THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

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Via email: genevieve.st-amour@tc.gc.ca

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Dear Ms. St-Amour:

Re: Nairobi International Convention on the Removal of Wrecks, 2007

I write to you on behalf of the National Maritime Law Section of the Canadian Bar Association (the CBA Section) in response to the Discussion Paper, dated April 1, 2010, regarding the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention).

The Canadian Bar Association is a national association representing 37,000 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.

The Nairobi Convention addresses liability and compensation for shipwrecks located outside territorial waters. The number of derelict or abandoned vessels in Canadian waters has been on the increase, especially on the west coast. Accession to the Nairobi Convention, with its 'compulsory insurance and direct access' provisions, would give Canada an additional tool to deal with future incidents resulting in derelict vessels. For this reason alone, Canada should, if it accedes to the Convention, extend the application of the Convention to Canada's internal waters and territorial sea.

Extending the application of the Convention to anywhere in Canadian waters including the exclusive economic zone (EEZ) would also benefit Canada when responding to incidents in the Arctic, in addition to strengthening Canada's sovereignty claims in that part of the country.

However, Canada should not go it alone in adopting the Nairobi Convention but should only adopt the Convention if it generates significant international support. The business of shipping is an international one. Often a ship is registered in a country other than the coastal state. Ownership, chartering, management and operation of a ship may be in the hands of companies located in a number of different countries. The crew of ships may represent many different nationalities.

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This reality was recognized by the Supreme Court of Canada when it stated, "The nature of navigation and shipping activities as they are practised in Canada makes a uniform maritime law a practical necessity. Much of maritime law is the product of international conventions, and the legal rights and obligations of those engaged in navigation and shipping should not arbitrarily change according to jurisdiction."[1] Its comments apply not only to Canadian domestic maritime law, but to maritime law internationally. We should ensure that in acceding to the Convention, we are contributing to uniformity in maritime law, not adding more complexity. Equally, Canada should consult potentially affected insurers, both domestic and international, before a decision is made on adopting the Convention, in light of the impact of its 'compulsory insurance and direct access' provisions.

Yours truly,

(original signed by Kerri Froc for Peter Swanson)

Peter Swanson
Chair, National Maritime Law Section

1 *Ordon Estate v. Grail,* [1998] 3 S.C.R. 437 at para. 71, citing *Whitbread v. Whalley*, [1990] 3 S.C.R. 1273.