an International Will (Washington, D.C.)
- 1983 - Convention on Agency in the International Sale of Goods (Geneva)
- 1988 - UNIDROIT Convention on International Financial Leasing (Ottawa)
- 1988 - UNIDROIT Convention on International Factoring (Ottawa)
- 1995 - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome)
- 2001 - Convention on International Interests in Mobile Equipment (Cape Town)
- 2001 - Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town)
- 2007 - Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg)
- 2009 - Convention on Substantive Rules for Intermediated Securities (Geneva)

### Model Laws

- 2002 - Model Franchise Disclosure Law
- 2008 - UNIDROIT Model Law on Leasing

## OAS

### Conventions and Protocols

- 1975 - Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes and Invoices
- 1975 - Inter-American Convention on Conflict of Laws concerning Checks
- 1975 - Inter-American Convention on International Commercial Arbitration
- 1975 - Inter-American Convention on Letters Rogatory
- 1975 - Inter-American Convention on the taking of evidence abroad
- 1975 - Inter-American Convention on the Legal Regime of Powers of Attorney to be used abroad
- 1979 - Inter-American Convention on Conflicts of Laws concerning Checks
- 1979 - Inter-American Convention on Conflicts of Laws concerning Commercial Companies
- 1979 - Inter-American Convention on Domicile of Natural Persons in Private International Law
- 1979 - Inter-American Convention on Execution of Preventive Measures
- 1979 - Inter-American Convention on General Rules of Private International Law
- 1979 - Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards
- 1979 - Inter-American Convention on Proof of and Information on Foreign Law
- 1979 - Additional Protocol to the Inter-American Convention on Letters Rogatory
- 1984 - Inter-American Convention on Conflict of Laws concerning the Adoption of Minors
- 1984 - Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments

- 1984 - Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law
- 1984 - Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad
- 1989 - Inter-American Convention on Contracts for the International Carriage of Goods by Road
- 1989 - Inter-American Convention on the International Return of Children
- 1989 - Inter-American Convention on Support Obligations
- 1994 - Inter-American Convention on International Traffic in Minors
- 1994 - Inter-American Convention on the Law applicable to International Contracts

**Model Law**

- 2006 - Model Inter-American Law on Secured Transactions and
- 2009 - Model Registry Regulations

# 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

March 2010



Priority Level		International Commercial Law	Judicial Co-operation and Enforcement of Judgments	Family Law	Protection of Property
1	Negotiation	<ul style="list-style-type: none"> <li>• CIDIP VII - Project on jurisdiction and applicable law for consumer contracts (OAS)</li> <li>• Preliminary draft Protocol on Matters specific to Space Assets to the Convention on International Interests in Mobile Equipment (Unidroit)</li> </ul>			
	Implementation	<ul style="list-style-type: none"> <li>• Convention on the Settlement of Investment Disputes (ICSID) - (World Bank)</li> <li>• Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)</li> <li>• Convention on Securities Held by Intermediaries (Hague) - ULCC Uniform Act</li> <li>• Convention on the Limitation Period in the International Sale of Goods and Protocol (UNCITRAL)</li> <li>• Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)</li> <li>• Convention on Choice of Court Agreements (Hague)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague)</li> <li>• Convention on the International Protection of Adults - (Hague)</li> <li>• Convention on Parental Responsibility and Measures of Protection of Children (Hague)</li> </ul>	<ul style="list-style-type: none"> <li>• Convention on the Form of an International Will (Unidroit)</li> <li>• Convention on the Law Applicable to Trusts - (Hague)</li> </ul>
	Monitoring			<ul style="list-style-type: none"> <li>• Convention on the Civil Aspects of International Child Abduction (Hague)</li> <li>• Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (Hague)</li> </ul>	
2	Negotiation	<ul style="list-style-type: none"> <li>• Security Interests in Intellectual Property (UNCITRAL)</li> <li>• Revision to the Model Law on Procurement of Goods, Construction and Services (UNCITRAL)</li> <li>• Treatment of enterprise groups in insolvency (UNCITRAL)</li> <li>• Revision of UNCITRAL Arbitration Rules</li> </ul>			
	Implementation	<ul style="list-style-type: none"> <li>• Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)</li> <li>• Convention on the Assignment of Receivables (UNCITRAL)</li> </ul>			<ul style="list-style-type: none"> <li>• Convention on the Law Applicable to Successions (Hague)</li> </ul>

2	<b>Monitoring</b>	<ul style="list-style-type: none"> <li>• Convention on Substantive Rules regarding Intermediated Securities (UNIDROIT)</li> </ul>			
3	<b>Negotiation</b>				
	<b>Implementation</b>	<ul style="list-style-type: none"> <li>• Model Law on Cross-border Insolvency (UNCITRAL)</li> <li>• Conventions on International Leasing and on International Factoring (Unidroit)</li> <li>• Model Legislative Provisions on the Recognition and Enforcement of Interim Measures of Protection in Arbitral Context (UNCITRAL)</li> <li>• Model Law on International Commercial Conciliation (UNCITRAL) - ULCC Uniform Act on International Commercial Mediation</li> </ul>			<ul style="list-style-type: none"> <li>• Convention on Stolen or Illegally Exported Cultural Objects (Unidroit)</li> </ul>
	<b>Monitoring</b>	<ul style="list-style-type: none"> <li>• CIDIP VII - Project on electronic registries for secured transactions (OAS)</li> <li>• UNIDROIT Model Law on Leasing</li> </ul>	<ul style="list-style-type: none"> <li>• Convention on Service Abroad (Hague)</li> </ul>		

# **CHART OF INTERNATIONAL PRIVATE LAW PRIORITIES**





# International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
	Implementation Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) - (World Bank)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1998)</li> <li>- Implementing legislation adopted but not yet in force in Canada (2008), Ontario (1999), British Columbia, Newfoundland and Labrador, Nunavut, Saskatchewan (2006) and the Northwest Territories (2009)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on October 14, 1966</li> <li>- 144 States party</li> <li>- Signed by Canada on December 15, 2006</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to seek support from provinces and territories in terms of implementation</li> <li>- Work towards ratification</li> </ul>
	Implementation Convention on International Interests in Mobile Equipment and Aircraft Protocol (Unidroit)	<ul style="list-style-type: none"> <li>- ULCC uniform act (2002)</li> <li>- Implementing legislation adopted but not yet in force in Canada (2005), Ontario (2002), Nova Scotia (2004), Alberta, Newfoundland and Labrador (2006), Quebec, Saskatchewan (2007), and the Northwest Territories (2009)</li> </ul>	<ul style="list-style-type: none"> <li>- Convention entered into force on March 1, 2006 and has 37 States Party</li> <li>- Aircraft Protocol entered into force on March 1, 2006, and has 32 States Party</li> <li>- Signed by Canada in March 2004</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to seek support from provinces and territories in terms of implementation</li> <li>- Complete federal work needed for ratification</li> </ul>
	Implementation Convention on Securities Held by Intermediaries (Hague)	<ul style="list-style-type: none"> <li>- ULCC approved establishment of a Working Group to prepare a uniform act</li> </ul>	<ul style="list-style-type: none"> <li>- Not in force</li> <li>- 3 ratifications – accessions required to enter into force</li> <li>- 3 signatures</li> </ul>	<ul style="list-style-type: none"> <li>- Establish ULCC Working Group to prepare uniform implementing legislation</li> </ul>
	Implementation Conventions on the Limitation Period in the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1998)</li> <li>- Implementing legislation adopted but not yet in force in Nunavut (2006)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on August 1<sup>st</sup>, 1988</li> <li>- 28 States party to the Convention;</li> <li>- 21 States party to the Convention as amended by the Protocol</li> </ul>	<ul style="list-style-type: none"> <li>- Consideration by the federal government to adopt implementing legislation</li> <li>- Follow-up on consultations with provinces and territories</li> <li>- Consider simpler approach to implementation</li> </ul>
	Implementation Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act in preparation</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on January 1, 2000</li> <li>- 8 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Development of uniform act</li> </ul>

# International Commercial Law

Priority Level		Instrument	Implementation in Canada	International Status	Action Required
2	Implementation	Convention on the Use of Electronic Communications in International Contracts (UNCITRAL)	- ULCC uniform act in preparation	- Not in force - 3 ratifications -accessions required to enter into force - 2 States party	- Development of uniform act
2	Implementation	Convention on the Assignment of Receivables in International Trade (UNCITRAL)	- ULCC uniform Act (2007)	- Not in force - 5 ratifications - accessions required to enter into force - 1 State party - 3 signatures	- Monitor developments on ratification; - Consult with the private sector, federal, provincial and territorial authorities on implementation
3	Implementation	Model Law on Cross-border Insolvency (UNCITRAL)	- Provisions based on the Model Law in <i>Bankruptcy and Insolvency Act</i>	- Adopted in 1997 - List of States that have enacted Model Law is available at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html</a>	- Provide information when requested
3	Implementation	Conventions on International Leasing and on International Factoring (Unidroit)	- ULCC uniform act (1995)	- Entered into force on May 1 <sup>st</sup> , 1995 - 7 States party to Convention on International Factoring - 10 States party to Convention on International Financial Leasing	- Consult with governments and industry on interest

# International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
3 Implementation	Model Law on International Commercial Conciliation (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (2005)</li> <li>- Implementing legislation adopted in Nova Scotia (2005)</li> </ul>	<ul style="list-style-type: none"> <li>- Adopted in 2002</li> <li>- List of States having enacted the Model Law is at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation_status.html</a></li> </ul>	<ul style="list-style-type: none"> <li>- Consider adoption of uniform act at federal level</li> <li>- Encourage adoption of uniform act by provinces and territories</li> </ul>
	Convention on International Bills of Exchange and International Promissory Notes (UNCITRAL)		<ul style="list-style-type: none"> <li>- Not in force</li> <li>- 10 ratifications – accessions required to enter into force</li> <li>- 5 States party</li> <li>- Signed by Canada on December 7, 1989</li> </ul>	<ul style="list-style-type: none"> <li>- None at this time</li> </ul>
Monitoring	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UN)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on August 10, 1986</li> <li>- ULCC uniform act (1987)</li> <li>- Application extended to Canadian jurisdictions: Manitoba, New Brunswick, Québec (1986), Northwest Territories, Prince Edward Island (1989), Nova Scotia, Ontario (1990), Newfoundland and Labrador (1992), Saskatchewan (1996), British Columbia (1997), Alberta (2002), Yukon (2003)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on June 7, 1959</li> <li>- 144 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Publicize United Nations General Assembly resolution on interpretation of Convention to accommodate electronic communications</li> </ul>

# International Commercial Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Monitoring	Model Law on Electronic Commerce (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1999)</li> <li>- Enacted by Canada, Manitoba, Nova Scotia, Ontario, Saskatchewan and Yukon (2000), Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Québec (2001), Nunavut (2004)</li> </ul>	<ul style="list-style-type: none"> <li>- Adopted in 1996</li> <li>- List of States having enacted the Model Law at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html</a></li> </ul>	
Monitoring	Convention on Contracts for the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on May 1, 1992</li> <li>- Application extended to Canadian jurisdictions: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Yukon (1992), Nunavut (2003)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on January 1, 1988</li> <li>- 76 States party</li> </ul>	
Monitoring	Model Law on International Commercial Arbitration (UNCITRAL)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1987)</li> <li>- Enacted by Canada, New Brunswick, Québec (1986), Manitoba (1987), Northwest Territories, Prince Edward Island (1989), Nova Scotia, Ontario (1990), Newfoundland and Labrador (1992), Saskatchewan (1996), British Columbia (1997), Alberta (2002), Yukon (2003)</li> </ul>	<ul style="list-style-type: none"> <li>- Adopted in 1985</li> <li>- List of States having enacted the Model Law at: <a href="http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html">http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html</a></li> </ul>	<ul style="list-style-type: none"> <li>- Consult to determine interest in interim measures provisions</li> </ul>

# Judicial Cooperation and Enforcement of Judgements

Priority Level	Instrument	Implementation in Canada	International Status	Action Required	
1	Implementation	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague)	<ul style="list-style-type: none"> <li>- Entered into force on January 24, 1965</li> <li>- 98 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Continue work on implementation questions</li> <li>- Follow-up in Canada on the Special Commission of February 2009</li> </ul>	
1	Implementation	Convention on Choice of Court Agreements (Hague)	<ul style="list-style-type: none"> <li>- ULCC uniform act in preparation</li> <li>- Not in force</li> <li>- 2 ratifications – accessions required to enter into force</li> <li>- 1 State party</li> <li>- 2 signatures</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with Canadian jurisdictions on implementation</li> </ul>	
3	Monitoring	Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on May 1, 1989</li> <li>- Application extended to all Canadian jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on February 10, 1969</li> <li>- 62 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Continue to provide information and respond to requests regarding the application of the Convention</li> <li>- Coordinate the exchange of information among Canadian Central Authorities</li> <li>- Follow-up on the Special Commission of February 2009</li> </ul>
3	Monitoring	Canada-France Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance (Bilateral)	<ul style="list-style-type: none"> <li>- ULCC uniform act (1997)</li> <li>- Implementing legislation adopted in Saskatchewan (1998), Ontario (1999) and Manitoba (2000)</li> </ul>	<ul style="list-style-type: none"> <li>- Not in force</li> <li>- Convention signed on June 10, 1996</li> </ul>	<ul style="list-style-type: none"> <li>- Consultation with France on ratification</li> </ul>

# Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Implementation	Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague)	- CCSO – Family Justice Working Group on implications of implementation	- Not in force - 2 ratifications – accessions required to enter into force - 2 signatures	- Work on federal implementation issues - Participate in CCSO Family Justice WG on potential implementation in Canada
Implementation	Convention on the International Protection of Adults - (Hague)	- ULCC uniform act (2001) - Implementing legislation adopted in Saskatchewan (2005)	- Entered into force on January 1, 2009 - 4 States party	- Examine and assess the legislative and operational requirements to implement the Convention in Canada
Implementation	Convention on Jurisdiction, Applicable Law, Recognition and Enforcement, and Co-operation in matter of Parental Responsibility and Measures of Protection of Children (Hague)	- ULCC uniform act (2001) - CCSO – Family Justice Working Group on implications of implementation	- Entered into force on January 1, 2002 - 22 States party	- Work on federal implementation issues - Participate in CCSO Family Justice WG on potential implementation in Canada - Prepare for 2011 Hague Special Commission
Monitoring	Convention on the Civil Aspects of International Child Abduction (Hague)	- Entered into force in Canada on December 1, 1983 - Application extended to Canadian jurisdictions: British Columbia, Manitoba, New Brunswick, Ontario (1983), Newfoundland and Labrador, Nova Scotia (1984), Québec, Yukon (1985), - Prince Edward Island, Saskatchewan (1986), - Alberta (1987), Northwest Territories (1988), Nunavut (2001)	- Entered into force on December 1, 1983 - 82 States party	- Prepare for 2011 Hague Special Commission - Decisions on acceptance of 10 States that acceded to the Convention

# Family Law

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
Monitoring	Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague)	<ul style="list-style-type: none"> <li>- ULCC uniform Act (1996)</li> <li>- Entered into force in Canada on April 1, 1997</li> <li>- Application extended to Canadian jurisdictions: Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, Saskatchewan (1997), Yukon (1998), Nova Scotia, Ontario (1999), Northwest Territories (2000), Nunavut (2001), Newfoundland and Labrador (2003), Québec (2006)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on May 1, 1995</li> <li>- 82 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Provide information on the Convention where required</li> <li>- Continue follow-up on the recommendations and conclusions adopted at the Special Commission of June 2010</li> </ul>

# Protection of Property

Priority Level	Instrument	Implementation in Canada	International Status	Action Required
1	Implementation Convention Providing a Uniform Law on the Form of an International Will (Unidroit)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on February 9, 1978</li> <li>- Application extended to Canadian jurisdictions: Alberta, Manitoba, Newfoundland and Labrador, Ontario (1978), Saskatchewan (1982), Prince Edward Island (1995), New Brunswick (1997), Nova Scotia (2001)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on February 9, 1978</li> <li>- 12 States party</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with jurisdictions that have not yet implemented the Convention</li> </ul>
1	Implementation Convention on the Law Applicable to Trusts and on their Recognition (Hague)	<ul style="list-style-type: none"> <li>- Entered into force in Canada on January 1, 1993</li> <li>- Application extended to Canadian jurisdictions: Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Prince Edward Island (1993), Manitoba, Saskatchewan (1994), Nova Scotia (2006)</li> </ul>	<ul style="list-style-type: none"> <li>- Entered into force on January 1, 1992</li> <li>- 12 States party</li> </ul>	<ul style="list-style-type: none"> <li>- At appropriate time, consult with the jurisdictions that have not implement the Convention</li> </ul>
2	Implementation Convention on the Law Applicable to Successions to the Estates of Deceased Persons (Hague)		<ul style="list-style-type: none"> <li>- Not in force</li> <li>- 3 ratifications – accessions required to enter into force</li> <li>- 1 State Party</li> </ul>	<ul style="list-style-type: none"> <li>- Consult with provinces and territories when appropriate</li> </ul>
3	Implementation Convention on the Return of Stolen or Illegally Exported Cultural Objects (Unidroit)		<ul style="list-style-type: none"> <li>- Entered into force on July 1<sup>st</sup>, 1998</li> <li>- 30 States party</li> </ul>	<ul style="list-style-type: none"> <li>- When requested, assist the Department of Canadian Heritage in the consultations</li> </ul>



## WORK PLANS OF INTERNATIONAL ORGANIZATIONS\*

### 1. Hague Conference on Private International Law

Current or upcoming subjects:

- cross-border mediation in family matters; and
- choice of law in international contracts.

Watching brief:

- questions of private international law raised by the information society, including electronic commerce, e-justice and data protection;
- jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
- jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples; and
- assessment and analysis of transnational legal issues relating to security interests, taking into account in particular the work undertaken by other international organisations.

### 2. United Nations Commission on International Trade Law (UNCITRAL):

On-going or new negotiations:

- public procurement;
- transparency in treaty-based investor-state arbitration;
- online dispute resolution in the business to business and business to consumer contexts;
- registries for security interests; and
- center of main interests and liability of directors and officers in insolvency.

Preparatory work:

- microfinance in the context of international economic development; and
- electronic commerce:
  - electronic single window facilities;
  - electronic transferable records;
  - identity management; and
  - use of mobile devices in electronic commerce.

### **3. International Institute for the Unification of Private Law (Unidroit):**

On-going or new negotiations:

- preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets.

Preparatory work:

- principles and rules for enhancing trading in securities in emerging markets;
- third party liability for global navigation satellite system (GNSS) services;
- netting of financial instruments;
- private law aspects of agricultural financing; and
- guidelines for a legal framework for social enterprises.

\* For more detailed information please consult the International Private Law Section.

## PROVISIONAL SCHEDULE FOR INTERNATIONAL PRIVATE LAW MEETINGS

September 2010 – December 2011

Meeting		Travel Dates	Place
1.	Unidroit – First meeting Committee on Emerging Markets Issues, Follow-up and Implementation	September 6-9, 2010	Rome
2.	OAS – Meeting of the Network of Hemispheric Legal Cooperation in the Area of Family and Child Law	End of September/Beginning of October 2010 (tbc)	Washington
3.	UNCITRAL Working Group II - Arbitration and Conciliation	October 4-8, 2010	Vienna
4.	UNCITRAL Working Group I - Procurement	November 1-5, 2010	Vienna
5.	UNCITRAL Working Group VI - Security Interests	November 6-13, 2010	Vienna
6.	UNCITRAL Working Group V - Insolvency Law	December 6-10, 2010	Vienna
7.	UNCITRAL Working Group III – Online Dispute Resolution	December 13-17, 2010	Vienna
8.	UNCITRAL Working Group II - Arbitration and Conciliation	February 7-11, 2011	New York
9.	Unidroit Draft Space Protocol - 5 <sup>th</sup> Session of the Committee of Gov't Experts	February 21-25, 2011	Rome
10.	UNCITRAL Working Group I - Procurement	March 14-18, 2011	New York
11.	UNCITRAL Working Group VI – Security Interests	April 11-15, 2011	New York
12.	UNCITRAL Working Group V – Insolvency Law	May 16-20, 2011	New York
13.	UNCITRAL Working Group III – Online Dispute Resolution	May 23-27, 2011	New York
14.	Hague Conference, Special Commission on The 1980 Child Abduction Convention and The 1996 Convention on the Protection of Children	June 2011 (tbc)	The Hague
15.	UNCITRAL 44 <sup>th</sup> Session of the Commission	June 27 - July 15, 2011	Vienna
16.	UNCITRAL Working Group II - Arbitration and Conciliation	October 3-7, 2011 (tbc)	Vienna
17.	UNCITRAL Working Group – I Procurement	October 17-21, 2011 (tbc)	Vienna

<b>Meeting</b>		<b>Travel Dates</b>	<b>Place</b>
18.	UNCITRAL Working Group III – Online Dispute Resolution	November 14-18, 2011 (tbc)	Vienna
19.	UNCITRAL Working Group V – Insolvency Law	October 31 – November 4, 2011 (tbc)	Vienna
20.	UNCITRAL Working Group VI – Security Interests	December 12-16, 2011 (tbc)	Vienna
21.	OAS –CIDIP VII – Consumer Protection-	(tbd)	(tbd)