

Court file no. 03-CV-23500

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**UNITED MEXICAN STATES**

**Applicant**

**and**

**MARVIN ROY FELDMAN KARPA**

**Respondent**

APPLICATION UNDER sections 1 and 2 of the *International Commercial Arbitration Act*, R.S.O. 1990, c.19, and Articles 6 and 34 of the *UNCITRAL Model Law on International Commercial Arbitration* in the Schedule to the *International Commercial Arbitration Act*, and sections 27 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194



**NOTICE OF APPLICATION**

PROCEEDINGS HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on August 29<sup>th</sup>, 2003 at 10:00 AM, at 161 Elgin Street Ottawa, Ontario K2P 2K1

IF YOU WISH TO OPPOSE THIS APPLICATION to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

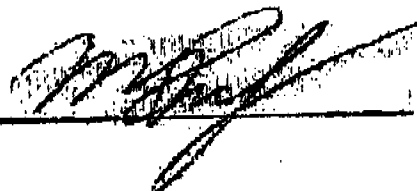
IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**MAR 14 2003**

Local registrar

Issued by:



Address of  
court office:

161 Elgin Street  
Ottawa, Ontario  
K2P 2K1

Mark B. Feldman, Esq.  
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AND TO:

Fernando Perez Correa and  
Gustavo Carvajal Isunza  
Solórzano, Carvajal, González y Pérez-Correa, S.C.  
San Barnabé 389 San Jerónimo Lidice  
C. P. 10200  
México, D.F.

## APPLICATION

The Applicant makes application for:

- (i) an Order setting aside in part the arbitral award made on December 16, 2002, as at Ottawa, Ontario, in ICSID Additional Facility Case No. ARB(AF)/99/1 (the "Award") between Marvin Roy Feldman Karpa and the United Mexican States concerning an arbitration arising under Chapter Eleven of the *North American Free Trade Agreement*, ("*NAFTA*"), pursuant to Section 34 of the *International Commercial Arbitration Act*, R.S.O. 1990, c.I.9 (the "*Act*");
  - (ii) costs; and
- such further and other Orders as this Court may deem just.

2. The grounds for the application are:

- (i) The Applicant was unable to present its case, contrary to Article 34(2)(a)(ii) of the *Act*, because a majority of the Tribunal drew impermissible inferences from the Applicant's compliance with its domestic law governing taxation law enforcement and taxpayer personal privacy protection and consequent inability to disclose certain confidential information to the Tribunal;
- (ii) The Award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, contrary to Article 34(2)(a)(iii) of the *Act*, because a majority of the Tribunal failed to comply with a mandatory rule governing the arbitration and thereby imputed liability on the Applicant's part for its alleged unwillingness or inability to adduce certain evidence;

The Award contains decisions on matters beyond the scope of the submission to arbitration, contrary to Article 34(2)(a)(iii) of the *Act*, because the majority of the Tribunal failed to appreciate that the Applicant did not consent to an arbitration process where liability could be imposed upon the Applicant for its alleged failure to discharge a burden of proof when such failure resulted from the Applicant's compliance with its domestic law governing taxation law enforcement and taxpayer personal privacy protection;

The arbitral procedure was not in accordance with the agreement of the parties, contrary to Article 34(2)(a)(iv) of the *Act*, given the mandatory rules for the conduct of investor-State arbitrations under Chapter Eleven and Article 2105 of the *NAFTA*; and

- (v) The Award is in conflict with the public policy of the Province of Ontario, contrary to Article 34 (2)(b)(ii) of the *Act*.

3. The following documentary evidence will be used at the hearing of the application:

- (i) The Award, pleadings, exhibits and proceedings in the arbitration record.

- (ii) The post-Award submissions of the parties submitted to the Tribunal pursuant to Article 1136(3)(b)(i) of the *NAFTA*; and
- (iii) Such other material as counsel may advise and this Court may permit.

**MAR 14 2003**

Date of issue

Thomas & Partners  
 Barristers and Solicitors  
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 Jeffery D. Jenkins  
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 Solicitors for the Applicant

Court file no. 03-cv-23500

UNITED MEXICAN STATES V. KARPA

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ONTARIO SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED IN OTTAWA, ONTARIO

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