

**NOTICE OF INTENT TO SUBMIT CLAIM TO ARBITRATION PURSUANT TO  
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

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**WILLIAM JAY GREINER and  
MALBAIE RIVER OUTFITTERS INC. (LES POURVOIRIES MALBAIE INC.),**

**Investors,**

**v.**

**GOVERNMENT OF CANADA,**

**Party.**

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**A. The name and address of the disputing investor and, where the claim is made under Article 1117, the name and address of the enterprise.**

William Jay Greiner  
12 Aspen Lane  
Bedford, New Hampshire 03110  
U.S.A.

Malbaie River Outfitters Inc.  
(Les Pourvoiries Malbaie Inc.)  
100 Vauquelin Rd.  
Barachois, Québec G0C 1A0  
Canada

**B. The provisions of the Agreement alleged to have been breached and any other relevant provisions.**

Investors allege that the Government of Canada has breached the following obligations under Section A of Chapter 11 of the North American Free Trade Agreement (“NAFTA”):

**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.

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.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

#### **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.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

### **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.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and

interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

**C. The issues and the factual basis for the claim.**

**Factual Background**

Investor, William Jay Greiner (“Mr. Greiner”), is a citizen of the United States of America and sole investor and shareholder in Malbaie River Outfitters Inc. (Les Pourvoires Malbaie Inc.) (“MRO”), a corporation formed under the laws of Canada. (Mr. Greiner and MRO will be collectively referred to as the “Investors.”)

Mr. Greiner was issued an outfitters license in the Province of Québec in 1996. This license allowed Mr. Greiner to conduct business relating to fishing, hunting and lodging in Québec. In 2002, Mr. Greiner, as sole investor and shareholder, formed the Canadian corporation MRO in order to expand his outfitting business. As a part of the business, the Investors maintained a lodge in Barachois, Québec. Substantial investments were made in renovating the lodge, constructing new lodging facilities, marketing and promoting the outfitting

business and the Gaspé region, and maintaining the business. The Investors have invested capital in an amount in excess of US\$1,000,000, in addition to countless hours dedicated to marketing and promoting the outfitting business and the Gaspé region.

The Investors' outfitting business involved the scheduling, organizing, and offering of services related to fishing and hunting trips in the Province of Québec, particularly, the Gaspé Peninsula. These services were predominately provided to citizens of the United States interested in Atlantic salmon fishing trips. The trips were conducted on the Dartmouth, Saint Jean, York, Grande, Grand Pabos North, Grand Pabos West, and Petite Pabos Rivers. While the Investors operated on a total of eight rivers, the vast majority of the Investors' business involved the Dartmouth, Saint Jean, and York Rivers. The Investors would handle all aspects of a guest's fishing trip including licensing, room, board, fishing equipment and guides. Clients often would bring non-fishing/hunting guests who would require the Investors to organize daily activities such as whale watching, hiking, and sightseeing within the Gaspé region.

In order to service customers, the Investors were required by the Québec Government to procure proper licensing so that clients could legally fish rivers in the vicinity of the lodge. Licensing was administered by a local organization called a Zone Exploitation Contrôlée ("Z.E.C.") or a Wildlife Reserve. Three Z.E.C.s and one Wildlife Reserve independently manage one or more of the seven rivers where the Investors conducted business. Z.E.C.s and Wildlife Reserves are local organizations formed under the authority of the Québec Government. Pursuant to an operating agreement with the Québec Government, the Québec Government delegates authority to the Z.E.C. or Wildlife Reserve to manage a river, a portion of a river, or a

territory. These organizations operate within the parameters and under ultimate control of the Québec Government.

### **Improper Changes to the Fishing License Lottery System**

Through the 2005 fishing season, in order to procure the proper fishing licenses for guests, the Investors obtained, by lottery, fishing licenses called “rods” from the proper authority. Both the angler and his guest needed to obtain a daily right of access, or rod, in order to fish. The price of each rod was between CDN\$20 and CDN\$250. When a rod was obtained through the lottery, it enabled the winner and a guest access to a certain river sector for a designated day of salmon fishing. For each fishing season, which generally runs from June 1 through September 30, there were a set number of rods issued in limited rod sectors of each river. Each season, approximately half of the rods were made available through a lottery on November 1, and the remainder were sold two days before the scheduled fishing day. Under this system, rods were able to be used in such a manner that the winner of a rod did not need to be present in order for his guest to fish on the second rod. Therefore, through the lottery system, once a rod was procured and the fee was paid, the second rod could be used by any individual or business for fishing access on the designated date and river.

Prior to the 2005 improper and unilateral governmental change to this lottery system, it is undisputed that the Investors always were in compliance with all governmental rules and regulations, and rightfully and legally obtained rods through the lottery system. The Investors invested large sums of money to obtain rods through the lottery system, and started and built their business based on the rules and regulations that were in place in 2002. The Québec Government was well aware of how the Investors conducted their business, allowing them to

build and expand the business. The Investors operated the business legally and with the knowledge and consent of the Québec Government and local Z.E.C.

For the 2006 fishing season, in order to limit the number of rods that the Investors could obtain, in violation of NAFTA, the Government of Québec, in concert with the Federation Gestionnaires Saumon Québec (an organization representing certain Z.E.C.s and Wildlife Reserves), revised the lottery system for obtaining rods. Under the new lottery system (changed by Québec governmental regulations), a procurer of a rod has to be present during the specific fishing day that the rod is issued for use. In other words, the rods are no longer transferable among individuals. This new lottery system currently remains in place. Admittedly, the government's sole purpose for this new procedure is to limit the number of rods that the Investors are able to obtain and, thus, limit the number of customers the Investors are able to service. Furthermore, this action diminished the quality of fishing that the Investors are able to offer as compared with previous years, adding to the reduction of clients and, in turn, profits. This government action, in violation of NAFTA, severely damaged the Investors' business, including loss of customers, profits and goodwill, as well as the deterioration of the value of the Investors' investments in Canada.

At the time the lottery system was changed, the Québec Government acknowledged, through a high-ranking government official, that its action caused prejudice to the Investors' business and that compensation and/or accommodations to the Investors were necessary and proper. This top-ranking official in the Wildlife Ministry, which oversees outfitting businesses, had the decision-making authority and had the power to offer compensation to the Investors. After the changes to the lottery system were implemented, the Investors attempted to negotiate

with the Québec Government in order to ameliorate any potential damage caused by the new lottery system. The Québec Government promised to remedy the prejudice, however, that promise was not kept. The Québec Government never compensated or otherwise resolved the injuries to the Investors caused by the new regulations that were imposed, despite several meetings and written correspondence between representatives of the Québec Government and the Investors, or representatives of the Investors, in which the government acknowledged prejudice and the need for compensation and/or corrective action. In June 2006, after the Québec Government refused to keep its promise to rectify the prejudice caused to the Investors, Investors realized their loss and damages.

#### **Improper Revocation of Investors' Authorizations of Commerce**

In addition to an outfitters license, in order to conduct business on a river located in Québec, an entity must hold an Authorization of Commerce, which is issued by the Québec Government. Until May 2008, the Investors held such authorizations for all the rivers on which they conducted business. On or about April 29, 2008, a decision was made within the Québec Government to revoke the Investors' Authorizations of Commerce for the Dartmouth, York, and Saint Jean Rivers. This decision was made in violation of NAFTA, with no legal right, authority, proper explanation or due process. The Québec Government did not accord fair and equitable treatment and full protection and security to the Investors. Instead, by a letter dated May 22, 2008, a Québec Government official informed the Investors that their Authorizations of Commerce were being revoked, effective immediately, due to criticisms expressed by the Investors in relation to the management of salmon fishing in the Gaspé region. The Québec Government official further wrote that the revocation was in order to maintain an acceptable

social climate in the area. (The May 22, 2008 letter of Québec Government official René Lafond is annexed hereto.) In fact, the Québec Government had no authority for such action and no legitimate or legally sufficient reason to revoke the Investors' Authorizations of Commerce. Recently, in a letter received on August 15, 2008 by New Hampshire United States Senator John Sununu (which is annexed hereto), a Québec Government official stated that the reason for the decision to revoke the Investors' licenses was an "economic consideration related to salmon fishing on the Gaspé Peninsula." This action taken by the Québec Government, in violation of NAFTA, effectively put the Investors out of business, diminished the value of properties held by the Investors in Canada, caused the loss of investments made in Canada by the Investors, and caused the loss of all future profits related to the outfitting business. The Québec Government never compensated the Investors for these improper actions taken in violation of NAFTA.

The improper government actions set forth above were committed, in part, to benefit the financial interests and investments of the Canadian Government and businesses owned and/or operated by Canadian nationals. By way of example, it was in the best interest of the Société Gestion du Rivières Grand Gaspé ("Z.E.C. Gaspé") for the Québec Government to revoke the license of the Investors, as the Z.E.C. Gaspé, which is a member of the Federation Gestionnaires Saumon Québec, operates a lodge that directly competes with the Investors' outfitting business. The lodge, Pavillon St. Jean, has been operated by the Z.E.C. Gaspé since 1993 (Pavillon St. Jean previously was operated by the Québec Government). The Pavillon St. Jean provides identical services in terms of offering meals, lodging, and guided salmon fishing and operates under identical or like circumstance. In fact, the Director General of the Z.E.C. Gaspé often

expressed concern about the Pavillon St. Jean being able to financially operate when there is competition from the Investors' business.

Furthermore, in violation of NAFTA, the Québec Government does not require the many Canadian national-owned and operated lodges to operate under the same rules that the Investors must operate. By way of example, the Pavillon St. Jean does not hold the same licenses the Investors are required to maintain, as the Pavillon St. Jean operates an outfitting business without an outfitters license or Authorizations of Commerce. Therefore, the Pavillon St. Jean operates illegally, yet the Québec Government has taken no corrective or punitive action to remedy the situation. This is due, in part, to the fact that the Québec Government recently contributed substantially (financially) to support the operation of the Pavillon St. Jean. In addition, several lodges situated on the Grand Cascapedia receive paying guests yet do not operate under the same licensing requirements imposed on the Investors. The Pavillon St. Jean also has received preferential government treatment in that it has access to exclusive rods on the St. Jean and York Rivers, affording the Pavillon St. Jean the ability to offer a higher quality of fishing to its clients without the same rules and regulations relating to the new lottery system imposed against the Investors. These actions and inactions, among others, of the Québec Government have resulted in a violation of Canada's obligations under NAFTA. An unfair advantage has been bestowed upon businesses owned by Canadian nationals, including the Pavillon St. Jean, and the Investors have been treated in a manner inconsistent with NAFTA.

The arbitration of the Investors' claims will address the issue of whether the Government of Canada has taken actions inconsistent with its obligations under Chapter 11 of NAFTA. The

arbitration tribunal also will address the issue of the amount of monetary damages that are properly due and owing the Investors as a result the Canada's actions in violation of NAFTA.

**D. The relief sought and the approximate amount of damages claimed.**

William Jay Greiner, on behalf of himself, as well as on behalf of Malbaie River Outfitters Inc. (Les Pourvoires Malbaie Inc.), will submit a claim for arbitration seeking:

1. Damages of not less than US\$5,000,000 for loss of investment, sales, profits (past and future) and goodwill;
2. Cost associated with these proceedings, including professional fees and disbursements;
3. Prejudgment and post-judgment interest at a rate fixed by the tribunal; and
4. Such further relief as the tribunal may deem appropriate.

September 10, 2008

Respectfully submitted,

Law Offices of Brett G. Canna, P.C.



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*Counsel for Investors  
William Jay Greiner and  
Malbaie River Outfitters Inc.*

To: Office of the Deputy Attorney General of Canada  
Justice Building  
284 Wellington Street  
Ottawa, Ontario K1A 0H

**RECOMMANDÉ**

Le 22 mai 2008

Les Pourvoiries Malbaie inc.  
À l'attention de Monsieur William J. Greiner  
12, Aspen Lane  
Bedford (New Hampshire) 03110

Monsieur,

Pour faire suite à ma correspondance du 12 mai dernier et après analyse, la présente a pour but de vous faire part de la décision du ministère des Ressources naturelles et de la Faune dans votre dossier.

Le ministère considère toujours inadmissibles les comportements non éthiques reprochés à votre entreprise à l'égard de la gestion de la pêche au saumon sur les rivières de Gaspé. C'est pourquoi, celui-ci révoque, en vertu de l'article 8 des dites autorisations, l'autorisation de commerce dans les secteurs 1 et 2 de la réserve faunique de la rivière Saint-Jean (signée en mai 2007) ainsi que celle relative aux zecs des rivières Darmouth et York (signée en octobre 2003). Cette décision, applicable immédiatement, a été prise pour des considérations économiques liées à la pêche au saumon en Gaspésie et dans l'objectif de maintenir un climat social acceptable pour tous les pêcheurs et gestionnaires de rivières à saumon de la péninsule gaspésienne.

Veuillez agréer, Monsieur, mes salutations.

Le directeur,



René Lafond

RL/lc

c. c. M. Bernard Landry, Direction générale régionale - Caplan  
M. François Dessurault, Direction de la protection de la faune - Sainte-Anne-des-Monts  
Les Pourvoiries de la Malbaie, 100, chemin Vauquelin, Barachois (Québec) G0C 1A0



GOUVERNEMENT DU QUÉBEC  
BUREAU DU QUÉBEC  
WASHINGTON

2008 AUG 15 PM 4: 54

PORTSMOUTH, NH

COURTESY TRANSLATION

Dear Mr. Senator:

We received a copy of the letter you sent on May 30, 2008 to the Ambassador of Canada to the United States, Michael Wilson, concerning the decision to revoke the commercial licenses that had been granted to William Greiner and his company, Malbaie River Outfitters Inc., on the York, Saint Jean and Dermouth rivers in Québec. I would like to assure you that the Québec government is aware of the content of your letter and the recriminations made by Mr. Greiner.

After a written notice was given to Mr. Greiner and verification was made with the authorities concerned, the decision to revoke his commercial licenses was made for economic considerations related to salmon fishing on the Gaspé Peninsula. The conservation of this rare resource requires fair distribution between all users.

In the event that new facts are presented, this decision may be reviewed. Furthermore, I would like to point out that Mr. Greiner still holds his outfitter's license for Malbaie River Outfitters Inc., as well as the commercial licenses required to operate on the Grande-Rivière, Pabos and Madeleine rivers.

As you know, the Québec government has made strengthening its ties with the United States a priority in its international relations. Accordingly, trade and investment, as well as security, energy and environment, are among its areas of priority action. I am convinced that cooperation between Québec and New Hampshire will continue to be successful and greatly benefit their common interests.

Sincerely yours,

ORIGINAL SIGNED BY

Jean-Stéphane Bernard

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BRETT G. CANNA  
ADMITTED IN NY AND CT

September 10, 2008

***Via Registered Mail***

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

***Re: Greiner v. Canada  
Notice of Intent to Submit Claim to Arbitration Pursuant to  
Chapter Eleven of the North American Free Trade Agreement***

Dear Honorable Deputy Attorney General:

This letter and the enclosed Notice of Intent to Submit Claim to Arbitration Pursuant to Chapter Eleven of the North American Free Trade Agreement are submitted in accordance with Articles 1116, 1117 and 1119 of the North American Free Trade Agreement.

Respectfully submitted,



Brett G. Canna

Enclosure

Deputy Minister's Office / Cabinet du Sous-Ministre  
Routing Slip / Feuille de contrôle

Letter Date / Date de Lettre: 10/09/2008

Dep't #: 2008-013227

Author/  
Auteur: Brett Canna

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New York

Due Date / Date d'échéance:

Assigned To / Assigné à:

Asgn Date /  
Date assigné:  
18/09/2008

BF Date /  
Date rappel:

Ret. Date /  
Date de retour:

PLS-TLB Meg Kinnear  
ACTION

Synopsis / Précis: GREINER V. CANADA NOTICE OF INTENT TO SUBMIT CLAIM TO ARBITRATION PURSUANT TO CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT

REQUEST BRIEFING NOTE	<input type="checkbox"/>	DEMANDER NOTE DE SYNTHÈSE
YOUR RECOMMENDATION	<input type="checkbox"/>	VOTRE RECOMMANDATION
ACTION AT YOUR DISCRETION	<input type="checkbox"/>	DONNER SUITE À VOTRE DISCRÉTION
DRAFT RESPONSE FOR DM SIGNATURE	<input type="checkbox"/>	FAIRE UN PROJET DE RÉPONSE POUR LA SIGNATURE DU SM
ACTION	<input checked="" type="checkbox"/>	ACTION
DIRECT REPLY WITH COPY TO DMO	<input type="checkbox"/>	POUR RÉPONSE ET COPIE AU BSM
FOR REVISION (UPDATE)	<input type="checkbox"/>	POUR RÉVISION (METTRE À JOUR)
TO ATTEND IF INTERESTED (PLEASE INFORM DMO OF DECISION)	<input type="checkbox"/>	PARTICIPATION SI VOUS ÊTES INTÉRESSÉ (S.V.P. AVISEZ LE BSMDE LA DÉCISION)
FOR CORRECTIONS	<input type="checkbox"/>	POUR CORRECTIONS
FOR INFORMATION	<input type="checkbox"/>	POUR INFORMATION

Additional Comments / Remarques additionnelles:

CC: CC: CC: CC:  
CC: CC: CC: CC:

Closed / Fermé:

File Away / Classer: