



December 7, 2005

The Honourable Irwin Cotler, P.C., M.P.
Minister of Justice and Attorney General
House of Commons
Ottawa ON K1A 0A6

Mr. Yvon Marcoux
Minister of Justice and Attorney General Québec
Édifce Louis-Philippe-Pigeon, 9th Floor
1200, route de l'Église
Sainte-Foy QC G1V 4M1

Dear Minister Cotler and Minister Marcoux:

Re: ICSID Convention

I write on behalf of the Canadian Bar Association (CBA) regarding Canada's failure to sign the 1965 *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States* (the ICSID Convention). The Convention forms a central element in securing the rule of law in international investment. Canada is not among the 142 countries that are signatories of the ICSID Convention. It is the only significant developed country that has not signed. Over the years, Quebec and Canada have been negotiating issues that require resolution so Canada may take this first step towards ratification. The CBA urges both governments to make a fresh and sustained effort to reach the necessary compromises.

Many of our members advise business clients in Quebec and elsewhere in Canada on their overseas investments. Quebeckers benefit from the presence of many highly successful international businesses within the province. Companies like Abitibi-Consolidated, Alcan, Bombardier, Power Corporation, Quebecor, SNC-Lavalin, among many others, demonstrate the importance of international investment rules to the economic future of Quebec. Unfortunately, Canada's failure to sign the ICSID Convention prevents these companies from accessing the most effective dispute settlement mechanism available for international investors. Moreover, arbitration pursuant to the ICSID Convention is acknowledged under NAFTA, and could be used to protect Canadian investments in the United States.



Forty years of experience since the conclusion of the ICSID Convention make it abundantly clear that the benefits of membership are immense and there are no obvious costs. Arbitration under the ICSID Convention is entirely voluntary, even for state parties (unless they have consented to it by treaty). Canada and Quebec have cooperated successfully in the past to reach the necessary compromises allowing Canada to sign other international instruments, such as the *United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards*. We strongly urge both governments to recognize the benefits of Canada signing the ICSID Convention and to take necessary steps to resolve this matter without further delay.

Yours truly,

(Original copy signed by Brian Tabor)

Brian A. Tabor, Q.C.

cc: Mr. Claude Béchar, Minister of Développement économique, de l'Innovation et de l'Exportation Québec

Mr. Benoît Pelletier, Minister of the Secrétariat aux affaires intergouvernementales canadiennes, Ministère du Conseil exécutif Québec