

# **Americans Take on Prime Minister re Income Trust Fiasco**

**Posted: November 01, 2007, 11:31 AM by Diane Francis**

A Chicago couple is opening up a Pandora's Box of litigation against Prime Minister Stephen Harper under the North American Free Trade Agreement because he reneged on a promise not to tax income trusts.

Marvin and Elaine Gottlieb today filed under Chapter 11 of NAFTA, a little-used provision which is designed to remedy financial damages caused by any of the treaty's three signator governments against citizens of the other two. It's been used rarely and bypasses the regular court system, deferring to a tribunal of experts. The tribunal is comprised of one appointee from the accused government, one from the country in which the victims live and a third agreed to by both. They hear evidence and render a verdict that cannot be appealed.

## **Canada Disappoints**

"I've done a lot of business in Canada and with Canadians and I'm disappointed the government would do this," said Mr. Gottlieb in an interview today before his press conference in Ottawa. "What better promise than the Prime Minister of a country who said he had reviewed the issue and was not going to tax trusts. Then a year ago he did. We relied on that pledge to expand our investments and so did a lot of people."

## **The Flip Flop**

Harper's flip flop, cobbled together over a weekend last year for no reason then poorly marketed by Finance Minister Jim Flaherty, wiped \$35 billion in value off income trusts. It led to the takeover of 46 trusts by foreigners and private equity buyers.

Here's where this legal action gets interesting: Canadians cannot sue their own government for damaging them, but a Canadian who also holds Mexican and/or U.S. citizenship is entitled to file an action under Chapter 11, irrespective of where they live.

"Dual nationals and landed immigrants, who were damaged, can get involved even if they are residents of Canada," said Mr. Gottlieb.

For information as to what the case is about and who qualifies please look at website, [naftatrustclaims.com](http://naftatrustclaims.com).

## **Who Can Sue**

In general, those who can sue under Chapter 11 are:

- Canadians with dual citizenship
- Landed immigrants in Canada with Mexican or U.S. citizenship
- Mexican citizens not living in Canada
- American citizens not living in Canada

The last Chapter 11 case was waged by the Loewen Group, a Canadian funeral home chain. The company was bankrupted after an ignorant Mississippi jury awarded US\$600 million in punitive

damages to a local funeral home operator even though he was only suing for US\$2 million in a contract breach case. Founder Ray Loewen of Vancouver made a Chapter 11 claim but lost after several years. Most recently was a case involving B.C. lumber giant Canfor Corp., which sued over the unfair softwood lumber tariffs and quotas imposed by a U.S. federal agency over the years.

This case was launched by an American against the Canadian system. Mr. Gottlieb, a successful retired businessman, began investing in Canada pretty heavily beginning in 2000, mostly in the energy trust sector. He increased his investments as a direct result of the Prime Minister's promise to leave income trusts alone in the last election. He is suing for \$6.5 million in damages and doing what he can to help others get their day in court too.

"This is not about politics or politicians," he said in an interview this morning before his press conference in Ottawa. "We are not concerned about them, but the ground rules on NAFTA is what we're asking for. NAFTA treaty rules. Not politics."

### **Why Chapter 11**

Chapter 11 was written into NAFTA, ironically, mostly amid concern about Mexico and its corruption and past proclivity to expropriate assets or discriminate against foreigners.

But the high-handed behaviour of the Canadian government vis a vis income trusts is more egregious than anything the Mexicans have done.

"It's a question of ethics. NAFTA is the only avenue we have," he said. "We're talking about a broken commitment by a Prime Minister."

"We will be attempting to attract other American investors who found themselves in a similar disadvantage as a result of a government decision. This is about fair and equitable treatment," he said.

After the announcement about income trusts, Mr. Gottlieb started a letter writing campaign, with others, to convince the Tories to reconsider their decision.

"I contacted other government organizations and got stock answers, don't bother me anymore was the attitude," he said. "We learned that NAFTA might be the opportunity for an individual in the U.S. to bring this attention to the public."

"These hearings may also bring sunlight to the project. There were no reasons for the action and only generalities," he said. "A NAFTA tribunal will show who was right and who was wrong."

"There has also been serious damage to the energy sector, in particular," he said. "This is very important to Canadians."

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