

**NOTICE OF INTENT  
TO SUBMIT A CLAIM TO ARBITRATION  
UNDER SECTION B OF CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**MARVIN GOTTLIEB, ELAINE GOTTLIEB, M. GOTTLIEB  
ASSOCIATES, INC., MARVIN & ELAINE GOTTLIEB FAMILY  
FOUNDATION, GOTTLIEB INVESTMENTS LP,  
M. GOTTLIEB ASSOCIATES, INC. PROFIT SHARING PLAN**

**INVESTORS**

**v.**

**THE GOVERNMENT OF CANADA (“CANADA”)**

**PARTY**

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement (“NAFTA”), the Investors serve this Notice of Intent to Submit a Claim to Arbitration for breach of Canada's obligations under the NAFTA.

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**I. NAME AND ADDRESS OF THE DISPUTING INVESTORS**

The following investors are referred to as the “Gottlieb Investors Group” or the “Investors”:

**Marvin Gottlieb,**

**Elaine Gottlieb,**

**M. Gottlieb Associates, Inc.,**

**Marvin & Elaine Gottlieb Family Foundation,**

**Gottlieb Investments LP,**

**M. Gottlieb Associates, Inc. Profit Sharing Plan**

All located at:

6009 Milwaukee Ave.

Chicago, IL 60646

USA

**II. BREACH OF OBLIGATIONS**

1. The Investor alleges that Canada has breached its obligations under Section A of Chapter 11 of the NAFTA, under the following provisions:

- (a) Article 1102 – National Treatment;
- (b) Article 1103 – Most-Favored-Nation Treatment;
- (c) Article 1105 – Fair and Equitable Treatment; and
- (d) Article 1110 – Expropriation.

2. The applicable provisions of the NAFTA are as follows:

**Article 1102: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

### **Article 1103: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

### **Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

### **Article 1110: Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 1105(1); and
- (d) on payment of compensation in accordance with paragraphs 2 through 6.

## **III. FACTUAL BASIS FOR THE CLAIM**

### **Broken Trust**

3. On October 31, 2006, the Government of Canada caused massive destruction to the investment holdings of thousands of individual American investors when it announced its change in the tax treatment of Canadian income trusts in the energy sector. These arbitrary and discriminatory actions of the Government

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have effectively eliminated the income trust model for investments in the energy sector in Canada.

4. It has been estimated that all investors in Canadian income trusts have experienced unprecedented capital losses on the order of \$28 to \$37 Billion. The losses in the energy sector alone are considered to be half or more of these totals. The losses to non-resident, mostly U.S. based, investors in energy trusts is conservatively estimated as being over \$5 Billion. These unjustifiable measures to eliminate income trusts in the energy sector were sadly carried out by a Government that had repeatedly promised to be the protector of these same investors.
5. One of the individual American investors who experienced these losses is Marvin Gottlieb of Chicago, Illinois, a U.S. national who widely invested in Canada's energy sector income trusts (as listed below) in reliance upon the various institutional and political promises made by the Government of Canada about the future treatment that such investors and their investments could expect. Mr. Gottlieb, his wife Elaine, and the rest of the Gottlieb Investors Group submit this Notice of Intent to Submit a Claim to Arbitration ("Notice of Intent") because their trust in the Government of Canada was broken on October 31, 2006. The actions of the Government on that date and following also resulted in Canada's breach of its NAFTA obligations as alleged in Section II above.
6. The Investors' trust was broken because they took the Canadian Government at its word and relied upon its reputation as the Government of an advanced, industrial economy supported by a predictable and transparent tax and regulatory regime. Until October 31, 2006, Canada had one of the best reputations in the world for being a stable, reliable and safe place to invest. "Fairness and certainty" has been the mantra of Canadian Governments. One of the fundamental objectives of the NAFTA itself is "to ensure a predictable commercial framework for business planning and investment."

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7. High investor confidence was instilled by years of policy stability fostered by successive Canadian governments that genuinely reflected these values and objectives. The Canadian Government has in years past been trusted and thought to understand what is needed to attract investors to capital-intensive industries, such as the investments made by the Investor through the income trust vehicle to develop the mature basins of Western Canada's traditional oil and gas fields.
8. The trust of the Investors was broken because repeated public promises were made by two successive Canadian Governments to maintain the taxation regime on income trusts that existed prior to October 31, 2006. The Investors' trust was broken because they were enticed to invest using the income trust vehicle through the promise of an effective withholding tax rate contained within a long-standing Tax Treaty. Expectations were created, promises were made and relied upon. These expectations were not met, and these promises were not kept.
9. Finally, this is a claim about the unjustifiable destruction of a successful business model that allowed the intermediate segment of the Canadian energy sector to thrive and provide thousands of Canadian and American investors with reliable equity growth and a steady flow of returns on their investments. The income trust model was particularly well-suited to this segment of the energy sector. Despite the success of the trust model in Canada's intermediate oil and gas sector, the Government of Canada effectively banned its use for the sector on October 31, 2006. This is a claim about the violation by Canada of its international obligations pursuant to the NAFTA, but ultimately it is a simple case of a broken trust.

**The Investors and their Investments**

10. The Investors are nationals or enterprises of the United States that have made investments into the Canadian energy sector in Canadian business entities broadly referred to as "energy trusts".

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11. Marvin Gottlieb has been active in international corporate affairs for 35 years. In 1965, he founded M. Gottlieb Associates, Inc. (MGA), an international manufacturers' representative company that specializes in matching world-class technologies with the needs of its Fortune 500 clients. An experienced investor, Mr. Gottlieb created an investment portfolio for himself, his family and his enterprises (referred to collectively as the "Gottlieb Investors Group"). This portfolio was constructed as a long-term investment specifically designed to maintain a certain income level, and the size of the allocation to Canadian energy trusts grew over time based upon the assurances from the Government of Canada that the trust sector would not be taxed.
12. With his many contacts and business experience with Canada over the years, he had gained a great deal of confidence in Canada and Canadians. As a result, he invested widely in Canada, and in particular he invested in Canadian income trusts in the energy sector. The recent actions of the Government of Canada on October 31, 2006 created a deep sense of betrayal in Mr. Gottlieb because of the broken promises and expectations described above.
13. As of October 31, 2006, the Gottlieb Investors Group owned publicly-traded units in certain Canadian energy trusts and investments that included energy trust unit holdings, as follows:
  1. ALTAGAS INCOME TRUST  
1700, 355 - 4th Avenue, S.W.  
Calgary, Alberta, Canada T2P 0J1
  2. ARC ENERGY TRUST  
2100, 440 2nd Ave SW  
Calgary, Alberta, Canada T2P 5E9
  3. BAYTEX ENERGY TRUST  
Suite 2200, Bow Valley Square II  
205 - 5th Avenue S.W.

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Calgary, Alberta, Canada T2P 2V7

4. BONAVIDA ENERGY TRUST

700, 311 6th Avenue S.W.

Calgary, Alberta, Canada T2P 3H2

5. BONNETT'S ENERGY SERVICES TRUST

RR2 Site 33 Box 1

Grande Prairie, AB Canada T8V 2Z9

6. BONTERRA ENERGY INCOME TRUST

Suite 901, 1015 Fourth Street S.W.

Calgary, Alberta, Canada T2R 1J4

7. BROMPTON EQUAL WEIGHT INCOME FUND

Suite 2930, P.O. 793 Bay

Wellington Tower BCE Place, 181 Bay Street,

Toronto, ON, Canada M5J 2T3

8. CANADIAN OIL SANDS TRUST

2500 First Canadian Centre

350-7th Avenue SW

Calgary, Alberta, Canada T2P 3N9

9. CANETIC RESOURCES

1900, 255 - 5th Avenue SW

Calgary, Alberta, Canada T2P 3G6

10. CCS INCOME TRUST

2400, 530 - 8 Ave. S.W.

Calgary, Alberta, Canada T2P 3S8

11. COUNTRYSIDE POWER

Acquired on August 14, 2007 by:

Fort Chicago Energy Partners L.P.

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2150, 300 - 5th Avenue S.W.

Calgary, Alberta, Canada T2P 3C4

12. CRESCENT POINT ENERGY TRUST

Crescent Point Energy Trust

2800, 111 - 5th Avenue SW

Calgary, AB, Canada T2P 3Y6

13. ENERPLUS RESOURCES FUND

The Dome Tower

3000, 333 - 7th Avenue SW

Calgary, Alberta, Canada T2P 2Z1

14. ESSENTIAL ENERGY SERVICES TRUST

950, 330 - 5th Avenue SW

Calgary, Alberta T2P 0L4

15. FAIRBORNE ENERGY TRUST

3400, 450 - 1st Street SW

Calgary, AB, Canada T2P 5H1

16. FOCUS ENERGY TRUST

3300, 205-5th Ave. S.W.

Calgary, Alberta, Canada T2P 2V7

17. FREEHOLD ROYALTY TRUST

c/o Freehold Resources Ltd.

400, 144 - 4th Avenue S.W.

Calgary, Alberta, Canada T2P 3N4

18. GREAT LAKES HYDRO INCOME FUND

480 de la Cité Boulevard

Gatineau, Québec, Canada J8T 8R3

19. HARVEST ENERGY TRUST

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2100, 330 - 5th Ave. SW

Calgary, AB, Canada T2P 0L4

20. KEYERA FACILITIES INCOME FUND

Suite 600, Sun Life Plaza, West Tower

144 - 4th Avenue SW

Calgary, Alberta, Canada T2P 3N4

21. MACQUARIE POWER & INFRASTRUCTURE INCOME FUND

Macquarie Power Management Ltd.

Canadian Pacific Tower, TD Centre

100 Wellington St. W., Suite 2200

Toronto, ON, Canada M5K 1J3

22. NAL OIL & GAS TRUST

600 – 550 Sixth Avenue SW

Calgary, Alberta, Canada T2P 0S2

23. PARAMOUNT ENERGY TRUST

500, 630 - 4th Avenue SW

Calgary, Alberta, Canada T2P 0J9

24. PEMBINA PIPELINE INCOME FUND

2000, 700-9th Avenue S.W.

Calgary, Alberta, Canada T2P 3V4

25. PENGROWTH ENERGY TRUST

2900, 240 - 4th Avenue S.W.,

Calgary, AB, Canada T2P 4H4

26. PENN WEST ENERGY TRUST

Suite 2200, 425 - 1st Street S.W.

Calgary, Alberta, Canada T2P 3L8

27. PEYTO ENERGY TRUST

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Suite 2900, 450 - 1st Street SW

Calgary, AB, Canada T2P 5H1

28. PRECISION DRILLING TRUST

4200, 150-6th Avenue S.W.

Calgary, Alberta, Canada T2P 3Y7

29. PRIMEWEST ENERGY TRUST

5100, 150 - Sixth Avenue SW

Calgary, Alberta Canada T2P 3Y7

30. PROGRESS ENERGY TRUST

1200, 205 - 5th Avenue SW

Calgary, Alberta, Canada T2P 2V7

31. SHININGBANK ENERGY INCOME FUND

Shiningbank Energy Income Fund successfully completed a merger with PrimeWest Energy Trust effective July 11, 2007.

32. SOUND ENERGY TRUST

1800, 635 - 8th Avenue S.W.

Calgary, Alberta, Canada T2P 3M3

33. STONEHAM DRILLING TRUST

1230, 335 - 8th Avenue SW

Calgary, Alberta, Canada T2P 1C9

34. TAYLOR NGL LIMITED PARTNERSHIP

2200 800 5th Avenue S.W.

Calgary, Alberta, Canada T2P 3T6

35. TRINIDAD ENERGY SERVICES INCOME TRUST

2500, 700 - 9 Avenue SW

Calgary, AB, Canada T2P 3V4

36. VERMILION ENERGY TRUST

2800, 400 4th Avenue S.W.

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Calgary, Alberta, Canada T2P 0J4

37. ZARGON ENERGY TRUST

700, 333 – 5th Avenue S.W.

Calgary, Alberta, Canada T2P 3B6

14. The energy trust mechanism has been used by investors in Canada's intermediate energy sector, in substantially the same form, for the past 20 years. Also known as a "flow-through-entity" (FTE), use of the energy trust was permitted under Canada's *Income Tax Act* and related regulations, policies and practices. Each of the energy trusts listed above, and related corporate entities, were "enterprises" organized under the laws of Canada and/ or Alberta, as defined under NAFTA Article 201 and enterprises are defined as a form of protected "investment" under NAFTA Article 1139. Units held by U.S. and Mexican Investors in these enterprises also may constitute investments as defined under NAFTA Article 1139. In those instances in which an investor is entitled to share in income or profits of the energy trust in which it has invested by way of a regular distribution or other form of return, such interest also qualifies as an "investment" pursuant to NAFTA Article 1139.

**Promises Made, Promises Not Kept**

15. During the Canadian Federal Election of late 2005 and early 2006, Conservative Party Leader (and current Prime Minister), the Rt. Hon. Stephen Harper, ran under the slogan of "Promises Made, Promises Kept". This slogan was constantly repeated by Conservative Party candidates, especially Mr. Harper, in order to emphasize the message that a new Conservative Government would not break its promises, as he alleged the outgoing Liberal Government had done.
16. One of the defining issues in the election campaign involved the Liberal Government's handling of the income trust file. In the fall of 2005, then Liberal Finance Minister, the Hon. Ralph Goodale, initiated a wide-ranging consultation process concerning the use and regulation of the income trust vehicle. During

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the election campaign, the Conservative Party attacked the Liberal Party's mere attempt to consult upon the income trust issue as:

**“... an inexcusable policy blunder that [had] destroyed the retirement savings of Canadians invested in income trusts.”**[Emphasis added.]

17. This campaign rhetoric obscured the fact that the Liberal Finance Minister had actually announced on November 23, 2005, which was prior to the election that after detailed consultations the Liberal Government had decided not to make any changes to tax policy supporting the income trust model. This was a position that was strongly endorsed by the incoming Conservative Government, whose election platform stated:

**“A Conservative government will: ... preserve income trusts by not imposing any new taxes on them.”**[Emphasis added.]

18. In summary, after a brief but detailed review and consultation of tax policy related to income trusts in the fall of 2005, both the outgoing and incoming Governments of Canada made numerous official statements unambiguously affirming tax policy supporting use of the income trust model by domestic and foreign investors.
19. On January 23, 2006, the Conservative Party formed the Government of Canada. At that time, the income trust issue was widely considered by commentators and professionals to have been definitively put to rest in Canada. The outgoing Government had announced that the issue was settled, and the incoming Government had aggressively denounced any future efforts to change taxation related to the income trusts, including the energy trust investments of the Investors. By any reasonable assessment, the promises made by the highest officials of two Governments of Canada could be relied upon by foreign investors, as they were clearly intended by these Governments to be relied upon by investors in the energy trust sector.

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20. The capital markets took great reassurance from the election of a Conservative Party Government because of the unambiguous guarantees it provided that the interests of income trusts and their unit holder investors would not be harmed, much less radically, arbitrarily and without notice. In other words, it was reasonable for all energy trust investors to hold strong expectations that this new Government would not abruptly change the income trust tax regime, and certainly not alter or eliminate the entire economic model upon which the sector had been built.
21. Following the election of the Conservative Government, many investors, including the Gottlieb Investors Group, made additional investments in energy trusts, and continued to maintain existing investments in these trusts, in reliance upon these most reasonable of expectations.
22. These Investors' expectations were strengthened by the long-standing promise of the Government of Canada, found in Article XXII:2 the *Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital* (the "Canada-US Tax Treaty"), that returns on investments made by them in Canada through a trust vehicle – i.e. income distributed by such trusts - would be taxed at an effective rate of no more than 15%. Under the NAFTA, all of the promises made by Canada to the Investors under a tax convention are paramount, prevailing to the extent of any inconsistency with NAFTA provisions that might otherwise be relied upon to escape responsibility for measures taken in breach of such promises.
23. In 2006, almost half of the market value of the income trust investment holdings in Canada was related to investments made in the energy sector. The income trust investment model, as supported by Canadian tax policy that had existed for twenty years prior to October 31, 2006, was particularly well suited for supporting and capitalizing a chronically under-funded segment of the energy industry: the intermediate segment, which specializes in redevelopment and management of maturing natural resources assets.

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24. For foreign investors, investments in energy trusts were particularly attractive because the income trust model, supported by Canada's tax regime and its international tax treaty obligations, provided these investors with an opportunity to invest directly in Canadian oil and gas assets that generated income that flows, through regular distributions, directly to unit holders.
25. The Government of Canada's long-standing support for the income trust model, and the promises of Mr. Harper to leave it intact, abruptly and dramatically ended on October 31, 2006. On that date, the current Canadian Finance Minister, the Hon. Jim Flaherty, made a surprise announcement that the Government would impose a significant, new tax on the distributions of most trust enterprises designed to force investors to abandon the model altogether.
26. In announcing and defending the new measure, Minister Flaherty stated that the Government's primary justification for the measure was to eliminate tax leakage, but it has become clear that the objective of the Government has been to target foreign investors, and predominantly American investors, whose investments were particularly focused on the trusts in the intermediate energy sector.
27. The October 31<sup>st</sup> announcement was made without any warning to the public or consultation with stakeholders. The announced measures have effectively eliminated the income trust investment vehicle in all economic sectors, excepting Canadian real estate investment trusts (REITs). REITs, and investors using the income trust model to make investments in the Canadian real estate sector, have thereby received more favorable treatment than energy trusts and energy trust investors because REITs remain subject to the previous tax regime, including the effective 15% withholding tax rate for favored foreign investors. By contrast, under the so-called new 'Tax Fairness Plan', energy trusts are to be subjected to economically unsustainable tax rates that are intended – by design – to eliminate them as an investment vehicle, and includes abrogation of the 15% effective tax rate promised to United States investors, such as the Gottlieb Investors Group. Under these measures, NAFTA investors in energy trusts have been

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substantially deprived of all or most of the benefits of their investments in the energy sector, unlike investors in the real estate sector.

28. The measures to eliminate the income trust regime have had a substantial, permanent and detrimental impact on the energy trusts themselves and upon investors who used the trust vehicle to make their investments in Canada's energy sector, including the Gottlieb Investors Group. The Investors were entitled to rely upon the Government of Canada's promised support for the income trust model, as well as Canada's commitment not to change its tax regime in a manner inconsistent with its international obligations, or otherwise in violation of established standards of non-discrimination or fair and equitable treatment.
29. As a result of Canada's actions, income trust investments in the intermediate energy sector have been substantially devalued. This devaluation effectively reflects the present-day value of the elimination of the energy trust model for each individual investment.
30. Since concluding the NAFTA in 1993, Canada has extended the right to seek compensation from an international tribunal for the measures and obligations described above to investors from certain other countries in like circumstances, including the Investors as nationals of the United States of America. As the energy sector was not excluded by Canada from such extension of obligation, the Investors and their investments are entitled to receive the most-favored treatment.

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**IV. ISSUES**

31. Has the Government of Canada taken measures inconsistent with its obligations under NAFTA Articles 1102, 1103, 1105 or 1110?
32. If the answer to this question is yes, what is the quantum of compensation to be paid to the Investors as a result of the failure of the Government of Canada to comply with its obligations arising under Chapter 11 of NAFTA?

**V. RELIEF SOUGHT AND DAMAGES CLAIMED**

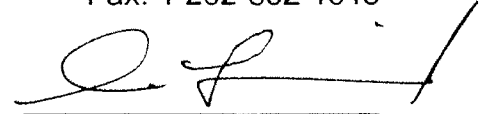
33. The Investors claim damages for the following:
- (a) Damages of not less than US\$6,500,000.00 as compensation for the losses caused by, or arising out of, Canada's measures which are inconsistent with its obligations contained within Part A of NAFTA Chapter 11;
  - (b) Costs associated with these proceedings, including all professional fees and disbursements;
  - (c) Fees and expenses incurred to oppose the promulgation of the infringing measures;
  - (d) Pre-award and post-award interest at a rate to be fixed by the Tribunal;
  - (e) Payment of a sum of compensation equal to any tax consequences of the award, in order to maintain the award's integrity; and
  - (f) Such further relief as counsel may advise and that this Tribunal may deem appropriate.

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**DATE OF ISSUE: October 30, 2007**

**COUNSEL TO THE INVESTORS**

**Fulbright & Jaworski L.L.P.**  
Market Square  
801 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2623  
Tel: 1 202 662 0200  
Fax: 1 202 662 4643

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**Ian A. Laird**

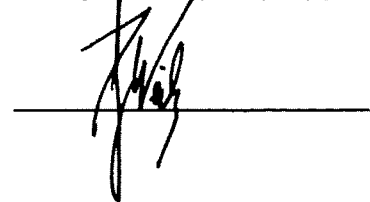
**Heenan Blaikie LLP**  
55 Metcalfe Street, Suite 300  
Ottawa, Ontario K1P 6L5  
Tel: 1 416 360.6336  
Fax: 1 866 245.4573

---

**Michael Woods**

**Professor Todd Grierson-Weiler**  
950 Centre Ave, NE, Suite 239  
Calgary, Alberta T2E 0P3  
Tel: +1 202 517 1597  
Fax: +1 202 403 3597

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**SERVED TO:**

**Office of the Deputy Attorney General of Canada**  
Justice Building  
284 Wellington Street  
Ottawa, Ontario K1A 0H8