



THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

March 27, 2009

Mr. Tim Meisner
Director General, Marine Policy
Transport Canada
25th Floor, Tower C
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Mr. Meisner,

RE: Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

I write to you on behalf of the National Maritime Law Section of the Canadian Bar Association (the CBA Section) in response to the Information Paper dated February 2009, on the United Nation's Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Convention).

The Canadian Bar Association is a national association representing over 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

In our May 26, 2008 letter to Tracy Chatman of the Department, we outlined the implications of the Rotterdam Convention for Canadian maritime law, some beneficial and some problematic. One of the more controversial portions of the Convention is the "arbitration and jurisdiction" clause for which there are "opt out" provisions. It may well be that use of these "opt out" provisions would satisfy some of the concerns. Our primary concern, however, is that there be harmonization of the rules on cargo liability with our major trading partners. Over the years, there have been a number of attempts internationally to establish uniformity in this area of the law. To date, none of those attempts has managed to achieve the desired level of acceptance. We appreciate the work of Transport Canada in this regard, culminating in the approval and adoption of the Rotterdam Convention by the General Assembly of the United Nations.

While the Rotterdam Convention is not perfect, it likely represents the best attempt possible to achieve harmonization today. Accordingly, we would recommend as a first step that Canada send representatives to Rotterdam in September 2009 and sign the Convention, subject to

ratification. In the interim, Canada should maintain the *Hague-Visby Rules* as its governing legislation on cargo liability and should review those Rules again in 2010. At that time, the intentions of Canada's major maritime trading partners regarding the Convention should be known.

If Canada signs the Convention, we would be very pleased to assist the Department in its consideration of what changes need to be made to Canadian maritime law to ratify the Convention.

Yours very truly,

(Original signed by Kerri A. Froc for Simon P. Barker)

Simon P. Barker
Chair, National Maritime Law Section