

Harmonization of Business Law in Canada

RONALD C.C. CUMING Research Coordinator

Published by the University of Toronto Press in cooperation with the Royal Commission on the Economic Union and Development Prospects for Canada and the Canadian Government Publishing Centre, Supply and Services Canada

University of Toronto Press Toronto Buffalo London



FOREWORD ix INTRODUCTION xi PREFACE XV ACKNOWLEDGMENTS xix

Harmonization of Provincial Laws, with Particular Reference to Commercial, Consumer and Corporate Law 1

Jacob S. Ziegel

Introduction 1

Constitutional Background 1

The Need for Harmonization 3

. Meaning and Appropriateness of

Harmonization of Laws 5

The Special Position of Quebec 7

Section 94 of the Constitution Act 8

The Current Canadian Position 10

The Uniform Law Conference of Canada 10

Critique of the Work of the Uniform Law Conference 15

The Challenge of the Law Reform Agencies 20

International Dimensions 23

The Unifying Role of the Supreme Court of Canada 24

Other Unifying Sources 25

A Functional Overview 28

Comparative Aspects 36

United States 37

Australia 40

Conclusions 42

	Recommendations 48
	APPENDIX A Uniform Law Conference of Canada, 1983
	Proceedings 50
	APPENDIX B Uniform Law Conference of Canada, Degree of
	Support for Uniform Acts 55 APPENDIX C National Conference of Commissioners on
	Uniform State Laws 57
	Notes 61
	The Decoled on all the Country of the Lorentz
2.	The Regulation of the Securities Market and the Harmonization of Provincial Laws 77
	Philip Anisman
	Introduction 77
	Provincial Securities Regulation 82
	The Regulatory Schemes 82
	Disclosure 82
	Licensing 83
	Direct Regulation 84
	Remedies 86
	Coordination and Cooperation 87
	Continuous Disclosure 87
	Distribution of Securities 91
	Substantive Regulation 106
	Enforcement 111
	Registration 115
	Stock Exchanges 121
	Conclusions 127
	Provincial Regulation 127
	Federal Regulation 129
	Notes 131
3.	Harmonization of Canadian Personal Property Security Law 169
	Ronald C.C. Cuming
	Introduction 169
	A Definition of Harmonization 172
	Factors to be Included 172
	The Definition 176
	Structural Sources of Disharmony 177 Bifurcated Legislative Jurisdiction 177
	Two Legal Systems: The Civil Law and the Common Law 178
	A Historical Overview 180
	Early Factors Affecting Harmonization 180
	The Extent of Legislative Harmony Prior to 1930 181
	The Influence of Uniform Acts 185
	The Model Uniform Personal Property Security Act 188

Personal Property Security Registries 191
Developments in the United States 191
Some Conclusions 194
Notes 197
Appendix 204

4. Harmonization of Canadian Insurance Law 207 Marvin G. Baer

Scope 207

Provincial Jurisdiction over Insurance Law 208

The Nature of Insurance Regulation 211

Solvency 211

Canadianization 212

Government Revenue 213

Regulating the Contract 213

Control over Insurance Intermediaries 215

Direct Control over Marketing Practices 217

The Form of Insurance Regulation 218

How Harmonization has been Accomplished 219

Delegation 219

The Association of Superintendents of Insurance 221

Insurance Industry Organizations 226

Harmonization through Traditional Conflict of Laws 231

Harmonization through Integrative Drafting and

Interpretation 232

Harmonization through Interprovincial Agreement 233

The American Experience 234

Factors which have Fostered Harmonization 234

Notes 239

ABOUT THE CONTRIBUTORS 245