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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DEMOCRACY WATCH, and JUDY DARCY on her own
behalf and on behalf of and for the benefit of all members of the
CANADIAN UNION OF PUBLIC EMPLOYEES

Applicants

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

**AFFIDAVIT OF MARYSE MAHY
(affirmed June 28, 2002)**

I, Maryse Mahy, of the City of Toronto, articling student of counsel for the Applicants,
MAKE OATH AND AFFIRM:

1. I am an articling student working with counsel for the Applicants, and have personal knowledge of the matters stated herein, except where stated to be based on information and belief, in which case I believe them to be true.
2. The purpose of this Affidavit is to put before the Court relevant statutory and international instruments, documents illustrating the types of claims that have been made pursuant to Chapter 11 of the *North American Free Trade Agreement*, documents illustrating the relevant procedural rules and practices of Chapter 11 Tribunals, and documents indicating the Government of Canada's legal and public positions in relation to Chapter 11.

Relevant Statutory and International Instruments

3. A true copy of Order in Council P.C. 1993-2196, approved December 29, 1993, obtained from the National Archives and bearing a stamp certifying its authenticity, is attached as Exhibit "1" to this Affidavit.

4. A true copy of Order in Council P.C. 1992-2553, approved December 10, 1992, obtained from the National Archives and bearing a stamp certifying its authenticity, is attached as Exhibit "2" to this Affidavit.
5. A true copy of excerpts of the *North American Free Trade Agreement*, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp#Part%20V> (Table of Contents) and at <http://www.dfait-maeci.gc.ca/nafta-alena/chap11-e.asp> (Chapter 11), is attached as Exhibit "3" to this Affidavit.
6. A true copy of the *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*, which I copied from International Centre for the Settlement of Investment Disputes, *ICSID Basic Documents* (Washington: ICSID, 1985), is attached as Exhibit "4" to this Affidavit.
7. A true copy of the United Nations Commission on International Trade Law *UNCITRAL Arbitration Rules*, which I accessed from the website of the United Nations Commission on International Trade Law (UNCITRAL) at <http://www.uncitral.org/en-index.htm>, is attached as Exhibit "5" to this Affidavit.
8. A true copy of the International Convention on the Settlement of Investment Disputes (ICSID) *Rules of Procedure for Arbitration Proceedings (Arbitration Rules)*, which I copied from: ICSID, *ICSID Basic Documents* (Washington: ICSID, 1985), is attached as Exhibit "6" to this Affidavit.
9. A true copy of the International Convention on the Settlement of Investment Disputes (ICSID) *Arbitration (Additional Facility) Rules*, which I copied from: ICSID, *ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings* (Washington: ICSID, 1979), is attached as Exhibit "7" to this Affidavit.
10. A true copy of the *North American Agreement on Environmental Cooperation* ("NAAEC" or the "NAFTA Environmental Side Agreement") between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, is attached as Exhibit "8" to this Affidavit.

Examples of Chapter 11 Claims

11. A true copy of the Notice of Intent to Submit a Claim to Arbitration under Section B of Chapter 11 of the North American Free Trade Agreement in the matter of *Ethyl Corporation v. The Government of Canada*, dated September 10, 1996, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/ethyl1.pdf>, is attached as Exhibit "9" to this Affidavit.

12. A true copy of the Notice of Intent to Submit a Claim to Arbitration under Section B of Chapter 11 of the North American Free Trade Agreement in the matter of *United Parcel Service of America, Inc. v. Government of Canada*, dated January 19, 2000, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/ups-noi.pdf>, is attached as Exhibit "10" to this Affidavit.

13. A true copy of the Award of the Arbitral Tribunal in the matter of *Metalclad Corporation v. United Mexican States*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the ICSID Arbitration (Additional Facility) Rules, Case No. ARB(AF)/97/1, dated August 30, 2000, which I am informed by Ms. Stella Bastidas, International Environmental Law Coordinator at the Sierra Legal Defence Fund, and believe was requested by her and received from the registrar of the Supreme Court of British Columbia, is attached as Exhibit "11" to this Affidavit.

14. A true copy of the Partial Award of the Arbitral Tribunal in the matter of *S.D. Myers Inc. v. Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated November 13, 2000, which I accessed from the website of the Department of Foreign Affairs and International Trade at http://www.dfait-maeci.gc.ca/tna-nac/myersvcanadapartialaward_final_13-11-00.pdf, is attached as Exhibit "12" to this Affidavit.

15. A true copy of the Draft Amended Claim in the matter of *Methanex Corporation v. The United States of America*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated February 12, 2001, which I

accessed from US State Department website at <http://www.state.gov/documents/organization/3940.doc>, is attached as Exhibit "13" to this Affidavit.

16. A true copy of the Notice of Intent to Submit a Claim to Arbitration Under Section B of Chapter Eleven of the North American Free Trade Agreement in the matter of *Crompton Corp. v. Government of Canada*, dated November 6, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/CROMPTON-CORP.pdf>, is attached as Exhibit "14" to this Affidavit.

The Procedure of Chapter 11 Tribunals

17. A true copy of a Procedural Order in the matter of *Ethyl Corporation v. Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated October 13, 1997, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/ethyl5.pdf>, is attached as Exhibit "15" to this Affidavit.

18. A true copy of a Procedural Order in the matter of *Ethyl Corporation v. Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, undated, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/ethyl5.pdf>, is attached as Exhibit "16" to this Affidavit.

19. True copies of Procedural Orders Nos. 1 and 5 of the Arbitral Tribunal in the matter of *Pope & Talbot Inc. v. The Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated October 29, 1999 and December 17, 1999 respectively, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/pubdoc5.pdf>, are attached as Exhibits "17" and "18" to this Affidavit respectively.

20. True copies of Procedural Order Nos. 2, 3 and 11 of the Arbitral Tribunal in the matter of *S.D. Myers Inc. v. The Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated May 28,

1999, June 10, 1999 and November 11, 1999 respectively, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/myers5.pdf>, are attached as Exhibits "19", "20" and "21" to this Affidavit respectively.

21. A true copy of a Decision of the Arbitral Tribunal in the matter of *Pope & Talbot Inc. v. The Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated September 27, 2000, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/pubdoc9.pdf>, is attached as Exhibit "22" to this Affidavit.

22. A true copy of the Decision on hearing of Respondent's objection to competence of jurisdiction in the matter of *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, dated January 5, 2001, which I accessed from the website of the United States Department of State at <http://www.state.gov/documents/organization/3921.pdf>, is attached as Exhibit "23" to this Affidavit.

23. A true copy of a Decision of the Arbitral Tribunal in the matter of *Methanex Corporation v. United States of America*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated January 15, 2001, which I accessed from the website of the International Institute for Sustainable Development at http://www.iisd.org/pdf/methanex_tribunal_first_amicus_decision.pdf, is attached as Exhibit "24" to this Affidavit.

24. A true copy of the Decision of the Tribunal on Petitions for Intervention and Participation as Amici Curiae in the matter of *United Parcel Service of America, Inc. v. Government of Canada*, dated October 17, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at http://www.dfait-maeci.gc.ca/tna-nac/IntVent_oct.pdf, is attached as Exhibit "25" to this Affidavit.

25. A true copy of the Interim Order of the Arbitral Tribunal in the matter of *Pope & Talbot Inc. v. Canada*, Arbitration under Chapter Eleven of the North American Free Trade

Agreement and the UNCITRAL Arbitration Rules, dated March 5, 2002, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/Interim-Order-5Mar02.pdf>, is attached as Exhibit "26" to this Affidavit.

26. A true copy of the Decision and Order by the Arbitral Tribunal in the matter of *Pope & Talbot Inc. v. The Government of Canada*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated March 11, 2002, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/Decision-Order-11Mar02.PDF>, is attached as Exhibit "27" to this Affidavit.

27. A true copy of "Notes of Interpretation of Certain Chapter 11 Provisions", adopted by the NAFTA Free Trade Commission on July 31, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/NAFTA-Interpr-e.asp>, is attached as Exhibit "28" to this Affidavit.

Public positions of the Government of Canada

28. A true copy of the Submission of the Government of Canada in the matter of *Methanex Corporation v. United States of America*, Arbitration under Chapter Eleven of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, dated November 10, 2000, which I accessed from the website of the International Institute for Sustainable Development at <http://www.iisd.org/pdf/methanexsubCA.pdf>, is attached as Exhibit "29" to this Affidavit.

29. A true copy of the Outline of Argument of the Attorney General of Canada in its intervention before the British Columbia Supreme Court in the judicial review of the final award in the matter of *The United Mexican States v. Metalclad Corporation*, Arbitration Pursuant to Chapter Eleven of the North American Free Trade Agreement, ICSID Additional Facility Case No. ARB(AF)/97/1, dated February 16, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at

http://www.dfait-maeci.gc.ca/tna-nac/canada_submission-e.pdf, is attached as Exhibit "30" to this Affidavit.

30. A true copy of pp. 1 - 20 of the transcript of the hearing before the British Columbia Supreme Court of the judicial review of the final award in the matter of *The United Mexican States v. Metalclad Corporation*, Arbitration Pursuant to Chapter Eleven of the North American Free Trade Agreement, ICSID Additional Facility Case No. ARB(AF)/97/1, dated February 19, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/trans-19fe.pdf>, is attached as Exhibit "31" to this Affidavit.

31. A true copy of the Hansard record of the Hon. Pierre Pettigrew (Minister for International Trade) addressing the House of Commons during a Motion on Investor-State Dispute Settlement, on May 1, 2001, which I accessed from the website of the Parliament of Canada at <http://www.parl.gc.ca/PDF/37/1/parlbus/chambus/house/debates/Han052-e.pdf>, is attached as Exhibit "32" to this Affidavit.

32. A true copy of the written text of a Speech by the Hon. Pierre Pettigrew (Minister for International Trade) to the House of Commons during a Motion on Investor-State Dispute Settlement, dated May 1, 2001, which I accessed from the website of the Department of Foreign Affairs and International Trade at http://www.dfait-maeci.gc.ca/tna-nac/Min_S_Inv-e.asp, is attached as Exhibit "33" to this Affidavit.

33. A true copy of "Canadian Memo on Investor-State Provisions" from Mr. John Gero, Director General, Trade Policy Bureau II, NAFTA Coordinator, Department of Foreign Affairs and International Trade, dated November 13, 1998, which I am informed by Ms. Susanne Hayward, articling student working with the Applicants' counsel, and believe was obtained by her from the online journal *Inside US Trade*, is Attached as Exhibit "34" to this Affidavit.

34. A true copy of the June 7, 2002 Notice of Application by the Attorney General of Canada in the Federal Court of Canada (Trial Division) in the matter of *The Attorney General of Canada v. Pope & Talbot Inc. and Talbot Limited*, which I accessed from the website of

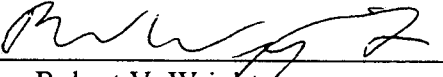
the Department of Foreign Affairs and International Trade at <http://www.dfait-maeci.gc.ca/tna-nac/notice0602.pdf>, is attached as Exhibit "35" to this Affidavit.

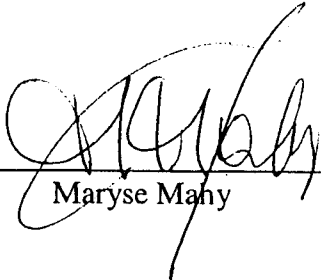
Miscellaneous

35. A true copy of a Submission by Philip Morris International Inc. in Response to the National Center for Standards and Certification Information Foreign Trade Notification NO. G/TBT/N/CAN/22, which I am informed by Mr. Raymond MacCallum, counsel for the Applicants, and believe was obtained from Health Canada following an Access to Information Act request by him, dated April 17, 2002, is attached as Exhibit "36" to this Affidavit.

36. A true copy of excerpts of the Summary Record of Joint Public Advisory Committee Session No. 02-01, dated March 8, 2002, which I accessed from the website of the Commission for Environmental Cooperation of North America at <http://www.cec.org/files/pdf/JPAC/sr02-01e-fin.pdf>, is attached as Exhibit "37" to this Affidavit .

AFFIRMED BEFORE ME at the City
of Toronto, on June 28, 2002.


Robert V. Wright


Maryse Mahy

The ATTORNEY GENERAL OF CANADA

Defendant

DEMOCRACY WATCH, and JUDY DARCY on her
own behalf and on behalf of and for the benefit of all
members of the CANADIAN UNION OF PUBLIC
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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF MARYSE MAHY
(affirmed June 28, 2002)

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