

CANADIAN CONFLICT OF LAWS

5TH EDITION

Jean-Gabriel Castel

O.C., O.O., Q.C., L.S.M., Chevalier de la Légion d'honneur
J.D. (Michigan), S.J.D. (Harvard), D. *hon. causa* (Aix)

of the Ontario Bar

Associate Member, International Academy of Comparative Law

Fellow of the Royal Society of Canada

Distinguished Research Professor of Law Emeritus

Osgoode Hall Law School of York University

Janet Walker

C.D., B.A. (Hons), M.A. (York), LL.B. (Osgoode), D.Phil. (Oxon)

of the Ontario Bar

Associate Dean

Osgoode Hall Law School of York University



LexisNexis®

Butterworths

Canadian Conflict of Laws, 5th Edition

© LexisNexis Canada Inc. 2004

All rights reserved. No part of this publication may be reproduced, stored in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication) without the written permission of the copyright holder except in accordance with the provisions of the Copyright Act. Applications for the copyright holder's written permission to reproduce any part of this publication should be addressed to the publisher.

Warning: The doing of an unauthorized act in relation to a copyrighted work may result in both a civil claim for damages and criminal prosecution.

Members of the LexisNexis Group worldwide

Canada	LexisNexis Canada Inc., 123 Commerce Valley Dr. E., MARKHAM, Ontario
Argentina	Abeledo Perrot, Jurisprudencia Argentina and Depalma, BUENOS AIRES
Australia	Butterworths, a Division of Reed International Books Australia Pty Ltd, CHATSWOOD, New South Wales
Austria	ARD Betriebsdienst and Verlag Orac, VIENNA
Chile	Publitecsa and Conosur Ltda, SANTIAGO DE CHILE
Czech Republic	Orac sro, PRAGUE
France	Éditions du Juris-Classeur SA, PARIS
Hong Kong	Butterworths Asia (Hong Kong), HONG KONG
Hungary	Hvg Orac, BUDAPEST
India	Butterworths India, NEW DELHI
Ireland	Butterworths (Ireland) Ltd, DUBLIN
Italy	Giuffrè, MILAN
Malaysia	Malayan Law Journal Sdn Bhd, KUALA LUMPUR
New Zealand	Butterworths of New Zealand, WELLINGTON
Poland	Wydawnictwa Prawnicze PWN, WARSAW
Singapore	Butterworths Asia, SINGAPORE
South Africa	Butterworth Publishers (Pty) Ltd, DURBAN
Switzerland	Stämpfli Verlag AG, BERNE
United Kingdom	Butterworths Tolley, a Division of Reed Elsevier (UK), LONDON, WC2A
USA	LexisNexis, DAYTON, Ohio

National Library of Canada Cataloguing in Publication Data

Castel, J.-G., 1928-
Canadian conflict of laws

5th ed.

Includes bibliographical references and index.

ISBN 0-433-43833-9

I. Conflict of laws—Canada. I. Walker, Janet, 1959-
II. Title.

KE470.C38 2001

340.9

C2001-902461-4

PREFACE

With Update Issues 7 and 8 we have begun to incorporate the law of Quebec found in the provisions of the Civil Code and the Code of Civil Procedure and the decisions interpreting these provisions. When the first edition of this text was published, the private international law of Quebec was presented in French in a separate volume. We hope that presenting the law of the common law jurisdictions and of Quebec together in one volume will foster comparative analysis and enable the text to become truly Canadian. The inclusion of the law of Quebec should also be helpful for Anglophone lawyers as there is no comprehensive text on Quebec private international law written in English. In addition the Index will be supplemented this year to assist Quebec lawyers and comparative lawyers to find the civil law counterparts to common law rules.

Jean-Gabriel Castel
Janet Walker
January 2004

GENERAL TABLE OF CONTENTS

Preface
Table of Contents
Table of Cases

Part One: General Considerations

Chapter 1: Nature and Scope of the Conflict of Laws
Chapter 2: The Constitution and the Conflict of Laws
Chapter 3: Characterization and the Incidental Question
Chapter 4: The Connecting Factors of Domicile and Residence
Chapter 5: *Renvoi*
Chapter 6: Substance and Procedure
Chapter 7: Proof of Foreign Law and Foreign Documents
Chapter 8: Refusal to Apply Foreign Law or to Enforce Foreign Judgments
Chapter 9: The Time Element

Part Two: Jurisdiction of Canadian Courts, Foreign Judgments and Arbitration Awards

Chapter 10: Persons Who Cannot Sue or be Sued
Chapter 11: Actions *In Personam*
Chapter 12: Admiralty Actions *In Rem* and *In Personam*
Chapter 13: Declining Jurisdiction
Chapter 14: Recognition and Enforcement of Judgments
Chapter 15: Arbitration and Recognition and Enforcement of Foreign Arbitral Awards

Part Three: Choice of Law

Chapter 16: Marriage
Chapter 17: Matrimonial Causes
Chapter 18: Custody, Access and Guardianship
Chapter 19: Support Obligations
Chapter 20: Legitimacy, Legitimation, Adoption and Determination of Paternity
Chapter 21: Mental Incompetence
Chapter 22: Nature and Situs of Property
Chapter 23: Immovables
Chapter 24: Movables
Chapter 25: Matrimonial Property
Chapter 26: Estates Administration
Chapter 27: Succession
Chapter 28: Trusts
Chapter 29: Bankruptcy and Insolvency
Chapter 30: Foreign Corporations
Chapter 31: Contracts
Chapter 32: Unjust Enrichment

CANADIAN CONFLICT OF LAWS

Chapter 33: Negotiable Instruments
Chapter 34: Foreign Currency Obligations
Chapter 35: Torts

Index

PREFACE

Gone are the days when legal treatises expounded general and fixed principles of law. The law is evolving too rapidly, and those who consult texts are looking for answers that are more detailed and more responsive to the contexts in which the law is developing. We are pleased, therefore, in this fifth edition of the leading Canadian text on the conflict of laws, to move to a looseleaf format. It will enable us in the coming months and years to meet this challenge by making the text more sensitive to change, better able to explain the law, more accessible, and easier to use. Whether your work is in the field of scholarship, litigation, or providing advice to clients, we hope to continue to make this text more helpful to you. We welcome your comments and suggestions on how we might do so.

Many have assisted in the preparation of the new edition of this text. We are particularly grateful to Tina Eng and the editorial staff at Butterworths LexisNexis for their energy and their expertise in producing the new format; to Marilyn Reckord for her assistance in preparing the first draft of the manuscript; to Mathew Abenstein and Trevor de Boer for their work on the Table of Authorities, and again to Mathew for his work on the Index; and to our families for supporting our efforts throughout.

Jean-Gabriel Castel
Janet Walker
January 2002

A year has passed since the first publication of this edition. During that time, the pace of change in the law has increased and, with it, the challenge of providing a clear and current account of the law within the projected scope of the updates for this work. Once again, we welcome your comments and suggestions, large and small, on ways in which this work may be made as helpful as possible to you. We are grateful to Alison Reed, Kate Watson and Marcia Pritzker for their assistance in preparing tables soon to appear, and to the Foundation for Legal Research for sponsoring this initiative.

Jean-Gabriel Castel
Janet Walker
March 2003

TABLE OF CONTENTS

General Table of Contents	iii
Preface	PREFACE-1
How to Use this Service.....	HOW TO USE-1
Table of Contents.....	CONTENTS-1
Supplementary Table of Cases	SUPP TC-1
Table of Cases	CASES-1

Part One: General Considerations

		<i>Page</i>
CHAPTER 1.	NATURE AND SCOPE OF THE CONFLICT OF LAWS.....	1-1
1.1	Nature of the Subject	1-1
1.2	Legal Units.....	1-2
1.3	National as Opposed to International Character of the Conflict of Laws	1-2
1.4	Conflict of Laws or Private International Law vs. Public International Law.....	1-3
1.5	Scope of the Conflict of Laws	1-3
1.6	Definition.....	1-4
1.7	Jurisdiction and Choice of Law	1-4
1.8	Sources of the Canadian Conflict of Laws Rules.....	1-4.1
	a. The Canadian Constitution	1-4.1
	b. Public International Law.....	1-4.1
	c. Legislation	1-5
	d. Common Law	1-5
	e. Textbooks	1-5
1.9	Gender Discrimination.....	1-6
1.10	Unification of Laws	1-7
	a. Elimination of the Conflict of Laws	1-7
	b. Unification of the Conflict of Laws	1-7
1.11	Terminology: Structure and Function of the Principles and Rules.....	1-8
	a. Form	1-8
	b. Unilateral and Bilateral Rules.....	1-8
	c. Forum and Foreign Mandatory Laws	1-9
	d. Material Rules of the Conflict of Laws	1-10
	e. Interpersonal Conflicts.....	1-10
	f. Meaning of Some Maxims.....	1-10
	g. Meaning of Some Words Used in this Treatise	1-10.1
1.12	History of the Conflict of Laws	1-10.2
1.13	Theories on the Conflict of Laws.....	1-11

CANADIAN CONFLICT OF LAWS

	a. The Internationalists	1-11
	b. The Neo-statutists	1-11
	c. The Territorialists	1-12
	i. Comity.....	1-13
	ii. Vested Rights	1-14
	iii. The Local Law Theory.....	1-17
1.14	Methods	1-21
	a. The Traditional Method: Jurisdiction-selecting Rules	1-21
	b. Governmental Interests and Policies.....	1-22
	c. Principles of Preference	1-28
	d. Predominance of the <i>Lex Fori</i>	1-30
	e. The Restatement Second: Choice-influencing Factors or Policies	1-32
	i. Coordination of Legal Systems: Relevant Policies of Interested Legal Units	1-34
	ii. Justice of the End Result	1-34
	iii. Protection of Justified Expectations	1-35
	iv. Predictability and Uniformity of Results or of Legal Consequences	1-35
	v. Convenience, Simplicity, and Ease in the Determination and Application of the Law to be Applied.....	1-35
1.15	The Principle of Proximity	1-39
1.16	Conclusion on Theories and Methods.....	1-41
1.17	Problems of Interpretation and Construction of Statutes or Common Law Rules of the Territorial Unit Where the Case is Pending Which do not Contain Choice of Law Rules	1-43
1.18	Treatment of the Subject.....	1-44
1.19	Canadian Literature on the Conflict of Laws	1-44
1.20	Scope of this Work	1-45
CHAPTER 2.	THE CONSTITUTION AND THE CONFLICT OF LAWS.....	2-1
2.1	Constitutional Provisions for the Conflict of Laws.....	2-1
2.2	Order and Fairness	2-2
	a. Recognition and Enforcement of Judgments	2-3
	b. Jurisdiction and <i>Forum Non Conveniens</i>	2-5
	c. Procedural Questions	2-7
	i. Discovery and Blocking Statutes	2-7
	ii. Proof of Foreign Law	2-8
	iii. Class Proceedings Involving Non-Resident Class Members	2-8
	d. Choice of Law	2-9

TABLE OF CONTENTS

2.3	International and Interprovincial Conflict of Laws Rules	2-12
CHAPTER 3. CHARACTERIZATION AND THE INCIDENTAL QUESTION		
3.1	The Role of Characterization in Choice of Law Analysis	3-1
3.2	Examples of Characterization of a Legal Question or Issue.....	3-6
3.3	Characterization of the Connecting Factor	3-12
3.4	Incidental or Preliminary Question.....	3-13
CHAPTER 4. THE CONNECTING FACTORS OF DOMICILE AND RESIDENCE.....		
A.	Nature of Domicile.....	4-1
4.1	Function and Meaning of "Domicile".....	4-1
4.2	Area of Domicile	4-2
4.3	Law Determining Domicile	4-2
4.4	Everyone Has a Domicile — Everyone Has Only One Domicile at a Time.....	4-3
4.5	Domicile of Origin and Domicile of Choice.....	4-3
4.6	How Domicile of Origin is Fixed	4-4
4.7	Change of Domicile.....	4-4
	a. The Fact of Residence	4-5
	b. The Intention to Remain	4-5
4.8	Abandonment of Domicile of Choice	4-7
4.9	Married Women.....	4-8
4.10	Proof of Change of Domicile.....	4-10
4.11	Evidence of Intention.....	4-11
4.12	Direct Evidence of Intention.....	4-12
4.13	Secondary Evidence of Intention — Residence.....	4-13
	a. Residence as a Matter of Duty or by Force of Circumstance	4-13
	b. Invalids	4-14
	c. Persons Liable to Removal	4-14
	d. Matrimonial Home	4-14
	e. Other Evidence	4-14
4.14	Children	4-16
4.15	The Mentally Incapable	4-18
4.16	Proposals for Reform of Common Law Rules.....	4-18
4.17	Residence.....	4-19
	a. Permanent Residence.....	4-21
	b. Ordinary Residence	4-22
	c. Actual Residence	4-24
	d. Habitual Residence	4-24
	e. Temporary Residence	4-25

CANADIAN CONFLICT OF LAWS

4.18	Statutory Reform	4-30
4.19	Quebec	4-32
	a. Definition.....	4-33
	b. Change of Domicile	4-33
	c. Residence.....	4-33
	d. Presumptions	4-33
	e. Public Office.....	4-33
	f. Minors.....	4-33
	g. Incapables of Full Age.....	4-34
	h. Spouses	4-34
	i. Election of Domicile.....	4-34
CHAPTER 5.	RENVOI	5-1
5.1	The Operation of <i>Renvoi</i> : Three Approaches.....	5-1
	a. Internal Reference (No <i>Renvoi</i>).....	5-1
	b. Simple <i>Renvoi</i>	5-2
	c. The Foreign Court Principle (Total <i>Renvoi</i>).....	5-4
5.2	Criticism of <i>Renvoi</i>	5-6
5.3	Diagrams.....	5-7
CHAPTER 6.	SUBSTANCE AND PROCEDURE.....	6-1
6.1	General Rule	6-1
6.2	Distinguishing Substance from Procedure.....	6-1
6.3	Illustrations	6-4
	a. Parties	6-4
	b. Service of Process, Mode of Trial, Time for Appeal.....	6-5
	c. Evidence and the Fact-Finding Process	6-5
	d. Nature of Remedy.....	6-6
	e. Damages, Costs and Pre-judgment Interest	6-6
	f. Set-Off and Counterclaim.....	6-7
	g. Liens and Priorities	6-8
	h. Limitation of Actions.....	6-8
	i. Method of Enforcement.....	6-8
	j. Security for Costs	6-9
6.4	Letters Rogatory (Letters of Request).....	6-14
	a. Where There Is a Convention	6-15
	b. In the Absence of a Convention.....	6-16
6.5	Foreign Proceedings Breaching Canadian Sovereignty	6-24
6.6	Obtaining Evidence Outside the Jurisdiction for Canadian Proceedings.....	6-25
6.7	Interprovincial Subpoenas	6-27
6.8	Tolling Statutes	6-28
6.9	Injunctions to Restrain Removal of Assets from the Jurisdiction.....	6-29
App.	Related Legislation	6-101

TABLE OF CONTENTS

CHAPTER 7.	PROOF OF FOREIGN LAW AND FOREIGN DOCUMENTS	7-1
7.1	Foreign Law Must Be Pleaded and Proved.....	7-1
7.2	Pleading Foreign Law	7-4
7.3	Proving Foreign Law	7-5
7.4	Absence of Proof	7-8
7.5	Proving Foreign Documents	7-10
CHAPTER 8.	REFUSAL TO APPLY FOREIGN LAW OR TO ENFORCE FOREIGN JUDGMENTS	8-1
8.1	Foreign Law Generally Applied	8-1
8.2	Foreign Blocking Legislation	8-1
8.3	Foreign Penal Laws	8-2
8.4	Foreign Revenue Laws	8-2
8.5	Foreign Public Laws	8-8
8.6	Public Policy	8-11
8.7	Evasion of Law	8-14
8.8	Governmental Seizure of Property.....	8-16
CHAPTER 9.	THE TIME ELEMENT	9-1
9.1	Conflicts in Time	9-1
9.2	Conflit Mobile	9-3

**Part Two: Jurisdiction of Canadian Courts
Foreign Judgments and Arbitration Awards**

CHAPTER 10.	PERSONS WHO CANNOT SUE OR BE SUED	10-1
A.	Persons Who Cannot Sue	10-1
10.1	Enemy Alien	10-1
B.	Persons Who Cannot be Sued	10-1
10.2	The Foreign State.....	10-1
10.3	The General Grant of Immunity	10-5
10.4	The Exceptions	10-6
a.	Commercial Activity	10-6
b.	Death, Personal or Bodily Injury, and Property Damage.....	10-7
c.	Maritime Law	10-7
d.	Property in Canada	10-8
10.5	Waiver	10-9
10.6	Procedure and Relief.....	10-10.1
10.7	Special Remedies.....	10-10.1
10.8	Execution	10-10.2
10.9	Failure to Produce Documents and other Immunities.....	10-11
10.10	Diplomats.....	10-12
10.11	Consuls	10-15

CANADIAN CONFLICT OF LAWS

10.12	Waiver	10-16
10.13	General Provisions.....	10-17
10.14	Privileges and Immunities of International Organizations.....	10-18
10.15	Political Subdivisions of Foreign States	10-19
10.16	Visiting Forces.....	10-19
App.	Related Legislation	10-101
CHAPTER 11. ACTIONS IN PERSONAM		
11.1	Judicial Jurisdiction	11-1
11.2	Jurisdiction <i>In Rem</i> and <i>In Personam</i>	11-2
11.3	Constitutional Aspects	11-2
11.4	International Aspects — Non-justiciability — Act of State	11-3
11.5	International Conventions Affecting Jurisdiction	11-4
11.6	Foreign Immovables	11-5
11.7	Jurisdiction in Actions <i>In Personam</i> : Consent or Submission.....	11-6
11.8	Jurisdiction in Actions <i>In Personam</i> : Presence (Individuals).....	11-8
11.9	Jurisdictions in Actions <i>In Personam</i> : Presence (Corporations).....	11-10
11.10	Real and Substantial Connection	11-11
11.10.1	Multi-jurisdiction Class Actions	11-17
11.11	Categories Listed in the Rules of Procedure.....	11-20
	a. Property Within the Jurisdiction.....	11-20
	b. Interpretation of an Instrument	11-20
	c. Persons Domiciled or Resident or Carrying on Business in the Jurisdiction	11-20
	d. Administration of Estates and Trusts Where Assets Include Property in the Jurisdiction.....	11-20
	e. Contracts in General	11-21
	f. Breach of Contract Within the Jurisdiction	11-21
	g. Tort Committed in the Jurisdiction	11-21
	h. Damage Sustained in the Jurisdiction	11-24
	i. Injunctions	11-25
	j. Mortgage on Property in the Jurisdiction	11-25
	k. Necessary and Proper Party	11-26
	l. Judgment of Court Outside the Province.....	11-26
	m. Other Situations	11-26
11.11.1	Quebec	11-34
	a. Constitutional Requirements	11-35
	b. General Principle	11-35
	c. Exceptional Jurisdiction	11-35
	d. Provisional and Conservatory Measures	11-35
	e. Emergency Jurisdiction	11-35
	f. Incidental and Cross Demands	11-36
	g. Special Provisions	11-36

TABLE OF CONTENTS

11.12	Manner and Proof of Service Outside the Jurisdiction.....	11-39
11.13	Service of Judicial Documents Under the Hague Convention.....	11-39
11.14	Service of Judicial Documents by Virtue of Bilateral Conventions	11-42
11.15	Motion to Set Aside Service Outside the Jurisdiction.....	11-44
11.16	Summary and New Issues.....	11-45
	a. Summary.....	11-45
	b. Personal Jurisdiction and the Internet.....	11-46
11.17	Proposals for Reform.....	11-55
11.18	Hague Multilateral Convention on International Jurisdiction and the Effect of Foreign Judgments in Civil and Commercial Matters.....	11-57
App.	Related Legislation	11-101
CHAPTER 12. ADMIRALTY ACTIONS <i>IN REM</i> AND <i>IN PERSONAM</i>.....		
	<i>PERSONAM</i>.....	12-1
12.1	General Considerations.....	12-1
12.2	Jurisdiction Over the Subject Matter <i>In Rem</i> and <i>In Personam</i>	12-2
12.3	Service of Statement of Claim or Declaration in Actions <i>In Rem</i> and <i>In Personam</i>	12-9
12.4	Service of Warrant for the Arrest of Property in an Action <i>In Rem</i>	12-11
12.5	Motion to Set Aside Service Outside the Jurisdiction.....	12-12
12.6	Proposals for Reform.....	12-12
App.	Related Legislation	12-101
CHAPTER 13. DECLINING JURISDICTION.....		
13.1	Forum Shopping	13-1
13.2	English and Canadian Approaches to Stays of Proceedings.....	13-3
13.3	Burden of Proof	13-11
13.4	Antisuit Injunctions: Restraining Foreign Proceedings.....	13-15
13.5	Factors to be Taken Into Account in Determining the Appropriate Forum.....	13-18.1
	a. Balance of Convenience	13-19
	b. Legitimate Personal or Juridical Advantage of the Plaintiff Available in the Local Forum	13-19
	c. Quebec.....	13-21
13.6	Parallel Proceedings.....	13-24
13.7	Forum Selection Clauses	13-29

CANADIAN CONFLICT OF LAWS

13.8	Proposals for Reform	13-38
	a. <i>Forum Non Conveniens</i>	13-38
	b. Transfer of a Proceeding	13-38
	c. An Integrated Approach to Jurisdiction <i>Simpliciter and Forum Non Conveniens</i>	13-39
App.	Related Legislation	13-101
CHAPTER 14. RECOGNITION AND ENFORCEMENT OF		
	JUDGMENTS	14-1
A.	Introduction	14-1
	14.1 Policy Considerations	14-1
	14.2 Definition and Principle	14-2
B.	Recognition and Enforcement at Common Law	14-2
	14.3 Actions on Foreign Judgments <i>In Personam</i>	14-2
	14.4 Non-merger of Cause of Action — Pleading a Foreign Judgment in Defence	14-7
	14.5 Requirements for Recognition and Enforcement: Jurisdiction of the Foreign Court	14-10
	a. Submission	14-10
	b. Agreement to Submit	14-10
	c. Residence or Presence of Defendant in Foreign State	14-11
	d. Real and Substantial Connection	14-12
	14.6 Further Requirements for Enforcement: Finality, Definite Sum of Money	14-20
	14.7 Foreign Public Law Exception to Recognition and Enforcement	14-24
	14.8 Impeachment	14-25
	a. Judgment Obtained by Fraud	14-25
	b. Proceedings Contrary to Natural Justice: Due Process	14-27
	c. Judgment Contrary to Public Policy	14-28
	14.9 Further Defences to Enforcement: Prior Inconsistent Local Judgment, Injunction, Declaration	14-30.3
	14.10 Foreign Injunctions, Declarations, and Orders for Specific Performance	14-31
	14.11 Foreign Judgments <i>In Rem</i>	14-32
	a. Movables	14-32
	b. Immovables	14-32
	c. Personal status	14-32
C.	Quebec: Foreign Decisions of a Patrimonial Nature	14-34
	14.11.1 General	14-34
	14.11.2 Jurisdiction of Foreign Authorities	14-34
	14.11.3 Exclusive Jurisdiction	14-34.2
	14.11.4 Conclusiveness	14-34.2
	14.11.5 Applicable Law	14-34.2
	14.11.6 Decisions Rendered by Default	14-34.2

TABLE OF CONTENTS

14.11.7	Public Order and Fundamental Principles of Procedure	14-34.3
14.11.8	Taxation Laws	14-34.3
14.11.9	Finality	14-34.3
14.11.10	Conversion of Foreign Currency and Interest.....	14-34.3
14.11.11	Procedure for Enforcement	14-34.4
D.	Statutory Recognition and Enforcement of Judgments	14-34.5
14.12	Uniform Legislation.....	14-34.5
14.13	Legislative Schemes for Registering Judgments.....	14-36
14.14	Registration Procedure.....	14-38
14.15	Uniform Enforcement of Canadian Judgments.....	14-44.1
14.16	Convention Between Canada and the United Kingdom	14-46
14.17	Convention Between Canada and France	14-49
14.18	Other Statutory Provisions for Foreign Judgments	14-51
	a. Antitrust Judgments	14-51
	b. Certain International Trade Judgments	14-51
	c. Judgments for Oil Pollution	14-52
	d. Miscellaneous	14-52
14.19	Federal Court Rules	14-53
14.20	Summary and Proposals for Reform.....	14-55
CHAPTER 15. ARBITRATION AND RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS.....		
	15.1 Introduction.....	15-1
	15.2 Federal and Provincial Legislation	15-1
	15.3 General Principles.....	15-4
	a. Arbitration Agreement.....	15-4
	b. Arbitral Procedure	15-4
	c. Substantive Rights and Liabilities	15-5
	15.4 Enforcement of Arbitration Agreements.....	15-7
	a. General Rules	15-7
	b. Arbitration Agreements Governed by the 1958 New York Convention.....	15-8
	15.5 Enforcement of Awards	15-9
	a. At Common Law	15-9
	b. General Provincial Legislation: Canadian Awards.....	15-9
	c. Special Provincial Legislation: Canadian and Foreign Awards	15-10
	d. 1958 New York Convention.....	15-10
	e. Foreign Commercial Awards: Ontario	15-12
	f. Quebec.....	15-12
	15.6 International Commercial Arbitration under the UNCITRAL Model Law.....	15-14

CANADIAN CONFLICT OF LAWS

a.	Scope of Application of Federal and Provincial Legislation	15-14
b.	The Arbitration Agreement.....	15-16
(i)	Definition and Form.....	15-16
(ii)	Capacity of the Parties	15-16
(iii)	Autonomy of the Arbitration Agreement	15-16
(iv)	Law Applicable to the Arbitration Agreement.....	15-17
(v)	Arbitrability and Scope of the Arbitration Agreement.....	15-17
(vi)	Arbitration Agreements and the Courts.....	15-18
(vii)	Miscellaneous.....	15-18
(viii)	Ad hoc Arbitration	15-19
c.	Conduct of Arbitral Proceedings	15-19
d.	Making of Award and Termination of Proceedings.....	15-20
e.	Recognition and Enforcement of International Commercial Arbitral Awards	15-20
f.	Recognition and Execution of Awards in Quebec.....	15-22
15.7	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.....	15-28
15.8	Free Trade Agreements.....	15-30

Part Three: Choice of Law

(A) Family Law

CHAPTER 16.	MARRIAGE.....	16-1
16.1	Constitutional Aspects and Sources of Law	16-1
16.2	Formal Validity.....	16-1
16.3	Exceptions to the Application of the <i>Lex Loci Celebrationis</i>	16-3
a.	Compliance with <i>Lex Loci</i> Impossible.....	16-3
b.	Marriages on Board Merchant Ships	16-4
c.	Marriages in Countries Under Belligerent Occupation.....	16-4
d.	Imperial Foreign Marriages Act	16-4
e.	Quebec	16-5
f.	Marriages Solemnized by Canadian and Foreign Diplomatic and Consular Officers.....	16-5
16.4	Essential Validity — Capacity and Consent.....	16-7
16.5	Essential Validity — Consanguinity and Affinity, and Public Policy	16-9
16.6	Non-monogamous Marriages.....	16-10

TABLE OF CONTENTS

16.6.1	Effects of Marriage: Quebec	16-13
16.7	<i>De Facto</i> Unions, Same Sex Marriages, and Civil Unions.....	16-14
16.8	Jurisdiction of Quebec Courts with Respect to the Effects of Marriage and Civil Union.....	16-16
CHAPTER 17. MATRIMONIAL CAUSES		
17.1	Granting Divorces.....	17-1
	a. Legislative Jurisdiction.....	17-1
	b. Judicial Jurisdiction	17-1
	c. Parallel Proceedings, <i>Forum Non Conveniens</i>	17-1
	d. Applicable Law.....	17-3
	e. Non-monogamous Marriages	17-3
17.2	Recognizing Divorces.....	17-5
	a. Grounds for Recognizing Foreign Divorces	17-5
	b. Extrajudicial Divorces	17-8
	c. Grounds for Refusing to Recognize Foreign Divorces.....	17-8
	d. Finality of the Foreign Decree	17-8
	e. Estoppel	17-9
17.3	Judicial Separations	17-14
	a. Judicial Jurisdiction	17-14
	b. Applicable Law.....	17-14
	c. Recognizing Foreign Decrees.....	17-14
17.4	Nullity Decrees	17-15
	a. Void and Voidable Marriages.....	17-15
	b. Judicial Jurisdiction	17-15
	c. Applicable Law.....	17-16
	d. Recognizing Foreign Decrees.....	17-17
	e. Refusing to Recognize a Foreign Decree.....	17-17
17.5	Presumption of Death and Dissolution of Marriage	17-20.1
	a. Judicial Jurisdiction	17-20.1
	b. Applicable Law.....	17-20.2
	c. Recognizing Foreign Decrees.....	17-20.2
17.5.1	Disolution of Civil Unions.....	17-21
	a. Judicial Jurisdiction	17-21
	b. Applicable Law.....	17-21
	c. Recognizing Foreign Decrees.....	17-21
17.6	Declarations of Status	17-22
	a. Judicial Jurisdiction	17-22
	b. Applicable Law.....	17-22
	c. Recognizing Foreign Decrees.....	17-22
17.7	Recognition and Enforcement of Civil Judgments with Respect to the Status of Natural Persons and Matrimonial Matters	17-23

CANADIAN CONFLICT OF LAWS

CHAPTER 18.	CUSTODY, ACCESS AND GUARDIANSHIP	18-1
18.1	Granting Custody and Access Orders	18-1
	a. The Divorce Act and Judicial Jurisdiction.....	18-1
	b. Transfers of Proceedings	18-2
	c. Variation Proceedings.....	18-2
	d. Common Law Judicial Jurisdiction	18-5
	e. Provincial Legislation and Judicial Jurisdiction	18-6
	f. Applicable Law.....	18-9
18.2	Recognizing and Enforcing Custody and Access Orders	18-17
	a. The Divorce Act	18-17
	b. The Common Law	18-17
	c. Provincial Legislation.....	18-18
18.3	Convention on the Civil Aspects of International Child Abduction.....	18-22
18.4	Guardianship Orders	18-31
	a. Local Appointments	18-31
	b. Applicable Law.....	18-31
	c. Foreign Appointments	18-31
	d. Quebec.....	18-32
CHAPTER 19.	SUPPORT OBLIGATIONS	19-1
19.1	Support Orders in Divorce Proceedings.....	19-1
	a. Applicable Law.....	19-1
	b. Variation, Rescission and Confirmation of Canadian Orders	19-1
19.2	Support Apart From Divorce: Granting Support Orders	19-3
	a. Provincial Legislative Regimes	19-3
	b. Terms	19-4
	c. Making Provisional Orders.....	19-5
	d. Confirming Provisional Orders.....	19-6
	e. Making Final Orders.....	19-7
	f. Proving Foreign Law	19-7
19.3	Enforcing Support Orders	19-13
	a. Registering Final Orders.....	19-13
19.4	Varying and Appealing Support Orders.....	19-14.2
	a. Varying Support Orders.....	19-14.2
	b. Appealing Support Orders	19-15
	c. Other Procedural Issues	19-16
19.5	Convention between Canada and France	19-19
19.6	Quebec	19-20
	a. Principal Demand	19-20
	b. Accessory Demand	19-21
	c. Reciprocal Enforcement of Maintenance Orders	19-21

TABLE OF CONTENTS

	d. Entente Between France and Quebec	19-21
CHAPTER 20.	LEGITIMACY, LEGITIMATION, ADOPTION AND DETERMINATION OF PATERNITY	20-1
20.1	Historical Background: Legitimacy and Legitimation.....	20-1
20.2	Equal Status of Children	20-5
20.3	Legitimacy and Succession.....	20-5
20.3.1	Quebec	20-6
	a. Jurisdiction of Quebec Authorities	20-6
	b. Applicable Law.....	20-6
	c. Effects of Filiation	20-6
	d. Recognition and Execution of Foreign Decisions	20-7
20.4	Adoption: Jurisdiction and Choice of Law	20-7
20.5	Extraprovincial and International Adoptions	20-8.2
20.6	Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption	20-11
20.7	Paternity	20-13
CHAPTER 21.	MENTAL INCOMPETENCE	21-1
21.1	Jurisdiction and Choice of Law	21-1
21.2	Foreign Representatives.....	21-3
21.3	Quebec	21-5
	(B) Property	
CHAPTER 22.	NATURE AND SITUS OF PROPERTY	22-1
22.1	Immovable and Movable Property.....	22-1
	a. Characterization and Terminology	22-1
	b. Immovables	22-1
	c. Movables	22-1
22.2	Situs of Property	22-3
	a. Simple Contract Debts.....	22-3
	b. Specialty Debts.....	22-3
	c. Securities Transferable by Delivery	22-3
	d. Securities not Transferable by Delivery	22-3
	e. Property for which Title Depends on Registration.....	22-4
	f. Interests Under a Trust.....	22-4
	g. Ships	22-4
	h. Domain names	22-4
CHAPTER 23.	IMMOVABLES	23-1
23.1	Jurisdiction Over Immovables	23-1
	a. Foreign Immovables	23-1
	b. Equitable Jurisdiction <i>In Personam</i>	23-2

CANADIAN CONFLICT OF LAWS

23.2	Applicable Law	23-6
23.3	Uniform Transboundary Pollution Reciprocal Access Act	23-8
App.	Related Legislation	23-101
CHAPTER 24.	MOVABLES	24-1
24.1	Particular Kinds of Property	24-1
	a. Tangibles	24-1
	b. Negotiable Instruments and Documents of Title	24-1
	c. Intangibles	24-1
	d. Intellectual Property	24-2
	e. Cultural Property	24-2
	f. Quebec	24-3
24.2	Particular Kinds of Transfers	24-5
	a. Pledges	24-5
	b. Conditional Sales and Chattel Mortgages	24-5
	c. Stoppage <i>In Transitu</i>	24-7
24.3	Secured Transactions	24-10
	a. Perfecting the Security Interest Locally	24-10
	b. Security Interests Perfected Elsewhere	24-10
	c. Right to Revendicate or Repossess	24-12
	d. Goods to be Kept in Another Jurisdiction	24-12
	e. Intangibles, Mobile Goods and Non-possessory Security Interests	24-12
	f. Procedure and Substance	24-13
	g. Quebec: Movable Securities	24-14
	h. Aircraft	24-15
	i. UNIDROIT Proposals for Mobile Equipment and Aircraft	24-16
App.	Related Legislation	24-101
CHAPTER 25.	MATRIMONIAL PROPERTY	25-1
25.1	Choice of Law Issues	25-1
	a. Legislative Regimes	25-2
	b. The Significance of a Domestic Contract	25-3
	c. Proposed Uniform Legislation	25-3
25.2	In the Absence of a Domestic Contract	25-4
	a. British Columbia and Saskatchewan	25-4
	b. Alberta, Manitoba and New Brunswick	25-5
	c. Newfoundland, Nova Scotia and Yukon	25-6
	d. Ontario and Prince Edward Island	25-7
	e. Quebec	25-7
25.3	Where There is a Domestic Contract	25-10
	a. Statutory Choice of Law Rules	25-10
	b. Capacity	25-10
	c. Formal Validity	25-11

TABLE OF CONTENTS

	d. Movables	25-11
	e. Immovables	25-11
	f. Proper Law	25-11
	g. Giving Effect to a Domestic Contract.....	25-12
	h. Mandatory Rules and Public Policy.....	25-12
	i. Variation of a Domestic Contract	25-13
	j. Quebec	25-13
25.4	Mutability: Quebec	25-16
25.5	Jurisdiction of Quebec Courts.....	25-16
CHAPTER 26.	ESTATES ADMINISTRATION.....	26-1
26.1	General Considerations.....	26-1
	a. Applicable Law.....	26-1
	b. Administration Actions.....	26-2
26.2	Locally Appointed Representatives	26-4
	a. Jurisdiction of Canadian Courts to Appoint Representatives	26-4
	b. Effect of Provincial Grant.....	26-5
	c. Collection of Assets	26-5
	d. Payment of Debts.....	26-5
	e. Distribution and Handing Over of Net Assets	26-5
	f. Undue Depletion of Estates	26-6
26.3	Representatives Appointed Elsewhere.....	26-8
	a. Resealing Foreign Grants	26-8
	b. Actions by Foreign Personal Representatives.....	26-9
	c. Actions Against Foreign Personal Representatives.....	26-9
26.4	Quebec: Administration and Liquidation of Succession.....	26-12
CHAPTER 27.	SUCCESSION.....	27-1
27.1	Jurisdiction.....	27-1
	a. Canadian Courts	27-1
	b. Foreign Courts	27-2
27.2	Applicable Law.....	27-3
	a. General Rules	27-3
	b. <i>Renvoi</i>	27-3
	c. Time Factor	27-3
	d. <i>Bona Vacantia</i> and Escheat	27-3
27.3	Intestate Succession	27-5
27.4	Testamentary Succession.....	27-6
	a. Capacity	27-6
	b. Formal Validity at Common Law	27-7
	c. Statutory Provisions.....	27-7
	d. International Wills	27-8
	e. Construction	27-8

CANADIAN CONFLICT OF LAWS

	f. Material or Essential Validity	27-9
	g. Election.....	27-10
	h. Testamentary Revocation	27-11
	i. Revocation by Marriage, Divorce or Annulment	27-11
27.5	Testamentary Power of Appointment	27-17
	a. Capacity.....	27-17
	b. Formal Validity.....	27-18
	c. Construction	27-18
	d. Material or Essential Validity.....	27-18
	e. Revocation.....	27-18
27.6	1988 Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons.....	27-20
CHAPTER 28.	TRUSTS	28-1
28.1	Introduction.....	28-1
28.2	Common Law Rules for Trusts of Movables.....	28-2
	a. Validity of Testamentary Trusts	28-2
	b. Validity of <i>Inter Vivos</i> Trusts	28-3
	c. Construction	28-3
	d. Administration	28-4
	e. Restraints on Alienation of Beneficial Interests	28-5
28.3	Common Law Rules for Trusts of Immovables.....	28-6
	a. Validity.....	28-6
	b. Construction	28-7
	c. Administration	28-7
	d. Restraints on Alienation of Beneficial Interests	28-7
28.4	Hague Convention on the Law Applicable to Trusts and on Their Recognition	28-8
	a. Matters Excluded.....	28-8
	b. Applicable Law.....	28-9
	c. Recognition.....	28-9
	d. Mandatory Rules – Public Policy	28-10
28.5	Legislative Regimes Outside the Convention.....	28-12
28.5.1	Quebec	28-13
28.6	Constructive Trusts	28-14
	a. Common Law Choice of Law Rule	28-14
	b. Convention Choice of Law Rule	28-15
28.7	Variation of Trusts.....	28-15
	(C) Bankruptcy, Insolvency and Foreign Corporations	
CHAPTER 29.	BANKRUPTCY AND INSOLVENCY	29-1
29.1	Background.....	29-1
29.2	Jurisdiction.....	29-3
	a. Creditors' Petitions	29-3

TABLE OF CONTENTS

	b. Debtors' Petitions	29-5
29.3	Applicable Law.....	29-6.1
29.4	Effects of Canadian Adjudication.....	29-7
	a. As an Assignment of Property	29-7
	b. The Hotchpotch Rule.....	29-9
	c. As a Discharge of Debts	29-9
29.5	Effects of Foreign Adjudications	29-11
	a. English Adjudications.....	29-11
	b. Adjudications in Other Countries	29-11
	c. Foreign Discharges	29-12
29.6	International Cooperation	29-13
29.7	Rate of Exchange	29-15
29.8	Judicially Supervised Arrangements.....	29-16
	a. Supervised in Canada	29-16
	b. Supervised in Other Countries.....	29-16
CHAPTER 30.	FOREIGN CORPORATIONS.....	30-1
30.1	Status, Powers, Domicile, Residence and Nationality	30-1
30.2	Changes in Status: Amalgamation, Dissolution and Winding-up	30-5
	a. Amalgamation	30-5
	b. Continuance and Dissolution	30-5
	c. Foreign Resident Corporations	30-6
	d. Winding-up	30-6
30.3	Carrying on Business: Registration, and Limitations on Activities.....	30-10
	a. Registration.....	30-10
	b. Special Limitations	30-11

(D) Obligations

CHAPTER 31.	CONTRACTS.....	31-1
31.1	Introduction.....	31-1
	a. Policy Considerations	31-1
	b. History	31-1
31.2	Determining the Governing Law	31-3
	a. Express Choice	31-3
	b. Incorporation by Reference, the Time Element	31-4
	c. No Express Choice	31-4
	d. Proper Law of the Contract.....	31-6
	e. Presumptions	31-6
	f. System of Law and <i>Renvoi</i>	31-7
	g. Quebec	31-7
31.3	Applying the Governing Law	31-16
	a. Essential Validity.....	31-16

CANADIAN CONFLICT OF LAWS

	b. Interpretation	31-17
	c. Effect on Third Parties.....	31-17
	d. Performance Obligations	31-17
	e. Discharge.....	31-18
31.4	Matters Governed by Other Laws.....	31-22
	a. Depeçage	31-22
	b. Formation	31-22
	c. Formal Validity	31-23
	d. Capacity.....	31-23
31.5	Mandatory Laws and Mandatory Choice of Law	
	Rules	31-26
	a. Bills of Exchange Act.....	31-26
	b. Canada Shipping Act.....	31-26
	c. Frustrated Contracts Act, Insurance Act.....	31-26
	d. Carriage by Air Act, Carriage of Goods by Water Act	31-27
	e. Exchange Control Legislation	31-27
	f. International Sale of Goods Act	31-28
	g. Rome Convention.....	31-29
31.6	Illegality.....	31-32
	a. Illegality by the Proper Law	31-32
	b. Illegality by the Place of Contracting	31-32
	c. Illegality by the Place of Performance.....	31-33
	d. Illegality by the Law of the Forum—Public Policy.....	31-33
	e. Gambling Debts.....	31-33
31.7	Contract Remedies.....	31-36
	a. Nature of the Remedy.....	31-36
	b. Remoteness, Measure of Damages	31-37
	c. Liability to Pay Interest	31-37
31.8	Particular Contracts.....	31-38
	a. Agency Contracts	31-38
	b. Insurance Contracts	31-40
	c. Letters of Credit.....	31-42
	d. International Contracts of Employment.....	31-43
	e. Maritime Contracts	31-44
	f. Sale Contracts: Quebec.....	31-46
	g. Consumer Contracts: Quebec	31-47
CHAPTER 32. UNJUST ENRICHMENT		32-1
	32.1 The Law of the Obligation to Make Restitution	32-1
	32.2 Quebec	32-3
CHAPTER 33. NEGOTIABLE INSTRUMENTS		33-1
	33.1 The Single Law and the Several Laws Principles.....	33-1
	33.2 The Bills of Exchange Act.....	33-2
	a. Formal Validity	33-3

TABLE OF CONTENTS

	b. Interpretation	33-4
	c. Duties of the Holder	33-4
	d. Rate of Exchange.....	33-5
	e. Maturity	33-5
33.3	Matters Governed by the Common Law	33-8
	a. Capacity.....	33-8
	b. Essential Validity.....	33-8
	c. Discharge	33-9
	d. Transfer.....	33-9
	e. Damages for Dishonour	33-10
	f. Interest	33-10
33.4	1988 United Nations Convention on International Bills of Exchange and International Promissory Notes	33-12
CHAPTER 34.	FOREIGN CURRENCY OBLIGATIONS.....	34-1
34.1	General Principle	34-1
34.2	Money of Account	34-1
	a. Determining the Money of Account	34-1
	b. Principle of Nominalism.....	34-1
	c. Revalorization of Debts	34-2
	d. Gold Clauses.....	34-2
34.3	Money of Payment.....	34-5
	a. Discharge of Foreign Currency Obligations	34-5
	b. Rate of Exchange.....	34-5
34.4	Exchange Control Legislation.....	34-12
CHAPTER 35.	TORTS.....	35-1
35.1	Jurisdiction in Torts	35-1
35.2	Characterization	35-1
35.3	Choice of Law: Theories and Methods	35-1
35.4	The English Common Law Choice of Law Rule	35-7
35.5	The Emergence of a Canadian Rule.....	35-8
35.6	Exceptions to the Application of the <i>Lex Loci</i> <i>Delicti</i>	35-11
35.7	Scope of the General Rule	35-15
35.8	Place of Tort	35-17
35.9	Particular Torts	35-21
	a. Maritime Torts.....	35-21
	b. Torts in Aircraft.....	35-21
	c. Statutory Provisions Dealing With Motor Vehicle Accidents.....	35-21
	d. International Convention on Traffic Accidents	35-24
	e. Consumer Product Liability and Securities Legislation: Statutory Rules	35-24
	f. Intellectual Property Rights	35-25

CANADIAN CONFLICT OF LAWS

	g. Workers' Compensation Schemes	35-26
	h. Transnational Human Rights Torts	35-26
	i. Violation of Competition Laws	35-27
INDEX		INDEX-1