

**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF AN ARIBITRATION PURSUANT TO CHAPTER ELEVEN OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT  
BETWEEN MARVIN ROY FELDMAN KARPA AND THE UNITED MEXICAN STATES,  
ICSID ADDITIONAL FACILITY CASE NO. ARB (AF)/99/1

BETWEEN:

UNITED MEXICAN STATES

Applicant

and

MARVIN ROY FELDMAN KARPA

Respondent

and

THE ATTORNEY GENERAL OF CANADA

Intervener

**FACTUM OF THE INTERVENER,  
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**SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN ARBITRATION PURSUANT TO CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT BETWEEN MARVIN  
ROY FELDMAN KARPA AND THE UNITED MEXICAN STATES, ICSID  
ADDITIONAL FACILITY CASE NO. ARB (AF)/99/1**

**BETWEEN:**

**UNITED MEXICAN STATES**

**Applicant**

**- and -**

**MARVIN ROY FELDMAN KARPA**

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**Intervenor**

**FACTUM OF THE ATTORNEY GENERAL OF CANADA**

**PART I - OVERVIEW**

1. The law of arbitration and the principles of treaty interpretation recognize and enforce the competence of the parties to define the law governing their relationships and the resolution of any disputes between them. In the arbitral context, arbitrators and courts refer to this as preserving the “autonomy” of arbitration. In treaty interpretation, this principle manifests itself in rules of construction requiring the parties, judges and others to give effect to the treaty as a whole and to preserve the effectiveness of each treaty provision.

2. Two of the grounds upon which the Applicant bases its application in this case relate to the purpose and effect of Article 2105 of the *North American Free Trade Agreement* (“NAFTA” or the “Agreement”) and whether the majority Award under review failed to recognize or give full effect to that provision. In Article 2105, the signatories carved out three categories of information they commonly hold in confidence and agreed that disclosure of information falling within those categories could not be compelled in any proceeding mandated by the NAFTA. That agreement applies to arbitrations under Chapter 11 of the NAFTA and restricts the ability of arbitrators or investors to request the production of such information. As intervenor, the Attorney General of Canada (the “Attorney General”) contends that the majority of the arbitral tribunal failed to consider Article 2105, its purpose or effect before rendering their decision. Further, the Tribunal supported their finding of discrimination and breach of Article 1102 by drawing a negative inference from the Applicants’ alleged refusal or failure to produce information about taxpayers without their consent. On a proper construction of the NAFTA, such an adverse inference is not permitted by the plain meaning and purpose of Article 2105.

3. In this factum, the Attorney General outlines the law governing investor-state arbitration under Chapter 11 of the NAFTA, and sets out how the Tribunal failed to consider and apply Article 2105 as part of the agreement to arbitrate and the rules of international law. He then advances an interpretation of Article 2105 of the NAFTA consistent with the plain language, purpose and effect of the NAFTA., and discusses the practical and legal effects of the majority’s failure to consider or apply Article 2105 to Mexico’s refusal or failure to produce information about taxpayers without their consent.

4. The Attorney General of Canada does not take a position on the other issues raised by the Applicant.

## PART II - THE FACTS

5. The Attorney General accepts the facts set out in the Memorandum of Argument filed by counsel for Mexico on September 29, 2003, for the purposes of this application. He notes particularly that the arbitrators neither requested nor received submissions on the application of Article 2105 during the arbitration and that the majority Award contains no reference to Article 2105.

## PART IV - ARGUMENT

### **THE GOVERNING LAW**

6. The NAFTA is a treaty between Canada, the United States of America and the United Mexican States. Chapter 11 provides that certain “investors” may submit to arbitration claims respecting measures adopted or maintained by a State Party in breach of its obligations under Section A of Chapter 11 and two Articles of NAFTA Chapter Fifteen, i.e. investment disputes. Section B of Chapter 11 and other NAFTA provisions define the procedural and substantive rules governing the arbitration of investment disputes.

*Mexico v. Metalclad Corp.* (2001), 89 B.C.L.R. (3d) 359; [2001] B.C.J. 950 per Tysoe J. at paras. 57, 58 - **Intervener’s Book of Authorities (“IBA”), Vol. I, Tab 4**

7. Arbitrators charged with resolving investment disputes employ arbitration rules selected by the investor from a list of three alternatives, as modified by the NAFTA and international law. In this case, the investor submitted a claim pursuant to the Additional Facility Rules of the International Centre for the Settlement of Investment Disputes (ICSID). Article 1120 of the NAFTA provides that the arbitration rules normally applied under those rules “shall govern the arbitration except to the extent modified by this Section” (i.e. Section B of Chapter 11). Within Section B of Chapter 11, Article 1131 stipulates the governing law of a Chapter 11 tribunal. It provides that tribunals “shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.” The arbitration, then, was to be conducted in accordance with the legal rules set out in the in the Additional Facility Rules, applicable

NAFTA provisions (e.g., Article 2105) and international law.

8. Here, the Tribunal failed to respect its governing law, and thereby exceeded its jurisdiction, in two different but interconnected ways. First, it failed to take Article 2105 into account as part of the agreement to arbitrate. Second, it failed to take account of Article 2105 as part of the applicable rules of international law.

**THE TRIBUNAL FAILED TO CONSIDER ARTICLE 2105 AS PART OF THE AGREEMENT TO ARBITRATE**

9. A cornerstone of the law of arbitration is the requirement that the parties consent to the arbitration. That consent must comprehend not only the fact of arbitration but also the specific issues to be resolved by arbitration and may stipulate the governing law. An arbitration tribunal has jurisdiction only over those issues submitted to it by the parties and must determine those issues in accordance with the law and processes they have chosen.

*International Commercial Arbitration Act*, R.S.O. 1990, c. I.9, ss. 1 (definition of "Code"), 2-13 and Schedule Article 34(2)(a) - **IBA, Vol. II, Tab 18**

*Desputeaux v. Éditions Chouette (1987) Inc.*, 2003 SCC 17 per LeBel J. at paras. 22, 40-41, 48, 52-55, 66-71 - **IBA, Vol. II, Tab 2**

*Thyssen Canada Ltd. v. Mariana (The)* [2003] 3 F.C. 398 (FCA) per Robertson J.A. at para. 22 - **IBA, Vol. I, Tab 8**

*Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/98/2, Arbitral Award, June 2, 2000, para. 16 - **IBA, Vol. I, Tab 10**

Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (Third edition, 1999) at pp. 3-8 - **IBA, Vol. II, Tab 21**

10. The requirement for consent recognizes and fosters the autonomy of the arbitration process by permitting the parties to define the law governing their relationships and the means of resolving any dispute between them: see the authorities cited immediately above.

11. An investor who pursues arbitration under Chapter 11 of the NAFTA must accept the terms fixed by the State Parties to NAFTA. The investor is obliged to give

written consent to have the dispute resolved by way of Chapter 11 arbitration.

**Article 1121(1), (2) and (3) - IBA, Vol. II, Tab 20**

12. Likewise, Article 1122(1) of the NAFTA provides:

Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

13. An agreement to resolve a dispute by way of Chapter 11 arbitration arises if the proposed State Party to the dispute is a party to NAFTA and the investor gives its consent to proceed to arbitration in accordance with NAFTA. That agreement to arbitrate makes it clear that all applicable provisions of NAFTA, in its entirety, apply to a Chapter 11 arbitration. Article 2105 is one of those rules.

14. The relevant part of Article 2105 states that no provision of the NAFTA “shall be construed to require a Party to furnish or allow access to information, the disclosure of which would impede law enforcement or would be contrary to the Party’s law protecting personal privacy ...”

15. The provision is of general application. It appears in a Chapter devoted to describing “exceptions” from other NAFTA provisions and refers to the “Agreement” - i.e. the NAFTA - in the same terms as other NAFTA provisions such as Chapter Two (“General Definitions”). By its terms, then, it applies to arbitrations under Section B of Chapter 11.

16. In this case, Mexico repeatedly informed the Tribunal that it was unable to provide certain information requested by the Claimant because it was protected by domestic law governing taxpayer confidentiality: section 69 of the Fiscal Code of the Federation. Some of the information in question related to audits, in other words the enforcement of taxation laws, and all of the information in question was protected by rules of taxpayer confidentiality. Pursuant to Article 2105, Mexico could not therefore be “required to furnish or allow access” to this information. If, pursuant to the applicable terms of the NAFTA and thus the agreement to arbitrate, Mexico cannot be required to disclose this information, then the Tribunal cannot draw an adverse inference from

Mexico's failure to do so.

**THE TRIBUNAL FAILED TO RESPECT BASIC RULES OF INTERNATIONAL LAW**

17. NAFTA Article 102(2) expressly adopts the customary rules of international law governing treaty interpretation. These rules include requirements: to interpret and apply treaties in good faith; to avoid interpretations that render a treaty provision meaningless or ineffective; and, to interpret each provision considering the purpose of the treaty in which it appears as a whole.

**ARTICLE 31 OF THE VIENNA CONVENTION**

18. The *Vienna Convention on the Law of Treaties* codifies the customary rules of interpretation of public international law. According to the Appellate Body of the WTO, the general rule of interpretation set out in Article 31,

has attained the status of a rule of customary or general international law. As such, it forms part of the 'customary rules of interpretation of public international law' which the Appellate Body has been directed [...] to apply in seeking to clarify the provisions of the *General Agreement* and the other 'covered agreements' of the *Marrakesh Agreement Establishing the World Trade Organization* (the '*WTO Agreement*').

*United States - Standards for Reformulated and Conventional Gasoline* ("United States - Gasoline"), May 20, 1996, WT/DS2/AB/R (WTO Appellate Body) pp. 17-18 - **IBA, Vol. II, Tab 23**

See also *The Matter of Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products* (1996), 1 T.T.R. (2d) 975 (NAFTA Arbitral Panel) para. 119 - **IBA, Vol. II, Tab 22**

19. The *Vienna Convention* requires that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. This requires an examination of the treaty in light of the entirety of the agreement, including its preamble and objectives. Thus, *In the Matter of Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products* the NAFTA Panel commenced its inquiry by identifying "the plain and ordinary meaning" of the words used in the Agreement, taking into consideration:

...the meaning actually to be attributed to words and phrases looking at the text as a whole, examining the context in which the words appear and considering them in the light of the object and purpose of the treaty.

*Vienna Convention*, May 23, 1969, 1155 U.N.T.S. 331 (in force January 27, 1980), Article 31 - **IBA, Vol. II, Tab 24**

*In the Matter of Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products*, (1996), 1.T.T.R. (2d) 975 (NAFTA Arbitral Panel), para. 122 - **IBA, Vol. II, Tab 22**

20. Together with the context, the interpreter must also consider “any relevant rules of international law applicable in the relations between the parties”.

*Vienna Convention, supra.*, Article 31(3)(c)

21. A corollary of the general rule of interpretation is the maxim of *ut res magis valeat quam pereat* (the parties are assumed to intend the provisions of a treaty to have a certain effect, and not to be meaningless). Major international dispute settlement bodies, including the International Court of Justice, the WTO Appellate Body and the European Court of Justice recognize this rule, which is often referred to as the principle of ‘effectiveness’.

22. In 1966, the International Law Commission, a UN body which has “as its object the promotion of the progressive development of international law and its codification”, considered this principle in relation to the drafting of the *Vienna Convention*. The Commission considered this rule to be embodied in the general rule of interpretation eventually embodied in Article 31(1) of the *Vienna Convention*.

See Commentary (Treaties), *Yearbook of the International Law Commission* (1966), vol. II, p. 219 at para (6) - **IBA, Vol. II, Tab 25**

23. The international rule mirrors the basic principle in domestic statutory interpretation that “[a] statute should, if possible, be construed so that there may be no repugnancy or inconsistency between its different provisions.”

Driedger, *Construction of Statutes*, 2<sup>nd</sup> ed., 1983, at p. 66 - **IBA, Vol. II, Tab 14**, citing *Victoria (City) v. Bishop of Vancouver Island*, [1921] 2 A.C. 384 - **IBA, Vol. I, Tab 9**; *Re A Debtor*, [1948] 2 All E.R. 533 - **IBA, Vol. I, Tab 5**.

See also P-A Côté, *The Interpretation of Legislation in Canada*, 3<sup>rd</sup> ed., 2000, at pp. 308-311 - **IBA, Vol. II, Tab 13**

24. The International Court of Justice (“ICJ”) succinctly stated and applied this rule of public international law in the matter of *Certain Expenses of the United Nations*. In rendering his opinion about the meaning of the words “expenses of the organization” and Article 17 of the U.N. Charter, Mr. Justice Spender held that:

The [U.N.] Charter must, of course, be read as a whole so as to give effect to all its terms in order to avoid inconsistency. No word, or provision, may be disregarded or treated as superfluous, unless this is absolutely necessary to give effect to the Charter’s terms read as a whole.

*Certain Expenses of the United Nations*, Advisory Opinion of 20 July 1962, (1962) *I.C.J. Reports*, p. 186 - **IBA, Vol. II, Tab 12**

25. The same rule has also been consistently applied by the European Court of Justice. According to the Court:

Under Article 84 of the [European Coal and Steel Community] Treaty, the words “this Treaty” mean the provisions of the Treaty and its annexes, of the protocols annexed thereto and of the Convention on the Transitional Provisions. For that reason, the provisions contained in all those instruments are equally binding and there is no question of contrasting them with one another but only of *considering them in conjunction with one another so as to apply them appropriately*. [emphasis added].

*7/54 and 9/54 Groupement des Industries Sidérurgiques Luxembourgeoises v. High Authority of the European Coal and Steel Community*, [1955] ECR 53 - **IBA, Vol. I, Tab 11**

26. The Appellate Body of the WTO recently considered the principle of effective treaty interpretation, and described it as:

One of the corollaries of the 'general rule of interpretation' in the *Vienna Convention* is that interpretation must give meaning and effect to all the terms of a treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.

*US - Gasoline* (Appellate Body of the WTO), p. 23, IBA, Vol. II, Tab 23, citing *Corfu Channel Case* (1949) *I.C.J. Reports*, p.24 (International Court of Justice), IBA, Vol. I, Tab 1; *Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)* (1994) *I.C.J. Reports*, p. 23 (International Court of Justice) - **IBA, Vol. I, Tab 7**

27. It is therefore abundantly clear that a tribunal interpreting a specific provision in a treaty must not adopt an interpretation that reduces other provisions of the treaty to redundancy or inutility. Effectiveness is a “fundamental tenet” of treaty interpretation.

*Japan - Taxes on Alcoholic Beverages*, October 4, 1996, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (WTO Appellate Body) p. 12 - **IBA, Vol. II, Tab 19**

28. In this case, the majority bases its award on a finding that Mexico discriminated against a company owned and controlled by the Respondent by refusing to rebate excise taxes applied to cigarettes exported from Mexico.

29. To support its finding of discrimination, the majority of the Tribunal drew inferences adverse to the Applicant. The Tribunal held that while the “extent of the evidence of discrimination on the record is admittedly limited”, the Respondent has established a presumption and a *prima facie* case that his company was treated in a different and less favourable manner than several Mexican owned cigarette resellers and that Mexico failed to introduce any credible evidence to rebut that presumption. Thus, the Tribunal’s finding, rather than being based on positive evidence of discrimination, relies on “an inference based on the [United Mexican States’] failure to present evidence on the discrimination issue”.

Award, paragraphs 176 and 178

Dissenting opinion of Jorge Covarrubias Bravo, 3 December 2002 ARB(AF) 88/1

30. The inference drawn by the Tribunal in the interpretation and application of Article 1102 of the NAFTA was contrary to the customary rules of interpretation of public international law. It renders Article 2105 useless because it effectively requires

Mexico to furnish taxpayer information contrary to its domestic law thereby defeating the purpose of Article 2105. And the adverse inference was drawn without any submission on or consideration given to Article 2105.

#### **THE INTERPRETATION OF ARTICLE 2105**

31. With the adoption of Article 2105, the Parties to the NAFTA recognized a fundamental public interest in protecting certain kinds of information that will necessarily be held by the NAFTA governments. As discussed above, under Chapter 11, the right of an investor to pursue a dispute is limited by the terms of the treaty. By its formulation as a general exception, Article 2105 stipulates that the public interest in protecting certain information is an overriding interest.

32. Article 2105 addresses the compulsory disclosure of certain information by stipulating that a State Party cannot be required to disclose it. In other words, the State Parties found it necessary to preclude access to certain types of information in order to ensure effective enforcement of their laws and protect economic or privacy interests within their borders.

33. Some of the information to which the majority of the tribunal refers in the award related to taxation audits and the enforcement of taxation laws. All of that information was protected by Mexico's law governing taxpayer privacy. In relation to the meaning of the phrase "to furnish or allow access to information, the disclosure of which would impede law enforcement", the Attorney General submits:

- (a) First, there must be some evidence from which it could be inferred that disclosure ". . . would impede law enforcement"; and,
- (b) Second, the term "law enforcement" applies clearly to the enforcement of the criminal law whether *malum in se* or *malum prohibitum*. It may extend also to the administration of statutes that impose penal sanctions for failing to provide information or for filing inaccurate, incomplete or misleading information.

34. The second branch of Article 2105 provides that no NAFTA provision shall be “construed to require a Party to furnish or allow access to information, the disclosure of which . . . would be contrary to the Party’s law protecting personal privacy”. While the term “personal privacy” is not defined, the Attorney General submits that it refers to the privacy of any person to whom the NAFTA applies or might affect. Chapter Two defines a “person” as a “natural person or an enterprise”. The confidential taxation information of the companies at issue in this case falls within the terms of Article 2105.

35. Mexico’s domestic law prohibits the disclosure of information about excise tax rebates paid to taxpayers without the consent of the taxpayer. This law is consistent with Article 2105 because it is a “law protecting personal privacy”.

36. The United States, like Mexico, has legislation that protects the information of taxpayers. Income tax returns are confidential communications between a taxpayer and the government. They are so by force of statute. Title 26 U.S.C. §§ 6103 and 7213(a) provide for confidentiality of returns while in the hands of the government and provide for criminal penalties for unauthorized disclosure. According to the U.S. District Court,

the statutes cited reflect a valid public policy against disclosure of income tax returns. This policy is grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue. To indiscriminately compel a taxpayer to disclose this information merely because he has become a party to a lawsuit would undermine this policy.

*Federal Savings and Loan Insurance Corporation v. Krueger*, 55 F.R.D. 512 (1972) (U.S. District Court) - **IBA, Vol. I, Tab 3**

37. Moreover, Section 7431 of the U.S. Code creates a private cause of action by the taxpayer against the United States for improper disclosure of such information and provides for damages.

38. Canada’s domestic law concerning the treatment of taxpayer information is also similar to Mexico’s. Subsections 239.(2.21) and 241 of the *Income Tax Act, R.S.C. 1985*, Chapter 1 (5th Supp.) require the government and its officials to keep confidential “taxpayer information” defined in subsection 241.10. Similar provisions appear in section 295 of the *Excise Tax Act, R.S., c. E-15* in connection with the goods and services

tax. While both acts allow the government to use or disclose taxpayer information for limited purposes, those purposes do not include disclosure to arbitral tribunals without the consent of the taxpayer.

*Income Tax Act*, R.S.C. 1985, ss. 239.(2.21) and 241 - **IBA, Vol. II, Tab 17**

*Excise Tax Act*, R.S., c. E-15, s. 295 - **IBA, Vol. II, Tab 15**

39. An overriding public interest in limiting the disclosure and use of taxpayer information lies at the heart of section 241 of the *Income Tax Act* and - by extension -- the relevant provisions of the *Excise Tax Act* and similar legislation in other jurisdictions. As Mr. Justice Iacobucci noted in *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430 at p. 443:

In my view, s. 241 involves a balancing of competing interests: the privacy interest of the taxpayer with respect to his or her financial information, and the interest of the Minister in being allowed to disclose taxpayer information to the extent necessary for the effective administration and enforcement of the *Income Tax Act* and other federal statutes referred to in s. 241(4).

Section 241 reflects the importance of ensuring respect for a taxpayer's privacy interests, particularly as that interest relates to a taxpayer's finances. Therefore, access to financial and related information about taxpayers is to be taken seriously, and such information can only be disclosed in prescribed situations. Only in those exceptional situations does the privacy interest give way to the interest of the state.

As alluded to already, Parliament recognized that to maintain the confidentiality of income tax returns and other obtained information is to encourage the voluntary tax reporting upon which our tax system is based. Taxpayers are responsible for reporting their incomes and expenses and for calculating the tax owed to Revenue Canada. By instilling confidence in taxpayers that the personal information they disclose will not be communicated in other contexts, Parliament encourages voluntary disclosure of this information. The opposite is also true: if taxpayers lack this confidence, they may be reluctant to disclose voluntarily all of the required information (Edwin C. Harris, *Canadian Income Taxation* (4th ed. 1986), at pp. 26-27).

40. All three NAFTA parties have laws protecting against the disclosure of taxpayer information. Given the mandatory application of Article 2105, Canada submits that a

NAFTA Chapter 11 Tribunal cannot draw an adverse inference from the failure of a State Party to disclose information about taxpayers if its domestic law regarding tax law enforcement and personal privacy protection prohibits the State party from producing that information.

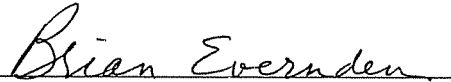
41. The majority of the Tribunal relied heavily upon Mexico's "refusal" or "failure" to disclose information about excise tax rebates given to other taxpayers and investigations of such taxpayers. Mexico repeatedly explained its legal constraints to the Claimant and to the Tribunal and therefore the Claimant agreed to accept a statement from a senior official that disclosed how Mexico was treating other taxpayers but without disclosing the specific details relating to individual taxpayers that would place the official in violation of the fiscal law. The Tribunal welcomed this agreement between the parties and did not subsequently call upon Mexico to disclose confidential evidence relating to investigations and actions taken against other taxpayers. (It had earlier ruled that it reserved the right to draw adverse inferences if a party did not comply with one of its directions to produce evidence; Mexico complied with all such directives.) The approach adopted by the majority was inconsistent with the agreement of the parties and the governing rules of the arbitration; it forces a Party to disclose information notwithstanding Article 2105 or risk losing the arbitration. Such an approach is inconsistent with the meaning and purpose of Article 2105.

42. By drawing an adverse inference from Mexico's refusal to produce the taxpayer documents at issue, the Tribunal failed to take into account Article 2105 and thereby clearly exceeded the scope of the submission to arbitration (Article 34(2)(a)(iii) of the Model Law).

**PART III - ORDER SOUGHT**

43. The Attorney General respectfully requests that this Court interpret and apply Article 2105 in accord with the principles set out above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of October, 2003.



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**PART IV - LIST OF AUTHORITIES**

**STATUTES**

*Excise Tax Act*, R.S., c. E-15, s. 295

*Income Tax Act*, R.S.C. 1985, Chapter 1 (5th Supp.), Subsections 239.(2.21) and 241, subsection 241.10 confidential

*International Commercial Arbitration Act*, R.S.O. 1990, c. I.9

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*Re A Debtor*, [1948] 2 All E.R. 533

*Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430

*Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)* (1994) I.C.J. Reports, p. 23 (International Court of Justice).

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Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (Third edition, 1999) at pp. 3-8,

*The Matter of Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products* (1996), 1 T.T.R. (2d) 975 (NAFTA Arbitral Panel) paras. 119 and 122

*United States – Standards for Reformulated and Conventional Gasoline*, May 20, 1996, WT/DS2/AB/R (WTO Appellate Body)

*Vienna Convention* May 23, 1969, 1155 U.N.T.S. 331 (in force January 27, 1980), Article 31

*Yearbook of the International Law Commission* (1966), ii, at p.219, See Commentary (Treaties), Article 27, para (6),

UNITED MEXICAN STATES

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(Short title of proceeding)

**SUPERIOR COURT OF JUSTICE**

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