



February 7, 2011

Via email: francois.marier@tc.gc.ca

François Marier
Manager, Policy Development
International Marine Policy
Transport Canada
Place de Ville, Tower C, 25th Floor
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Mr. Marier:

Re: International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010

I write to you on behalf of the National Maritime Law Section of the Canadian Bar Association (CBA Section) in response to your Discussion Paper, dated October 2010, entitled, *Maritime Transport of Hazardous and Noxious Substances: Liability and Compensation* (the Discussion Paper).

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 CBA Section has over 400 members who have expertise in provincial, national, and international issues associated with the law and practice of shipping.

As the Discussion Paper sets out, the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* establishes a shared liability regime to compensate claimants for damages arising from the international or domestic carriage of HNS by seagoing vessels. The regime established by the Convention provides for shipowners' liability (tier 1) and the HNS Fund made up of contributions from the receivers or importers of HNS cargo (tier 2).

The Discussion Paper makes the following recommendations:

1. The *Marine Liability Act* be amended to implement the HNS Convention in Canada;
2. Transport Canada put in place the means for one year of reporting HNS receipts prior to ratification, as required by the HNS Convention; and
3. Canada ratify the HNS Convention along with proposed methods for proceeding with the implementation of the various aspects of the Convention in Canada as soon as is practicable.

We agree generally with the recommendations in the Discussion Paper. For the sake of international uniformity of law, however, Canada should not go it alone in adopting the Convention but should only implement 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.

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.

If Canada decides to implement the HNS Convention we agree doing so through the *Marine Liability Act* is the preferred avenue. We would be pleased to provide feedback on proposed amendments to the *Act*.

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.