Legislative Summary **LS-487E**

BILL S-10: FEDERAL LAW–CIVIL LAW HARMONIZATION ACT, NO. 2

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LEGISLATIVE HISTORY OF BILL S-10

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	3 December 2004	First Reading:	19 October 2004
Second Reading:	10 December 2004	Second Reading:	26 October 2004
Committee Report:	10 December 2004	Committee Report:	25 November 2004
Report Stage:	10 December 2004	Report Stage:	
Third Reading:	10 December 2004	Third Reading:	2 December 2004

Royal Assent: 15 December 2004

Statutes of Canada 2004, c. 25

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL S-10: FEDERAL LAW–CIVIL LAW HARMONIZATION ACT, NO. 2*

INTRODUCTION

Bill S-10, A second Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, was **introduced in the Senate on 19 October 2004 and subsequently referred to the Standing Committee on Legal and Constitutional Affairs. It passed third reading in the Senate on 2 December 2004. On 3 December 2004, it was introduced in the House of Commons, passing third reading there on 10 December 2004. Bill S-10 received Royal Assent on 15 December 2004, at which time its provisions came into force.**

As its title indicates, Bill S-10 is the second of a series of bills, all of which have the same purpose: to harmonize federal law with the civil law of the Province of Quebec by amending certain federal statutes so that both the French-language and English-language versions take into account the common law and the civil law. With a few exceptions, this second series of harmonization proposals is designed to complete the harmonization of all of the Acts that were partially harmonized by the *Federal Law–Civil Law Harmonization Act, No. 1* in 2001.(1) As only some fields of private law were taken into account at that time, this second series of proposals covers the remaining fields of private law.(2)

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) *A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law*, S.C. 2001, c. 4 (Bill S-4).

(2) See the introductory note in Department of Justice, *Second series of proposals to harmonize federal law with the civil law of the Province of Quebec*, Consultation Paper, Ottawa, 2003, available on-line at: http://canada.justice.gc.ca/en/cons/harm/ (hereinafter *Consultation Paper No. 2*).

BACKGROUND[3]

In 1993, because the *Civil Code of Québec* (hereinafter C.C.Q.) was going to replace the *Civil Code of Lower Canada* (hereinafter C.C.L.C.) in Quebec as of 1 January 1994, the federal Department of Justice created the Civil Code Section to review the federal government's attitude to the coexistence of the civil law system (in Quebec) and the common law system (in the other provinces and territories of this country).

A. Reminder of the Complementary Nature of Federal and Civil Law[4]

Since 1867, the Parliament of Canada has enacted more than 300 statutes that are designed, in whole or in part, to regulate matters of private law. It has done so primarily under Parliament's exclusive jurisdiction over matters that, had it not been for the division of powers in the *Constitution Act, 1867*,[5] would have fallen under the provinces' jurisdiction over property and civil rights. Examples of these matters are marriage and divorce, bankruptcy and insolvency, bills of exchange and promissory notes, interest on money, admiralty law, patents of invention, and copyright. To the same end, though less directly, Parliament has enacted statutes designed primarily to regulate questions of public law with some provisions relying upon private law concepts or regulating private law relationships.

All these statutes do not create an independent legal system. Because these Acts derogate from or add to the *jus commune*[6] of each province, they are supplemented by the relevant provincial law, which is used to interpret them and to apply them. There is, therefore, a complementary relationship between federal legislation and the *jus commune* of the provinces.

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(3) Much of the background in this paper is borrowed from Jay Sinha and Luc Gagné, *Bill S-4: Federal Law–Civil Law Harmonization Act, No. 1*, LS-379, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 January 2001.

(4) This section is based on a summary by André Morel of the work done in the harmonization project: "Harmonizing Federal Legislation with the *Civil Code of Québec*: Why? And Wherefore?" in Department of Justice, *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Collection of Studies*, Ottawa, 1999, pp. 1-25 (hereinafter *Collection of Studies No. 1*).

(5) 30 and 31 Vict., U.K., c. 3.

(6) The *jus commune* is the foundational general law of a legal order. The C.C.Q. is a central expression of the *jus commune* in Quebec. See Roderick A. Macdonald, "Encoding Canadian Civil Law," in *Collection of Studies No. 1*, p. 138.

In Quebec, the civil law – the *jus commune* governing private law – supplements federal legislation in the same way as the common law does in the other provinces. In this way, the *jus commune* is said to make up for "the incompleteness of the federal legislation" and to have a "suppletive role."

B. Object of Harmonization

Harmonization aims to ensure that the existing provisions of federal laws are brought into line with the existing civil law. It also addresses the question of pre-Confederation law and the need to rewrite the French versions of federal statutes in order to reflect the common law.(7)

The changes in language and in substance made to the *jus commune* of Quebec also have an impact on federal legislation. Changes in vocabulary have separated the rights at issue so that the language of the federal statutes is no longer exactly that of the civil law; it is now rather old-fashioned and over time will seem increasingly out of date, if not archaic.(8) As far as the substantive changes are concerned, changes have occurred in traditional institutions, the formulation of new concepts, establishment of new institutions, and reform of the existing rules.

With respect to pre-Confederation law that continues in effect in Quebec, this problem has been described as follows:

> [TRANSLATION] … the survival of a number of pre-Confederation provisions from the *Civil Code of Lower Canada*, which Quebec has not been able to repeal because they relate to matters that have since 1867 been within the jurisdiction of Parliament, which has not repealed them either, is another source of problems. These provisions were included in a Code; they were one of the components of the system then in effect. Since the Code in question no longer exists, they are as a result isolated and separated from the body of which they once formed part. They express a law in language that has been frozen for over a century now. Their relations with the civil law of today have become controversial.(9)

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(7) Morel (1999), p. 16.

(8) *Ibid.*, pp. 11-12.

(9) *Ibid.*, pp. 12-13.

However, the reform of the civil law in Quebec is not the only factor responsible for the lack of harmony between the federal law and the civil law. The problem existed long before the C.C.Q. came into force because Parliament has not always adequately included the civil law system and its language when setting out any new private law standards. This has been obvious in three different ways:

- the use of vague or inaccurate phrases to express concepts for which there is a recognized vocabulary in the civil law;
- the expression of legislative provisions only in the common law system, so that the two legal traditions did not receive equal treatment; and
- the policy of so-called semi-legal legislative drafting, whereby, for a number of years, the language of the civil law was used only in the French version and the language of the common law was used only in the English version, resulting in unequal treatment of the anglophone and francophone communities in this country.(10)

The Government of Canada has also cited other reasons to justify the need to harmonize federal statutes with the civil law of Quebec. Some of these reasons are set out in the preamble to the *Federal Law–Civil Law Harmonization Act, No. 1*, which states, among other things, that:

- all Canadians are entitled to have access to federal laws in keeping with their legal tradition;
- the civil law reflects the unique character of Quebec society;
- the harmonious interaction of federal and provincial legislation is essential; and
- the full development of our two major legal traditions gives Canadians a window on the world and facilitates exchanges with the vast majority of other countries.

In a speech given at the Conference on the Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism, held in Montréal on 24 November 1997, the

(10) This unequal treatment of the two communities has come about because each language version is associated with only one of the two legal systems; thus the anglophone community in Quebec does not have access to legislative documents expressed in terms of the civil law in English, and the francophone community in the other provinces does not have access in French to documents expressed in terms of the common law in French; *ibid.*, p. 15.

federal Minister of Justice at the time stated that the proposed harmonization sought to achieve three goals:

- to reaffirm the unique bijural nature of Canadian federalism;
- to strengthen the legitimate place of civil law beside the common law in the statutes of Canada; and
- to ensure that federal statutes would continue to have the desired effect in Quebec.(11)

The former Minister of Justice also felt that harmonization would help to facilitate the application of federal statutes in Quebec and increase the effectiveness of the courts responsible for applying federal statutes in that province. This would: help to improve access to justice; reduce problems of interpretation; save time and money for litigants and both the federal and the provincial governments; and clarify the intention of the legislator for the public.

C. Stages in the Harmonization Project

Since 1993, the federal Department of Justice has examined some 700 federal statutes and has identified 300 that will need to be harmonized. The first stage in the harmonization project was to establish how and in what way Quebec civil law came into contact with federal law, in order to determine the nature and extent of action necessary. Two studies were then completed.(12) At the same time, the Department of Justice held consultations with leading authorities in the faculties of law in the Province of Quebec. Following these consultations, the Department issued a report suggesting a methodology and a work plan.

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(11) The Hon. Anne McLellan, Minister of Justice, "Notes for a Speech by the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada and M.P. for Edmonton-West, to the Conference on the Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism," Montréal, 24 November 1997, available on-line at: http://canada.justice.gc.ca/en/news/sp/1997/bijur.html. See also Department of Justice, "Harmonization of Federal Statutes with Quebec Civil Law: Backgrounder," Ottawa, June 1998, available on-line at: http://canada.justice.gc.ca/en/news/nr/1998/bacg.html.

(12) The first study consisted of two papers prepared by Roderick A. Macdonald (for a synthesis and elaboration of these works, see Roderick A. Macdonald, "Encoding Canadian Civil Law," in *Collection of Studies No. 1*, pp. 135-213, or in *Mélanges Paul-André Crépeau*, Éditions Yvon Blais, Cowansville, 1997, pp. 579-640). The second study consisted of a paper by Jean-Maurice Brisson and André Morel ("Federal Law and Civil Law: Complementarity, Dissociation," in *Collection of Studies No. 1*, pp. 215-264).

In the second stage, pilot studies were carried out to determine what amendments should be made to the federal legislation in order to reflect the new situation.(13)

The third stage involved specific studies of surviving provisions of the C.C.L.C. (enacted in 1866) governing subjects that, after 1867, came within the exclusive jurisdiction of Parliament (for example, marriage, insolvency, admiralty law, the Crown and bills of exchange) and that had not been repealed or even amended by the province because it lacked jurisdiction.(14) Researchers identified 478 provisions of the 1866 C.C.L.C. that were likely to cause problems.(15) They also found that 111 of these had been validly repealed, in whole or in part, by Parliament and 64 had been repealed by the provincial legislature. Another 261 articles were affected by federal legislation, rendering them of no force or effect, in whole or in part. This meant that 42 articles were still in effect, although 17 of these were subject to dispute.(16) According to the Department of Justice, the repeal of these provisions would help to clarify legislation and avoid conflict between laws.

In November 1997, the federal Department of Justice issued a consultation paper to facilitate the drafting of the legislative provisions required and to seek public input on their implementation.(17)

A second consultation paper in relation to what would become Bill S-10 requested public input by April 2003.(18) Bill S-10 is also the result of a second collection of studies published in 2001, which dealt with, among other things, the history of various aspects of the

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(13) These pilot studies examined the following federal statutes: the *Federal Real Property Act*, S.C. 1991, c. 50; the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50; the *Garnishment, Attachment and Pension Diversion Act*, R.S.C. 1985, c. G-2; and the *Supreme Court Act*, R.S.C. 1985, c. S-26.

(14) These studies were specially commissioned from researchers in the law faculties in Quebec and the Civil Law Section of the University of Ottawa and from experts in civil and comparative law. Most of the studies were brought together in *Collection of Studies No. 1*. The findings and recommendations in these studies were brought together in a report: André Morel, "Pre-Confederation Civil Law and the Role of Parliament after the New Civil Code," revised version, April 1997, in *Collection of Studies No. 1*, pp. 71-133.

(15) See *Collection of Studies No. 1*.

(16) Morel (1997), pp. 97-98.

(17) Department of Justice, *L'harmonisation de la législation fédérale avec le droit civil québécois et le bijuridisme canadien : respect de la coexistence de deux traditions juridiques canadiennes*, Consultation Paper, Ottawa, November 1997, pp. 8-9.

(18) *Consultation Paper No. 2*.

harmonization project and bijuralism.(19) A third collection of studies was made available in September 2002, dealing with harmonization questions relating to tax law.(20) Finally, a special issue of the *Revue juridique Thémis* in February 2003 was devoted to the harmonization of the *Bankruptcy and Insolvency Act* and explains in detail certain amendments that are proposed for that Act in Bill S-10.(21)

The list of those who contributed to the development of the first harmonization bill and Bill S-10 includes civil law scholars, the Barreau du Québec, the Chambre des notaires du Québec, the Quebec Department of Justice, and the Canadian Bar Association. Detailed information regarding Canadian bijuralism and the harmonization of federal and Quebec law, including its genesis and the impact of decisions of the Supreme Court of Canada, is available in several booklets on the Department of Justice Canada Web site.(22)

D. Policy on Legislative Drafting

In June 1995, the federal Department of Justice adopted a policy on legislative drafting(23) with the goal of giving Canadians access to federal legislation that – in both the French and English versions – respects the system of law that governs them. According to this policy, the Department of Justice:

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(19) Department of Justice, *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Second Publication*, Ottawa, 2001, available on-line at: http://canada.justice.gc.ca/en/dept/pub/hfl/table.htm.

(20) Department of Justice, in collaboration with the Fiscal and Financial Planning Association, *The Harmonization of Federal Legislation with the Quebec Civil Law and Canadian Bijuralism: Collection of Studies in Tax Law*, Ottawa, September 2002.

(21) Department of Justice, Legislative Services Branch, Bijuralism Drafting and Support Services Group, "Civil Law and Common Law Balanced on the Scales of Thémis: The Example of the Bankruptcy and Insolvency Act," *Revue juridique Thémis*, Vol. 37, 2003, pp. 5-17; "Proposals for harmonizing the Bankruptcy and Insolvency Act with Quebec civil law," *Revue juridique Thémis*, Vol. 37, 2003, pp. 19-55; and "Some legislative policy issues: [with respect to the Bankruptcy and Insolvency Act as raised in the context of harmonization with Quebec civil law]," *Revue juridique Thémis*, Vol. 37, 2003, pp. 145-180. All of the above are available on-line at: http://www.themis.umontreal.ca/revue/rjtvol37num1_2/.

(22) Department of Justice, *Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism*, Booklets 1 to 9, Ottawa, 2001, available on-line at: http://canada.justice.gc.ca/en/dept/pub/hfl/table.html.

(23) Department of Justice, *Policy on Legislative Bijuralism*, Ottawa, June 1995.

- formally recognizes that it is imperative that the four Canadian legal audiences[24] may read federal statutes and regulations in the official language of their choice and find in them terminology and wording that are respectful of the concepts, notions and institutions proper to the legal system of their province or territory;

- will undertake, in drafting both versions of every bill and proposed regulation that touches on provincial or territorial private law, to take care to reflect the terminology, concepts, notions and institutions of both of Canada's private law systems;

- charges the Legislative Services Branch with the mandate of seeing to the respect and the implementation of legislative bijuralism, in bills and proposed regulations.

E. *Federal Law–Civil Law Harmonization Act, No. 1*

The *Federal Law–Civil Law Harmonization Act, No. 1* came into force on 1 June 2001.[25] It repealed the pre-Confederation provisions of the 1866 *Civil Code of Lower Canada* that fell within federal jurisdiction and replaced certain provisions with appropriate provisions on marriage applicable only in the Province of Quebec. It also amended the *Interpretation Act*[26] to recognize Canadian bijuralism and to provide that provincial law relating to property and civil rights applies to federal legislation on a suppletive basis. The *Harmonization Act, No. 1* also amended the *Interpretation Act* to include interpretation rules relating to bijural provisions in federal enactments.

With respect to specific federal law, the first *Harmonization Act* harmonized provisions of the *Federal Real Property Act*, the *Bankruptcy and Insolvency Act* and the *Crown Liability and Proceedings Act* with the civil law of the Province of Quebec. It also harmonized certain provisions of other Acts of Parliament with the civil law of Quebec to the extent that those provisions related to the property law, civil liability law or security law of that province. Following enactment of the *Harmonization Act, No. 1*, Bijural Terminology Records were

(24) This policy identifies four Canadian legal audiences: francophone civil law lawyers, francophone common law lawyers, anglophone civil law lawyers, and anglophone common law lawyers.

(25) S.C. 2001, c. 4.

(26) R.S.C. 1985, c. I-21.

published on the Department of Justice Web site.(27) In 2001 and 2002, harmonization amendments relating to tax law were also enacted by Parliament.(28)

Much of Bill S-10 continues the harmonization of the *Bankruptcy and Insolvency Act* that was commenced by the first *Harmonization Act*. The bill also harmonizes provisions in other statutes, some of which were and some of which were not already partially harmonized by the *Harmonization Act, No. 1*.(29)

DESCRIPTION AND ANALYSIS

The following pages summarize the proposed *Federal Law–Civil Law Harmonization Act, No. 2*, as set out in Bill S-10.

A. Short Title (Clause 1)

Clause 1 of the bill provides that the Act's short title is the *Federal Law–Civil Law Harmonization Act, No. 2*.

B. Amendments to the *Bankruptcy and Insolvency Act* (Clauses 7 to 103)

Clauses 7 to 103 are in Part 1 of the bill. They make many amendments to the *Bankruptcy and Insolvency Act*, either because that Act does not express certain concepts adequately in both English and French or because new terminology is now used.

The proposed changes in the French version of the *Bankruptcy and Insolvency Act* include the following:

- the definition of "*biens*" is repealed (clause 7(2)) and a revised definition for "*bien*" is added (clause 7(9));

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(27) Department of Justice, Civil Law and Comparative Law Section, Legislative Services Branch, *Bijural Terminology Records*, Ottawa, available on-line at: http://canada.justice.gc.ca/en/ps/bj/harm/Index.html.

(28) *An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act*, S.C. 2001, c. 17; *An Act to amend the Customs Act and to make related amendments to other Acts*, S.C. 2001, c. 25; *An Act respecting the taxation of spirits, wine and tobacco and the treatment of ships' stores*, S.C. 2002, c. 22.

(29) Bill S-10 also makes some stylistic changes to the various statutes, for example to be gender-inclusive or to remove legalese (e.g., "theretofore"). These types of changes are not noted in this paper.

- "*pétition en vue d'une ordonnance de séquestre*" and "*ordonnance de mise sous séquestre*" are replaced by "*ordonnance de faillite*" (clauses 7(4), 7(6), 8, 15, 16(1), 23, 26, 28, 44 to 47, 62, 81, 82, 86, 88, 89(2), 92(2), 96, 102(1) and 103);
- "*pétition*" and "*créancier pétitionnaire*" are replaced by "*requête*" and "*créancier requérant*" (clauses 7(6), 28, 29, 53, 80, 88, 92(2) and 99);
- "*pétition en vue d'une ordonnance de séquestre*" is replaced by "*requête en faillite*" (clauses 29, 41, 95 and 99);
- a definition for "*conseiller juridique*" is added (clause 7(7)) and "*avocat*" and "*procureur*" are replaced by "*conseiller juridique*" (clauses 64 and 92(3));
- a provision stating that a reference to "*biens immeubles*" or "*biens-fonds*" equally includes "*biens réels*" is repealed (clause 7(10));
- "*équité*" is replaced by "*equity*" (clauses 7(9), 9, 51 and 102(2));
- "*aliéner*" and "*aliénation*" (or occasionally "*emploi*" or "*vente*") are replaced by "*disposer*" and "*disposition*" (clauses 10, 27, 34, 48, 65, 75, 76, 79, 85, 86, 90 and 91);
- "*fournir (ou déposer) un cautionnement*" is replaced by "*fournir une garantie*" (clauses 12, 18(1), 65 and 92);
- the concept of a "*fondé de pouvoir*" (holder of a power of attorney) under an act constituting a hypothec granted by a debtor is added (clause 13(2));
- the concept of "*faute lourde ou intentionnelle*" for purposes within Quebec is added to the concept of "gross negligence or willful misconduct" (clause 16(2));
- the concepts of "*bien réel*" and "*bien personnel*" are added to those of "*immeuble*" and "*meuble*" (clauses 7(9), 16, 20, 22(1), 37(1) 38, 45 and 47), and "*bail immobilier*" is replaced by "*bail sur un immeuble ou un bien réel*" (clause 37(1));
- the concept of "*sûreté*" is added or other terms are replaced by it, and "*une première charge*" is replaced by "*sûreté de premier rang*" (clauses 16(5), 30, 46 and 49);
- clarification is made that a "*syndic*" is a "*fiduciaire*" for the purpose of the definition of "*fiduciaire*" in the *Criminal Code* (clause 17);
- "*opinion d'un conseiller juridique*" is replaced by "*avis juridique*" (clause 19);
- "*mandataire*" is sometimes replaced by "*représentant,*" such as for the purpose of inspecting records (clauses 21, 22(2) and 44);
- the concept of "*charge*" is added (clauses 22(3) and 47);
- "*droit*" or "*droits*" (e.g., in property) is added in provisions where only "*intérêt*" or "*intérêts*" was mentioned (clauses 22(4), 32(1), 47, 48, 70(2) and 86);
- "*transporter*" *(e.g., les droits ou les biens)* is removed or replaced by "*transférer*" (and in one instance "*céder*") (clauses 24, 27(1), 28, 47, 50(2), 56 to 58 and 73), and "*transport*" is replaced by "*transfert*" (clause 73);
- "*objections*" is added to "*oppositions*" and "*requêtes*" (clause 25(1));

- "*décharge de la garantie*" is replaced by "*mainlevée de la garantie*" (clause 25(2));
- "*exécution*" is replaced by "*procédure d'exécution*" (clauses 27(3), 44, 46 and 58);
- the concept of "*entreplaiderie*" for the English "interpleader" is added to that of "*oppositions*" (clause 16(5));
- the concept of a "*liquidateur de succession*" is added (clause 28);
- "*priorité*" is replaced by "*rang*" (clause 32(2));
- "*tort*" is replaced by "*préjudice*" (clauses 32(3) and 33);
- "*garantie*" is replaced by "*valeur mobilière*" (clause 35);
- the concept of a "*hypothèque légale résultant d'un jugement*" is added (clauses 40 and 44);
- "*mémoire d'honoraires*" is replaced by "*mémoire de frais*" for the English "bill of costs," and "*droits d'enregistrement ou d'inscription d'un immeuble*" is replaced by "*droits d'enregistrement fonciers*" for the English "land registration fees" (clause 44);
- the concept of a "*détenteur enregistré d'une charge*" is added (clause 47);
- "*registrateur*" is replaced by "*fonctionnaire*" (clause 47);
- the concept of "*domaine*" *(e.g., sur un bien réel)* is added for the English "estate" (e.g., in real property) (clauses 7(9), 47 and 60), and in one instance "*domaine*" replaces "*actif*" (clause 86);
- "*un privilège, un droit de rétention et un gage*" is replaced by "*une sûreté ou une charge*" (clause 48);
- "*réalise l'inventaire affecté*" is replaced by "*dispose des stocks grevés*" (clause 49(2));
- "*saisir l'acheteur de tous les droits*" is replaced by "*les droits sont dévolus à l'acheteur*" (clause 51);
- "*sociétés de personnes ordinaires*" is replaced by "*sociétés en nom collectif*" (clause 52(1));
- "*créancier hypothécaire*" is replaced by "*titulaire d'une charge*" (clause 54(2));
- "*mandataire (e.g., autorisé de voter)*" is replaced by "*fondé de pouvoir*" (clauses 63 and 100(1));
- "*remettre sa garantie à*" is replaced by "*renoncer à sa garantie en faveur de*" (clause 67);
- "*se départir des biens*" is replaced by "*aliéner les biens*" (clause 68);
- "*frais et dépenses*" is replaced by simply "*frais*" (clause 69);
- references to "successors" and "heirs" are added for purposes in Quebec, such as being a creditor in relation to funeral expenses (clauses 70(1) and 71);
- "*absence*" is replaced by "*défaut de se présenter*" (clause 78);
- "*ordonnance*" for support, maintenance and affiliation is replaced by "*décision d'un tribunal*" establishing them (clause 83);
- "*coadministrateur avec le failli*" is replaced by "*cofiduciaire avec le failli*" (clause 84);

- "*résistance au tribunal*" is replaced by "*outrage au tribunal*" for the English "contempt of court" (clause 88(2));
- "*une première charge*" is replaced by "*réclamation de premier rang*" (clause 89(1));
- "*frais subis par un créancier*" is replaced by "*frais supporté par un créancier*" and "*émission d'une ordonnance*" is replaced by "*prononcé d'une ordonnance*" (clause 89(1));
- "*met en nantissement*" is replaced by "*nantit*" for the English "pledges" (clause 90(2));
- "*conseiller juridique*" is replaced by "*officier de justice*" for the English "legal officer" (clause 94).

The proposed changes in the English version of the *Bankruptcy and Insolvency Act* include the following:

- the definition of "sheriff" is repealed (clause 7(3)), a definition for "executing officer" is added (clause 7(8)), and "sheriff" is replaced by "executing officer" (clauses 18(2), 27(3), 44, 46 and 74);
- a reference to "money, goods, things in action, land and every description of property, whether real or personal, legal or equitable" in the definition of "property" is replaced by "any type of property" (clause 7(5));
- "receiving order" is replaced by "bankruptcy order" (clauses 7(4), 7(6), 8, 15, 16(1), 23, 26, 28, 29, 41, 44 to 47, 62, 81, 82, 86, 88, 89(2), 92(2), 95, 96, 99, 102(1) and 103);
- "petition" and "petitioning creditor" are replaced by "application" (or "file an application") and "applicant creditor" (clauses 7(6), 28, 29, 41, 53, 80, 88, 89(2), 92(2), 95 and 99);
- definitions for "legal counsel" and "application" are added (clauses 7(7) and 7(8));
- a provision stating that a reference to land or property shall be construed as a reference to an immovable is repealed (clause 7(10));
- the concept of a "mandatary" is added (clauses 10(2), 77, 93 and 97);
- "deposit" security is replaced by "provide" or "give" security (clauses 12 and 18(1));
- "solicitor" is replaced by "legal counsel" (clauses 13(1), 14, 64 and 92(3));
- the concept of a "holder of a power of attorney under an act constituting a hypothec" granted by a debtor is added (clause 13(2));
- the concept of "gross or intentional fault" for purposes within Quebec is added to the concept of "gross negligence or willful misconduct" (clause 16(2));
- the concepts of "immovable" and "movable" are added to those of "real property" and "personal property" (clauses 16, 20, 22(1), 37(1), 38, 45 and 47);
- a "charge" on real property is replaced by "security" on real property (clauses 16(5), 30 and 49(2));

- the concept of a “suretyship” of a guaranty company is added (clause 18(1));
- “disclaimer” by a trustee is replaced by “renunciation” by a trustee (clause 20);
- “agent” is sometimes replaced by “representative,” such as for the purpose of inspecting records (clauses 21, 22(2) and 44);
- “barrister,” and for purposes within Quebec “advocate,” are added to “solicitor” (clauses 22(2) and 44);
- the concept of a “lien” is added (clause 22(3));
- “right” or “rights” (e.g., in property) is added in provisions where only “interest” or “interests” was mentioned (clauses 22(4), 32(1), 47, 48, 60, 70(2) and 86);
- the concept of “resiliating” a lease is added (clauses 22(4), 37, 38 and 39);
- “oppositions” and “motions” are added to “objections” and “applications” (clause 25(1));
- the concept of “nullifying” a contract for purposes in Quebec is added to that of “voiding” a contract (clauses 27(2), 27(5), 50, 52(2), 55(2) and 59);
- the concept of a “null or annullable contract” for purposes in Quebec is added to that of a “void or voidable contract” (clause 59);
- the concept of “opposition proceedings” is added to that of “interpleader proceedings” (clause 27(3));
- the concepts of “succession” and “liquidator of a succession” are added (clauses 28 and 31);
- “legal personal representative” is replaced by “executor or administrator of the estate” (clauses 28 and 31);
- “priority” is replaced by “rank” (clause 32(2));
- the concept of “forfeiture of the term” is added to that of “accelerated payment” (clauses 36 and 42);
- “tenant” is replaced by “lessee,” and “landlord” is replaced by “lessor” (clauses 37 to 39, 49(3), 70(3) and 72);
- the concept of a “legal hypothec of judgment creditors” is added (clauses 40 and 44);
- security payable under an “act” is added to security under an “instrument” or “law” (clause 43);
- the concept of “costs of seizure” for purposes in Quebec is added to that of “costs of distress” (clause 46);
- the concept of a “registered holder of a charge” is added (clause 47);
- “registrar” is replaced by “official,” and “office” is replaced by “registry office” (clause 47);
- the concept of “hypothecary creditor” is added (clause 47);
- “lien, a right of retention, a pledge or a charge” is replaced by “security or charge” (clause 48);

- the concept of “setting up a contract against” someone for purposes in Quebec is added to that of “voiding a contract as against” (clauses 54, 55(1) and 56);
- “holder of a charge” is added to “incumbrancer” (clause 54(2));
- “conveyance,” “delivery” or “transfer” is removed as redundant to other terms already used (clauses 56 to 58);
- the concept of “compensation” is added to that of “set-off” (clauses 58(4) and 98);
- the concept of “solidary liability” is added to that of “joint and several liability” (clause 61);
- “proxy” is replaced by “proxy holder” (clause 63);
- “written instrument” is replaced by “written document” (clause 66);
- references to “successors” and “heirs” are added for purposes in Quebec, such as being a creditor in relation to funeral expenses (clauses 70(1) and 71);
- “conveyances, deeds and instruments” is replaced by “transfers, deeds and instruments or acts” (clause 73);
- the concept of an “alimentary pension” is added to that of “alimony” (clause 83);
- support, maintenance and affiliation “orders” is replaced by “judicial decisions” establishing them (clause 83);
- “first charge” is replaced by “claim ranking above any other claim” (clause 89(1));
- “bond” is replaced by “security” (clause 92);
- the concept of “depositing” securities is added to that of putting them in “safekeeping” or “segregation” (clause 97(1));
- the concept of a “hypothec” is added (clause 97(3));
- “security interests” is replaced by “security” (clause 100(2)).

Details regarding the reasons for some of the above amendments to the French and English versions of the *Bankruptcy and Insolvency Act* are available in a special issue of the *Revue juridique Thémis*.(30) Examples of harmonization from the *Bankruptcy and Insolvency Act* are also available in a booklet on the Department of Justice Web site.(31)

(30) See footnote 21, above.

(31) Department of Justice, *Harmonization of Federal Legislation with Quebec Civil Law: Some Examples from the Bankruptcy and Insolvency Act*, Ottawa, available on-line at: http://canada.justice.gc.ca/en/dept/pub/hfl/fasc8/fascicule8_ptitre.html.

C. Amendments to Other Acts (Clauses 2 to 6 and 104 to 181)

Clauses 2 to 6 and 104 to 181, which are in Part 1 of the bill, make a variety of miscellaneous amendments to the following Acts:

- *Animal Pedigree Act*, R.S.C. 1985, c. 8 (4th Supp.);
- *Bank of Canada Act*, R.S.C. 1985, c. B-2;
- *Canada Council for the Arts Act*, R.S.C. 1984, c. C-2;
- *Canada Grain Act*, R.S.C. 1985, c. G-10;
- *Canada Pension Plan*, R.S.C. 1985, c. C-8;
- *Canada Wildlife Act*, R.S.C. 1985, c. W-9;
- *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);
- *Defence Production Act*, R.S.C. 1985, c. D-1;
- *Department of Industry Act*, S.C. 1995, c. 1;
- *Employment Insurance Act*, S.C. 1996, c. 23;
- *Energy Supplies Emergency Act*, R.S.C. 1985, c. E-9;
- *Excise Act*, R.S.C. 1985, c. E-14;
- *Explosives Act*, R.S.C. 1985, c. E-17;
- *Farm Products Agencies Act*, R.S.C. 1985, c. F-4;
- *Law Commission of Canada Act*, S.C. 1996, c. 9;
- *An Act to incorporate the Jules and Paul-Émile Léger Foundation*, S.C. 1980-81-82-83, c. 85;
- *National Arts Centre Act*, R.S.C. 1985, c. N-3;
- *National Energy Board Act*, R.S.C. 1985, c. N-7;
- *National Research Council Act*, R.S.C. 1985, c. N-15;
- *Natural Sciences and Engineering Research Council Act*, R.S.C. 1985, c. N-21;
- *Pesticide Residue Compensation Act*, R.S.C. 1985, c. P-10;
- *Social Sciences and Humanities Research Council Act*, R.S.C. 1985, c. S-12;
- *State Immunity Act*, R.S.C. 1985, c. S-18;
- *Telecommunications Act*, S.C. 1993, c. 38;
- *Visiting Forces Act*, R.S.C. 1985, c. V-2.

The proposed changes in the French version of some of these Acts include the following:

- "*représentants*" is replaced by "*mandataires*" (clauses 2 to 4);
- "*réalisation des placements*" is replaced by "*disposition des placements*" for the English "disposition of any investment" (clause 104);
- "*par autre mode de libéralités*" is replaced by "*autrement*" and "*libéralités*" is replaced by "*acquisition*" (clauses 105, 116, 143, 146, 165, 166, 170 and 171);
- "*détiennent des titres de propriété ou des intérêts pécuniaires*" is replaced by "*ont des intérêts, pécuniaires ou autres*" (clause 106);
- "*se départir entièrement des droits et intérêts*" is replaced by "*disposer … des biens auxquels sont rattachés les intérêts*" (clause 106);
- "*droit*" or "*droits*" (e.g., in property) is added in provisions where only "*intérêt*" or "*intérêts*" was mentioned (clauses 107, 108, 110, 115, 160, 177 and 179);
- the concepts of "*liquidateur de succession*" and "*administrateurs successoraux*" are added (clauses 111 and 113);
- "*aliéner*" and "*aliénation*" are replaced by "*disposer*" and "*disposition*" (clauses 114, 115, 117, 118, 123 to 127, 129, 147, 154, 163, 176 and 179);
- "*usage*" is replaced by "*utilisation*" (clause 115);
- "*cession de bail*" is replaced by "*location*" (clause 115);
- the concept of "*résolution d'un contrat*" is added to that of "*résiliation d'un contrat*" (clause 128);
- "*proclamations, commissions, lettres patentes, brefs et autres actes et documents*" becomes simply "*documents*" (clause 131);
- A Deputy Registrar General, rather than the Registrar General of Canada, may certify documents under the *Department of Industry Act* (clause 131);
- "*documents, actes ou pièces relatifs à des fiducies, hypothèques, cautionnements, charges, baux, ventes, gages, baillements, cessions, abandons*" becomes simply "*documents ou avis*" (clause 132);
- "*agents*" is removed or replaced by "*mandataires*" (clauses 135 and 178);
- "*détenir*" is added for the English "hold" in relation to real property (clauses 140 and 142);
- "*agent*" is replaced by "*employé*" (clause 141);
- "*créer des postes*" is replaced by "*prévoir la nomination*" for the English "provide for the appointment" (clause 144);
- a definition of "*terrains*" is amended by replacing a reference to "*biens-fonds, bâtiments et dépendances de toute sorte qui s'y trouvent et droits, servitudes et privilèges grevant la*

surface ou le sous-sol des terrains et ces biens” with “*bien réels et intérêts fonciers, ainsi [que] droits et intérêts afférents*” (clause 147);

- a definition of “*terrains*” is amended to include, for the purposes of Quebec, “*immeubles ainsi [que] droits afférents et … droits des locataires relativement aux immeubles*” (clause 147);
- the concepts of “*bien réel*” and “*bien personnel*” are added to “*bien immeuble*” and “*bien meuble*” (clauses 147, 151, 159 and 161);
- “*titulaire de droits, notamment d’aliénation*” is replaced by “*titulaire d’un droit ou d’un intérêt*” (clause 149);
- A distinction is made between an “*intérêt [dans les terrains ou biens]*” for purposes outside Quebec and a “*droit [sur les terrains ou biens]*” for purposes within Quebec (clauses 152, 172 and 177);
- “*biens-fonds*” is replaced by “*biens*” (clause 154);
- “*céder*” and “*cession*” are replaced by “*transférer*” and “*transfert*” (clauses 155 and 157);
- “*mandataire*” is replaced by “*personne autorisée*” for the purpose of inspecting records (clause 164);
- “*être subrogé dans les droits de poursuite de l’indemnitaire*” is replaced by “*pouvoir exercer, au nom de l’indemnitaire, tout recours de ce dernier*” (clause 167);
- the concept of “*annulation de jugement*” is added to that of “*rétraction de jugement*” (clause 173);
- provisions are broadened to include references to “*personnes ou entités qui agissent au nom ou pour le compte d’autrui*” or to a “*personne qui agit au nom et pour le compte d’un tel membre ou de sa succession*” (clauses 174 and 181);
- the concepts of “*séquestre*” and “*administrateur du bien d’autrui*” are added (clause 175);
- “*propriété*” is replaced by “*biens*” (clause 180).

The proposed changes in the English version of some of these Acts include the following:

- the concept of a “mandatary” is added (clauses 2 to 6, 109, 130, 135 to 137, 139, 141, 142, 144, 145, 150, 153, 162, 168, 169, 176 and 178);
- “pecuniary or proprietary interest” is replaced by “pecuniary or other interest” (clause 106);
- “interest” is replaced by “property giving rise to an interest” (clause 107);
- “forthwith” is replaced by “without delay” for the French “sans délai” (clause 107);
- “right” or “rights” (e.g., in property) is added in provisions where only “interest” or “interests” was mentioned (clauses 107, 108, 110, 115, 177 and 179);
- the concept of a “liquidator of a succession” is added (clauses 111 and 113);

- the concept of “solidary liability” is added to that of “joint and several liability” (clauses 112, 120 to 122, 133 and 134);
- the concept of a “providing a suretyship” is added to that of “posting a bond” (clause 119);
- the concept of “resolution of a contract” is added to those of “rescission” and “termination” of a contract (clause 128);
- “proclamations, commissions, letters patent, writs and other instruments and documents” becomes simply “documents” (clause 131);
- A Deputy Registrar General, rather than the Registrar General of Canada, may certify documents under the *Department of Industry Act* (clause 131);
- “instrument of trust, mortgage, hypothec, bond, suretyship, charge, lease, sale, bailment, pledge, assignment, surrender or other instrument, document or record” becomes simply “document or record” (clause 132);
- the concept of “hypothecary creditor” is added (clause 138);
- a definition of “lands” is amended by replacing a reference to “real property, messuages, lands, tenements and hereditaments of any tenure, and any easement, servitude, right, privilege or interest in … the same” by “real property and any interest or right in real property or land” (clause 147);
- a definition of “lands” is amended to include, for the purposes of Quebec, “any immovable, any right in an immovable and the right of a lessee in respect of any immovable” (clause 147);
- the concepts of “immovable” and “movable” are added to those of “real property” and “personal property” (clauses 147, 151, 159 and 161);
- a person “entitled to convey or … interested in … lands” is replaced by a “holder of an interest or right in … lands” (clause 149);
- a distinction is made between an “interest” in land or property for purposes outside Quebec and a “right” in land or property for purposes within Quebec (clause 152, 172 and 177);
- “alienate” is replaced by “otherwise dispose” (clause 154);
- “convey” and “conveyance” are replaced by “transfer” (clauses 155 and 157);
- the concept of “conceding” lands along a pipeline is added to those of “granting” or “selling” such lands (clause 156);
- the concept of “nullifying” a contract for purposes in Quebec is added to that of “voiding” a contract (clause 158);
- the concept of “revoking” a judgment is added to that of “setting aside” a judgment (clause 173);
- provisions are broadened to include references to persons (or entities) that act in the name of, on behalf of, or for the benefit of another (clauses 174 and 181);
- the concepts of a “trustee in bankruptcy,” “sequestrator” and “administrator of the property of another” are added (clause 176).

Details regarding the reasons for some of the above amendments to the French and English versions of the various Acts are available in Explanatory Notes attached to the 2003 Department of Justice Consultation Paper.(32)

D. Consequential Amendments (Clauses 182 to 204)

Clauses 182 to 204, which comprise Part 2 of the bill, make consequential amendments to the following Acts:

- *Advance Payments for Crops Act*, R.S.C. 1985, c. C-49;
- *Agricultural Marketing Programs Act*, S.C. 1997, c. 20;
- *Air Travellers Security Charge Act*, S.C. 2002, c. 9;
- *Bank Act*, S.C. 1991, c. 46;
- *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;
- *Canada Cooperatives Act*, S.C. 1998, c. 1;
- *Canada Corporations Act*, R.S.C. 1970, c. C-32;
- *Canada Student Financial Assistance Act*, S.C. 1994, c. 28;
- *Canadian Payments Act*, R.S.C. 1985, c. C-21;
- *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;
- *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);
- *Employment Insurance Act*, S.C. 1996, c. 23;
- *Excise Act, 2001*, S.C. 2002, c. 22;
- *Excise Tax Act*, R.S.C. 1985, c. E-15;
- *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);
- *Insurance Companies Act*, S.C. 1991, c. 47;
- *Prairie Grain Advance Payments Act*, R.S.C. 1985, c. P-18.

All of clauses 182 to 204 involve replacing "*ordonnance de sequestre*" or "*ordonnance de mise sous sequestre*" by "*ordonnance de faillite*" in the French version of these Acts. In the English versions, "receiving order" is replaced by "bankruptcy order." Clauses 189 and 190 include the additional change of replacing references to the *Winding-up Act*, *Bankruptcy*

(32) *Consultation Paper No. 2*, Explanatory Notes, available on-line at: http://canada.justice.gc.ca/en/cons/harm/Fiches.pdf.

Act, *Loi sur les liquidations* and *Loi sur la faillite*, respectively, by *Winding-up and Restructuring Act*, *Bankruptcy and Insolvency Act*, *Loi sur les liquidations et les restructurations* and *Loi sur la faillite et l'insolvabilité*.

E. Coordinating Amendments and Coming into Force (Clauses 205 to 209)

Clauses 205 to 209, which comprise Part 3 of the bill, make coordinating amendments to the following Acts:

- *Federal Law–Civil Law Harmonization Act, No. 2*;
- *Bank Act*, S.C. 1991, c. 46;
- *Canada Grain Act*, R.S.C. 1985, c. G-10;
- *Explosives Act*, R.S.C. 1985, c. E-17.

Bill S-10 comes into force when it receives Royal Assent.

COMMENTARY

As of the date of writing, there was very little, if any, commentary on Bill S-10 in the media. Nonetheless, as with the first *Harmonization Act*, this bill has the support of many members of the legal community and academics specializing in civil law.

Although the Standing Senate Committee on Legal and Constitutional Affairs reported the bill without amendment, it did make observations.(33) In particular, it noted that Bill S-10 is symbolic of the integration of two of the greatest legal traditions in the world and is another step towards the goal of making federal law more accessible, more efficient, and representative of Canada and Canadians. At the same time, however, the Committee observed that there is a third historical source of law, Aboriginal law, which is composed of the customs and traditions central to the culture of Aboriginal peoples and which Canada has yet to adequately address. The Standing Committee on Legal and Constitutional Affairs took the position that Aboriginal legal traditions should be integrated alongside the civil and common law in a manner that will better reflect Canada's diversity.

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(33) Standing Senate Committee on Legal and Constitutional Affairs, *Second Report*, 1st Session, 38th Parliament, 25 November 2004.