

CETA

CANADIAN CONSTITUTIONAL CHALLENGE

LAWYER ROCCO GALATI, ON BEHALF OF THE HONOURABLE PAUL HELLYER, P.C., AND OTHERS, LAUNCHES A CONSTITUTIONAL CHALLENGE AGAINST THE CETA, IN THE FEDERAL COURT OF CANADA

October 21st, 2016 – Canada's longest-serving member of the Queen's Privy Council, the Honourable Paul Hellyer, P.C., along with two co-plaintiffs, Ann Emmett and George Crowell, both prominent members of the Committee on Monetary and Economic Reform ["COMER"], launched a constitutional challenge against the much-maligned *Canada-Europe Trade Agreement* ["CETA"], at the Federal Court of Canada in Toronto today.

Their lawyer, constitutional lawyer Rocco Galati, filed the statement of claim, attached to this press release, on his clients' behalf, on October 21st, 2016.

The Plaintiff's central challenge is four-fold, namely that: (1) that the federal government does not have the constitutional authority to sign, execute and implement treaties without the express prior authority of Parliament through an Act of Parliament; (2); the vast majority of the CETA articles and their impact encroach on exclusive Provincial spheres of jurisdiction protected by the division of powers under the **Constitution Act, 1867**; (3) the CETA guts and extinguishes the constitutionally protected Judiciary in Canada by creating foreign tribunals to determine property and legal issues in Canada without any judicial oversight or jurisdiction of the Canadian Courts over the disputes; and (4) various articles of the CETA violate constitutionally enshrined rights in the **Charter of Rights and Freedoms**, and over-ride Charter guarantees that ground Canada's ability to mount public programs on Health, Education, Social Services, and public utilities including the elimination of subsidies, monopolies, and state enterprises for the public welfare. In short, the treaty places the rights of private foreign investors over those of the Canadian Constitution and Canadian citizens.

The Plaintiffs further argue that the federal government breached its right to vote under section 3 of the **Charter of Rights and Freedoms** inseparable from the constitutional right of "no taxation without representation" because the CETA was not properly debated and authorized by Parliament.

In addition to seeking several declarations, to clarify the Constitutional authority of the Executive branch of government to do this, the Plaintiffs also seek interim injunctions to prevent the federal government from signing, ratifying and implementing the CETA.



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Court File No.: T-1789-16

FEDERAL COURT

**THE HONOURABLE PAUL HELLEYER, P.C., FRSA, ANN EMMETT,
Dr. GEORGE CROMWELL**

Plaintiffs

- and -

**THE RIGHT HONOURABLE JUSTIN TRUDEAU, PRIME MINISTER OF CANADA,
HIS EXCELLENCY DAVID JOHNSTON, GOVERNOR GENERAL OF CANADA, THE
ATTORNEY GENERAL OF CANADA, HONOURABLE CHRYSIA FREELAND,
MINISTER OF INTERNATIONAL TRADE, and HER MAJESTY THE QUEEN**

Defendants

STATEMENT OF CLAIM

(Pursuant to s.17 (1) and (5)(b) *Federal Courts Act*,
and s.24(1) and 52 of the *Constitution Act, 1982*)

(Filed this 21st day of October, 2016)

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the applicant's solicitor, or where the applicant does not have a solicitor, serve it on the applicant, and file it, with proof of service, at a local office of this Court, **WITHIN 30 days** after this statement of claim is served on you, if you are served within Canada.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4338) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: October 21st, 2016

9:11:00 a.m.

Issued by: _____

TAINA WONG
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: Department of Justice
Ontario Regional Office
First Canadian Place
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
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THE CLAIM

1. The Plaintiffs claim the following declaratory relief:
 - (a) A declaration that, upon the Patriation of the **Constitution Act** by way of an Act of the Imperial Parliament in Great Britain in 1982, namely the **Canada Act**, and by concurrent patriation and entrenchment of a supreme constitution by means of the **Constitution Acts, 1867 and 1982**, the Canadian executive has no jurisdiction to sign, ratify, nor implement treaties without prior parliamentary consent of the Provincial Legislatures and/or the Federal Parliament, as the case may be, pursuant to ss. 91 and 92, *et seq.*, of the **Constitution Act, 1867**, as the patriation and enactment of the **Constitution Acts, 1867 and 1982** and the **Canada Act** by the Imperial Parliament has:
 - (i) Abolished residual “Crown prerogative” in Canada outside the purview of statutory or constitutional grant in the **Constitution Act, 1867 and 1982**; and
 - (ii) Established that all exercise of executive power, pursuant to ss. 9, 10, 11, 12, 13, 14, 15, 16, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68 of the **Constitution Act, 1867**, must be strictly exercised in accordance with *intra vires* legislation enacted pursuant to those sections;
 - (b) A declaration that the executive does not have any jurisdiction to sign a treaty on behalf of Canada with respect to the scope, application and judicial forum for disputes outlined in the treaty (in this case the “Comprehensive Economic and Trade Agreement”- hereinafter “CETA”), namely, the definition and/or application of investor and investment, in that:
 - (i) Such a treaty breaches the domestic constitutional order of Canada in that non-natural persons;
 - A. Are not substantively recognized under the **Charter of Rights** and the **Constitutions Act, 1867 and 1982** and it is not open to the executive

to elevate such non-natural persons to and over natural persons and/or nation-states;

B. Have no recognition or standing in international law and further and *inter alia* to grant them such recognition,

- I. Breaches ss. 3, 4, 5, 6, 7 and 15 of the **Charter**; and
- II. Is inconsistent with the **Constitution Acts, 1867 and 1982** in that Canada is a Constitutional Democracy premised on Constitutional and Parliamentary Supremacy and the Rule of Law, and not Executive arbitrary Rule, with ss. 3, 4, 5, 6, 7 and 15 of the **Charter** and the right of one vote per citizen defining the genesis of the Constitutional framework; and

(ii) The executive cannot sign a treaty with respect to legal fictions as the Constitution of Canada does not recognize corporations as “persons” or “Canadians” and, therefore, the executive has no jurisdiction to sign on behalf of “Canada”;

(c) A further declaration that, past the negotiation and signing of such treaties, in this case the CETA, the ratification and implementation of the treaty is further *ultra vires* the executive, in its entirety, whether with respect to natural persons or corporate investors, in that:

- (i) It tramples on provincial jurisdiction contrary to, *inter alia*, ss. 91 and 92, 92A, 93 and s. 52 of the **Constitution Acts, 1867 and 1982** with respect to subject matters of exclusive provincial jurisdiction such as natural resources(including the procurement of all energy and public utilities), education, health, regulation of professionals and property and civil rights as well as the incorporation of companies with Provincial Objects;
- (ii) It is an unconstitutional delegation of Canadian sovereignty to foreign bodies, and abdication of governance, not subject to the Constitution of Canada which is the birthright and protection of Canada’s citizens;
- (iii) It calls for the spending of monies for:

- A. establishing of an international “Investor- State Dispute Settlement” (“ISDS”) tribunal not subject to Canadian Law;
 - B. The paying of compensation to foreign investors, contrary to taxing and spending and taxing powers under ss. 53 and 90 of the **Constitution Act, 1867**;
- (iv) It is, in establishing “Investor – State Dispute Settlement” (“ISDS”) Tribunal (s), and relinquishing the jurisdiction of Canadian Courts, to a binding international tribunal, *ultra vires* the Constitution because it:
 - A. Usurps the powers conferred pursuant to ss. 96 and 101 of the **Constitution Act, 1867**; and
 - B. Further denies the citizens of Canada the right to a public and independent judiciary as guaranteed in:
 - I. The implied underlying structural imperatives enshrined in the **Constitution Act, 1867**; and
 - II. Section 7 of the **Charter**;
- (v) It elevates the rights of foreign investment and the investors over:
 - A. The rights of Canadian citizens;
 - B. The Imperatives of the Constitution as found in **the Constitution Acts, 1867 and 1982**;
 - C. Canadian domestic statutory, regulatory and common law; and
 - D. Governments in Canada, whether federal, provincial, municipal or aboriginal; and
- (vi) It violates the fundamental principle of equality before the law as enshrined in ss. 7 and 15 of the **Charter** in:
 - A. Giving investors recourse to courts and tribunals which are denied to Canadians resident in Canada with respect to Canadian property and Constitutional rights ; and
 - B. Conferring on foreign investors a status of immunity from Canadian laws and Courts which immunity is denied to Canadians;

- (d) A declaration that the CETA violates the Plaintiffs' constitutional right to no taxation without representation as guaranteed by ss. 53 and 90 of the **Constitution Act, 1867**, and unwritten constitutional imperative underlying it, dating back to the *Magna Carta*, as well as diminishes, devalues, and infringes on their right to vote under s. 3 of the **Charter**, which right to vote is inseparable from the right to no taxation without representation, in the Parliamentary System, and with respect to CETA, to taxation without representation as tied to the lack of Parliamentary process, enactment and/or statutory framework in the context of negotiating, signing, ratifying and implementing the treaty, within the constitutional framework and parameters of the **Constitution Acts, 1867 and 1982**, by way of Executive Fiat, without Parliamentary pre-approval nor statutory framework.
2. A further declaration that the CETA itself, on its face, and on the substance of its terms, exceeds and is beyond the constitutional authority for the executive to negotiate, sign, ratify and implement, in the absence of prior Parliamentary authority, or statutory framework, which Parliamentary approval (or Act) is itself subject to Constitutional constraints, and moreover, substantively is *ultra vires* and unconstitutional, by way of blatant examples, as follows:
- a) Chapter [2] Article X.08, Chapter [4] Article Section B, Article 4, Chapter [4] Annex 1, Chapter [21] Appendix 1 Annex X.04, Chapter [25] Article X.10, Chapter [29] Article X.04, Chapter [29] Article X.05, Chapter [21] Appendix Canada Market Access Offer (Notes to Annex X-03 Sections A and B), unconstitutionally trample on the provinces' exclusive jurisdiction under section 92A and 92(5) and (13) of the **Constitution Act, 1867**, over natural resources and further, Chapter [2] Article X.06 wherein the Federal Executive undertakes to ensure that the treaty provisions are "observed and given effect" by all levels of governments "including Provincial and Municipal" is a blatant trampling over s. 92, 92A, and 93 of the **Constitution Act, 1867**;
 - b) Chapter [2] Annex X.05 (Sections 1-6), Chapter [3] Annex Canada Tariff Schedule: Negative list tariff schedule targeting grapes and limiting sugar and alcoholic content, Chapter [41] Declaration on Wines and Spirits, Chapter [6]

Article 3, Chapter [6] Article 6, Chapter [6] Article 7, Chapter [6] Annex Cooperation in the field of motor vehicle regulation, Chapter [10] Article X.12, Chapter [11] Article X-03, Chapter [11] Article X-05, Chapter [12] Annex I, Chapter [13] Sections 4 and 5, Chapter [14] Article X.2, Chapter [15] Article 2, Chapter [15] Annex 10, Chapter [21] Article 2, Chapter [13] (mutual recognition of professional qualifications), Chapter [21] Article 14, Chapter [21] Appendix 1 Annex X.05, Chapter [21] Appendix Canada Market Access Offer Annex X.04, Chapter [24] Article 3,(labour and labour standards) Chapter [25] Article X.4 (local Environmental Laws), unconstitutionally trample over Licensing, Regulation of Professions and other jurisdiction on Property and Civil Rights, contrary to section 92(9) and (13) of the **Constitution Act, 1867**;

c) Chapter [7] Sanitary and phytosanitary measures, Chapter [26] Definition of Drug, Chapter [21] Appendix 1 Annex X.02, Chapter [28] Annex II, Chapter [21] Appendix Annex X-02, unconstitutionally trample over exclusive Provincial jurisdiction over health, contrary to section 92(7) of the **Constitution Act, 1867**;

d) Chapter [21] Appendix 1 Annex X.02, Chapter [35] Canada Annex I Sector Social Services, Chapter [21] Appendix Annex X-02, as well as other provisions with respect to service providers, unconstitutionally trample over the Provincial exclusive jurisdiction over education, contrary to section 93 of the **Constitution Act, 1867**;

e) Chapter [12] Article 2, Chapter [12] Article 7, Chapter [12] Article 8, Chapter [12] Article 9, Chapter [12] Article 8, Chapter [13] (mutual recognition of professional qualifications), unconstitutionally trample over immigration into the provinces, contrary to section 95 of the **Constitution Act, 1867**, and further inseparably and concurrently trample over the jurisdiction of the Regulation over Health, Professions and Property and Civil Rights under s. 92 (7), (9) and (13) of the **Constitution Act, 1867**;

f) Chapter [3] Article 9 Section 4, Chapter [3] Article 14, Chapter [10] Article X.21 (1G), Chapter [10] Article X.42, Chapter [19] Article X-03, Chapter [24] Article 11, Chapter [30] Article X.01, Chapter [30] Article X.03, Chapter [33] Article 14.16, Chapter [33] Article 14.3, unconstitutionally trample on judicial independence and violate the constitutional right to a fair and independent judiciary in Canada, and in fact eliminate the Canadian judiciary, on matters affecting the physical situs of property, and rights, on Canadian soil, and under the Canadian Constitution by establishing ISDS tribunal (s) contrary to s. 96- 101 of the **Constitution Act, 1867**, as well as the structural unwritten Constitutional rights to a fair and independent judiciary, as well as under s. 7 of the **Charter** where the same right is mirrored;

g) Chapter [22] Article 9.2, Chapter [22] Article 4, Chapter [22] Article 2, Chapter [22] Article 1.2, Chapter [22] Article 3, Chapter [22] Article 10, Chapter [22] Article 4A, Chapter [28] Annex 2-1.(f) which determine the right(s) on Health provisions, including pharmaceutical drugs, other medication, vitamins, herbs and food supplements, and which place the rights of foreign investors over those of government, over healthcare, impact and violate the Plaintiff's rights pursuant to sections 2 and 7 of the **Charter** as it impacts on their life, liberty and security interests and rights in violating their right(s) to freedom of conscience under s. 2, as well as violating their physical and psychological integrity, under s. 7 of the **Charter**, with respect to access and choice of healthcare including drugs, other medication vitamins, herbs and food supplements;

h) Chapter [3] Annex X.5, impacts and violates the Plaintiff's rights pursuant to section 2 and 7 of the **Charter** as it impacts their life, liberty and security interests and food supply choices and transparency over the composition of food in the same fashion and for the same reasons outlined in g);

(i) Chapter [9], which eliminates government subsidies (Federal, Provincial or Municipal) except for Culture, as well as Chapter [20] Article 4, which places state enterprises and monopolies by Act of Parliament, (whether Federal, provincial, or Municipal), on the same plane as private, foreign investors, as well as Chapter [21] which requires that government procurement of goods, services or supplies (whether such government procurement is Federal, Provincial or Municipal), must place foreign, private investors on the same plane as Canadian suppliers, which effectively and blatantly :

- tramples on the jurisdiction of Provinces and Municipalities, and s.92, 92A and 93, of the **Constitution Act, 1867**;
- as well as, with respect to the **Charter**, violate and tramples on the governments' (particularly Provincial and Municipal, but also Federal) ability and duty to devise programs under s. 6(3),(4) and s.15(2) of the **Charter**, and further restricts such subsidies, monopolies , and state enterprises, from effecting social, health, and educational and other programs under s. 2, 6(3),(4), 7, and 15(2) of the **Charter**;

(j) Chapter [32] articles X.05, X.06, and X. 09, “the Exceptions” clause, which sees exceptions to the treaty, restricted to matters of National Security, Taxation, and Cultural Industries, has the net effect of having foreign, private “investment” and “investors”, as defined in Chapter [10], over-ride the constitutional order under **Constitution Acts, 1867- 1982**, including but not restricted to s. 92, 92A, and 93 of the **Constitution Act, 1867**, as well as s. 2, 3, 6, 7, and 15 of the **Charter**, all by Federal Executive fiat and action outside the scope of Federal jurisdiction;

k) that all such violations, set out above, in substance, and by means of Executive action, further breach the Plaintiffs’ constitutional rights to the Rule of Law, Constitutionalism, and Federalism, and their rights as citizens, that the Executive will abide by the constitutional order, and framework, and limits which give it its very authority to act.

l) Such further declaratory relief as counsel may advise this Honourable Court grant;

3. The Plaintiffs claim an order, pursuant to ss. 24(1) and 52 of the **Constitution Act, 1982** temporarily and permanently prohibiting the Defendants from signing, ratifying and implementing the “Comprehensive Economic and Trade Agreement between Canada and the European Union” (“CETA”) without the prior approval of Parliament pursuant to specific legislation and/or a statutory scheme (currently non-existent) for the signing, ratification and implementation of economic and trade treaties.
4. An ancillary order, to the declaratory relief sought above:
 - a) Declaring and/or quashing any order-in-council which may have been granted to the executive members of Cabinet to sign the treaty on Canada’s behalf and any signing of the CETA;
 - b) Prohibiting and/or staying the Cabinet from granting such authority to a member of the executive from signing the treaty if not yet signed, and if signed, declaring void and/or quashing such signature;
 - c) Prohibiting and/or staying the ratification of the CETA, by Order-in-Council, without an Act of Parliament;
 - d) Prohibiting and/ or staying the implementation of the CETA, without an Act of Parliament.

5. An order and/or writ (in the nature of) *quo warranto* to the Right Honourable Prime Minister, and Governor General of Canada, and all members of the Cabinet, in the face of the constitutional barriers set out above, to justify and set out their authority to sign the treaty, (CETA), on behalf of and to the benefit of corporations and other non-natural legal entities as well as fictitious persons, and any other natural investors in the absence of a prior Act of Parliament granting such authority, or a statutory framework for CETA or economic trade, treaties, as well as:

a) An interim and ancillary order (in the nature of) **prohibition** and/or a stay of their purported Crown prerogative power to sign and/or ratify the treaty, pending disposition of the within action by this Court, particularly with respect to *quo warranto* in that the treaty:

(i) The Defendants lack the constitutional authority to sign, ratify, and implement the treaty by mere and sole Executive acts and action;

(ii) Relinquishes effective control and jurisdiction over property and civil rights, health, education, natural resources, regulation of professionals, and other exclusive provincial jurisdiction in the provinces to foreign investors and international tribunals contrary to. 92, 92A, 93, 96-101 of the **Constitution Act, 1867**;

(iii) Grants primary rights to foreign investors and corporations over those of Canadian citizens, violating rights under s. 2, 3, 6, 7, and 15 of the **Charter**;

b) An interim and ancillary order (in the nature of) **prohibition** and /or a stay prohibiting the spending of monies vis-à-vis the treaty, pursuant to ss. 53 and 90 of the **Constitution Act, 1867**, or any other purported statute enacted thereunder, until such time as this Court has disposed of this action.

6. The plaintiffs further claim:

(a) (i) general damages in each the amount of \$50, 000; and
(ii) other damages, to be calculated at trial, for the constitutional breaches as set out below in the within statement of claim.

(b) Costs of this action and such further or other relief this Court deems just.

THE PARTIES

7. The Plaintiff, the Honourable Paul Helleyer, P.C, FRSA, is a senior Canadian citizen over the age of 65, who files and pays income and other applicable taxes in Canada. He is the longest serving member (“dean”) of the Privy Council of Canada, having been appointed as a member of the Privy Council on April 26, 1957. He served, *inter alia*, as Parliamentary Assistant to the Minister of National Defence, Associate Minister of National Defence, Minister of National Defence, Transport Minister, as well as Minister responsible for Central mortgage and Housing Corporation. He is the author of several books on globalization, economics and monetary reform, including but not limited to *Exit Inflation* (1981), *Jobs for All: Capitalism on Trial* (1984), *Surviving the Global Financial Crisis*, *The Economics of Hope for Generation X* (1996), *A Miracle in Waiting* (2010) an update of *Surviving The global Financial Crisis*, *Light at the End of the Tunnel: A Survival Plan for the Human Species* (2010) and *The Money Mafia: A World in Crisis* (2014). It is an understatement to state that he has had, in addition to his service as Minister and Privy Council Member, a life-long interest and involvement in fiscal, trade and economic issues.

8. The Plaintiff, Ann Emmett, is a senior Canadian citizen over the age of 65, who files and pays income and other applicable taxes in Canada. She is an executive member of COMER (Committee on Monetary and Economic Reform). She has devoted much of her life to the study, research, analysis and writing on economic, monetary and social reform, and writes, speaks, and edits works on economic and monetary reform, including articles and papers as recent as 2010. COMER, historically to date, is an international economic “think-tank” based in Toronto. Established in 1970, it dedicates itself to the monetary and economic reform policies of Canada and conducts research, analysis and publications) on these issues. For the past 23 years, it has published a monthly publication entitled COMER with articles and analysis from authors including some of its own committee members. Its committee members have consisted of economists, academics and published authors expert in their respective fields.

9. The Plaintiff, Dr. George Cromwell, is a senior Canadian citizen over the age of 65, who files and pays income and other applicable taxes in Canada. He has worked with COMER since his retirement. Prior to “retiring”, he taught Social Ethics in the Department of Religious Studies at the University of Windsor between 1968 and 1996. He holds a B.A. from Princeton University (1953), and an M.Div. (1956) and Th.D. (1966) from the Union Theological Seminary in New York. He also taught at Lake Forest College in Illinois between 1956 and 1958 and 1964 and 1968, as well as the College of Wooster in Ohio between 1962 and 1964. He is also a member of COMER and has an acute interest and involvement in issues of economic and social reform, including trade treaties, and their socio-economic impact on Canadian society, and has written on these subjects.
10. The Defendant, Her Majesty the Queen, is statutorily and constitutionally liable for the acts and omissions of Her officials pursuant to s. 17 of the **Federal Courts Act** as well as s. 24(1) and 52 of the **Constitution Act, 1982**, including those who purport to act on crown prerogative.
11. The Defendant, the Right Honourable Justin Trudeau is the Prime Minister of Canada who has participated in undisclosed negotiations and has announced an intention to personally, or through Governor-in-Council instrument, designate a Minister of his Cabinet to purport to exercise residual Crown prerogative, and sign a trade agreement between Canada and the European Union, the CETA, on or about October 28th-29th, 2016 with an intention of ratifying CETA sometime in late 2016 or 2017.
12. The Defendant, the Attorney General of Canada, is constitutionally the Chief Legal Officer responsible for and defending the integrity of all legislation, as well as Executive action impinging on the, *inter alia*, Constitution of Canada, as well as responding to declaratory relief with respect to legislation, and with respect to its constitutionality, and is required to be named defendant in the action for declaratory relief.
13. The Defendant, the Minister of International Trade, is responsible, as her predecessors, for negotiating the text of CETA agreement without prior public disclosure, nor approval

of Parliament, either by Act of Parliament, nor statutory framework for economic/trade treaties, which statutory framework is non-existent.

14. The Defendant, the Right Honourable David Johnston, Governor General of Canada, purports to be constitutionally responsible for choosing and summoning members of the Privy Council for Canada and acts by and with the Advice of the Privy Council for Canada, which include members who are responsible for signing, ratifying and/or implementing the CETA, in the absence of an Act of Parliament or statutory framework.

THE (FURTHER) FACTS

15. Sometime in or about 2007- 2008, the Defendants' predecessors began, on behalf of Canada, in secret, to negotiate a trade agreement with the European Union, namely, the terms of the CETA.
16. The Defendants did so under purported residual Crown prerogative, in the absence of any Parliamentary statutory framework for the negotiation, signing, ratification and implementation of an economic treaty, and further without any prior Parliamentary approval prior to such negotiation with respect to the CETA itself, nor any Parliamentary approval or Act for its terms prior to any signature, ratification or proposed implementation, and in the absence of any statutory or constitutional framework, or provisions, with respect to all-encompassing trade/economic treaties, directly trampling upon Provincial and Municipal rights, as well as over-riding **Charter** rights of Canadian citizens.
17. On or about 2016, a draft text was made available on the International Global Affairs Canada website, under the administration of the Defendant Minister of International Trade, namely found at www.international.gc.ca/trade-agreements-accords , purporting to be the draft of the CETA, the draft text of which is a document referred to in the pleadings herein.
18. On or about September 18, 2016, the Defendant Minister of International Trade announced that she arrived in Europe to "promote the Comprehensive Economic and Trade Agreement (CETA)..." Sometime thereafter in the fall of 2016, an announcement was made by the Defendant, the Right Honourable Justin Trudeau, that he or one of his designates by Executive instrument, was scheduled to sign the CETA on Canada's behalf with representatives of the European Union, in late October, namely October 28-29th, 2016, with anticipated ratification in late 2016 or early 2017, with implementation thereafter.

19. Under US law, any bilateral or multilateral treaty must first obtain the approval of Congress to sign, ratify and implement. This is by the referential terms of the US Constitution. Under the European Union, the signature, ratification and/or implementation of a treaty must obtain prior European Parliamentary approval, comprised of elected officials of its member states. This prior EU Parliamentary approval has “1st, 2nd and 3rd level” approval tiers depending on the magnitude and scope of the treaty, which in turn not only requires the **minimal** approval of the EU Parliament representing the 28- member states, but may also require further approval from the Parliament of **each** of the 28 member- states and, in some cases may require the approval of local autonomous or Provincial Parliaments **within** each of the 28 member-states.

20. The Defendants, notwithstanding the **Canada Act, 1982** and Patriation of the Canadian Constitution, as imperially enacted under the **Canada Act, 1982**, and entrenched as the Supreme law of Canada under the **Constitution Acts, 1867 and 1982**, still purport to sign trade/economic treaties (thereby binding Canada) vis-à-vis the parties to the treaty, ratify, and implement treaties, under pre-patriation purported exercise of **residual** Crown prerogative. This is in the absence of a statutory framework or specific legislation for signing, ratifying, and implementing treaties, nor any constitutional provision in the text of the **Constitution Acts, 1867- 1982**. The basis of this purported, and erroneous, exercise of residual Crown Prerogative is set out, **inter alia**, and posited and postulated in Library of Parliament Research Publication No.2008-45-E, revised November 6th, 2012. The Plaintiffs state, and the fact is, that this continued exercise of residual Crown prerogative is constitutionally untenable post- 1982.

21. Binding trade, economic and/or investment treaties are thus signed, ratified and implemented through secret executive action, without pre-approval from Parliament and in the absence of a statutory framework as, juxtaposed to other treaty-making contexts, such as the **Extradition Act** or the **Mutual Legal Assistance Treaty (MLAT)**, both matters of exclusive federal jurisdiction – Criminal Law- where both legislation and statutory framework delineate the treaty-making power under those Acts. Conversely, once signed, economic and trade treaties, bind Canada with respect to foreign citizens

(both corporate and biological) and nation-states, notwithstanding that they breach the constitutional structure under the Constitution, including the Division of Powers between the Federal and Provincial Parliaments, the **Charter** and the constitutional rights of Canadian citizens, as well as the right(s) to access, and the very existence of, an independent judiciary in Canada. Where private foreign entities cannot access their treaty rights physically in Canada, due to constitutional constraints, Canada, as a nation and its citizen taxpayers, including the plaintiffs, are required to pay compensation to those foreign citizens/corporations adjudicated by an international tribunal under the treaty, beyond the reach of Canadian courts or law referred to as “investor- State Settlement Dispute”- “ISDS”. Such is the case and structure under the CETA, as set out above in this statement of claim, with the core provision found at Chapter [33] of CETA.

22. Such is the same case and structure under the NAFTA (North American Free Trade Agreement) currently implemented in Canada, between the USA, Mexico and Canada. The Plaintiffs state and the fact is that under the NAFTA, several billion dollars (US) have been paid to foreign, private entities for breach of rights granted which were not constitutionally enforceable under the Canadian Constitution. This includes matters of natural resources, the sole and exclusive jurisdiction of the Province, rights over Aboriginal lands, and rights, and so forth. The Plaintiffs state, and the fact is, that the magnitude of such unlawful (unconstitutional) granting of treaty rights will be much higher under the CETA. An example of this under NAFTA, is the 25 million dollars paid to a company that could not pursue wind energy in Quebec. And further the seeking of \$250 million (US) claimed by a company because it cannot pursue fracking in Quebec. That is, compensation will have to be paid to private, foreign investors for the unconstitutional action of the **Executive** over matters not within Federal jurisdiction to sign away. The same will hold true for CETA.
23. The Plaintiffs further state, and the fact is, that under the NAFTA accord, currently in force with the USA and Mexico, any and all treaty rights accorded to European investors under CETA, will have to be preferentially also accorded to USA and Mexico without any reciprocity by the USA and Mexico with Canada. This increases and amplifies the

compensation for which Canada will be liable for unconstitutional signing with respect to matters not within Federal jurisdiction, once CETA is implemented it will further amplify the constitutional breaches set out in the within statement of claim.

24. The Plaintiff, the Honorable Paul Helleger, P.C., as a member (“Dean”) of the Privy Council of Canada, contests and states that, post-Patriation of the Canadian Constitution in 1982, **no** residual Crown Prerogative is exercisable either by Governor-in-Council, nor by delegated Ministers, as the **Canada Act, 1982** and Patriation under the **Constitution Acts 1867 and 1982**, extinguished residual Crown Prerogative in Canada. The Plaintiffs and co-Plaintiffs further state and maintain that the executive has no constitutional authority to Executively sign, ratify, nor implement such treaties for the following reasons:

- a) That the exercise of Crown prerogative in Canada has been abolished by the Patriation of the **Constitution Acts, 1867 and 1982** outside the purview of statutory granting of such power pursuant to the **Constitution Act, 1867**;
- b) That the executive does not have jurisdiction to sign a treaty on behalf of non-natural persons and that to do so would be *ultra vires* of the Constitutional framework of the **Constitution Acts, 1867 and 1982**;
- c) That, in any event, whether it would be with respect to non-natural or natural persons or investors, the treaty is *ultra vires*, *inter alia*, under ss. 53, 90, 91, 92, 92A, 95, 96 and 101 of the **Constitution Act, 1867**, as well as ss. 2, 3, 4, 5, 6, 7 and 15 of the **Charter**;
- d) That the treaty is further unconstitutional for the reasons set out in the prayer for relief herein in that it:
 - (i) Relinquishes effective control and jurisdiction over property and civil rights in the provinces to foreign investors and international tribunals;
 - (ii) Grants primary rights to foreign investors and corporations over those of Canadian citizens particularly natural (biological) citizens;

- (iii) Renders the treaty and investor rights superior to that of the Canadian and provincial governments and removes the jurisdiction for disputes out of Canada from the Canadian courts to an international (ISDS) tribunal;
- (iv) Circumvents established and pending treaty rights of aboriginal peoples contrary to, **inter alia**, to s. 35 of the **Constitution Act, 1982**;
- (v) In its implementation, threatens to supersede the impact on all other treaties, ratified and implemented, accruing to the benefits of natural persons;
- (vi) Removes and/or transfers and/or limits the authority of the government(s) in Canada both Provincial and Municipal, to deal locally with all matters under domestic jurisdiction;
- (vii) In transferring to an international tribunal hearing disputes, in-camera, denies Canadians rights to a fair, public and independent judiciary;
- (viii) Gives investors and investment primacy over Canada's Constitution and citizen's rights under the **Charter** in granting investors and investment primacy over the Constitution which states:

“Whereas Canada is founded upon principles that recognize the supremacy of God and the **Rule of Law**.”

Which Constitution, as stated by the Supreme Court of Canada:

Does not belong to either Parliament, or to the Legislature; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled.

A.G.N.S. v A.G. Can., [1951] S.C.R. 27 at 34

- (ix) Places “investments” and “investors”, as defined under Chapter [10] of CETA, on the same, if not an elevated plane to that of governments or sovereign nation states that eliminates the distinction between “private” and “public” in its definition of

- “investor” and “investment” which is over inclusive and applies to all investment “whether private or government owned and/or controlled” including licencing their professional qualifications and regulation, both a matter of exclusive Provincial jurisdiction;
- (x) Relinquishes the control over immigration concurrent to the provinces and the federal government in s. 95 of the **Constitution Act, 1867** in cases of investors and key personnel of those investors and entitles those foreign natural persons to enter, stay and work, regardless of the immigration laws and welfare of Canadian citizens with respect to those jobs;
 - (xi) Removes the current requirement that corporations of foreign investors, doing business in Canada, be Canadian citizens or residents thus removing all accountability for their actions against Canadian citizens and natural persons living in Canada;
 - (xii) Removes all requirements to hire Canadian citizens and residents in preference to aliens in investments whether that investment is “private or government” owned, thus violating s. 6(3),(4), 7, and 15(2) of the **Charter** ;
 - (xiii) Removes any preference given to Canadian citizens in any privatization of public property or land over-riding s.6(3),(4), and 15(2) of the **Charter**;
 - (xiv) Removes any preference given to Canadian citizens in the designation of monopolies including historical, cultural and public monopolies for the benefit of Canadian citizens and residents at large over-riding s.6(3),(4), and 15(2) of the **Charter**;
 - (xv) Relinquishes the control of the rights to privacy of Canadian citizens with respect to information flowing outside of Canada to investors and investments;
 - (xvi) Relinquishes the applicability of Canadian domestic law, in cases of disputes, to the law of the treaty as interpreted by a multilateral (IDSD) tribunal, and compels the paying of

compensation by the Canadian taxpayers, for damages awarded to any “investor” without the input, knowledge, consent or any right whatsoever of Canadian citizens and/or courts to affect or determine any matter under Canadian law;

- (xvii) Removes any dispute between a foreign investor and a Canadian citizen out of the hands of Canadian courts and removes the rights of the Canadian citizen by transferring the dispute over to a multilateral (IDSD) tribunal as between the investor and “Canada” as a contracting party;
- (xviii) Removes the right of the Canadian government to take steps for pure economic reasons in furtherance of its duty and authority under the Peace, Order and Good Government of s. 91 of the **Constitution Act, 1867**, and protection of the public interest; and
- (xix) Removes the jurisdiction over taxation belonging to Parliament and Provincial Legislatures found in ss. 53 and 90 of the **Constitution Act, 1867**.

Thus elevating the rights of foreign investors, corporate or natural, over the rights of:

- (a) Canadian citizens;
- (b) The Imperatives of the Canadian Constitution;
- (c) Canadian domestic law; and
- (d) Governments in Canada whether federal, provincial, local or aboriginal;

All contrary to the **Constitution Acts, 1867 and 1982** and, in particular, contrary to ss. 53, 90, 91, 92, 92A, 95, 96 and 101 of the **Constitution Act, 1867** as well as ss. 2, 3, 4, 5, 6, 7, 15, 35 and 52 of the **Constitution Act, 1982**.

25. The Plaintiffs state, and the fact is, that the CETA, on its face, and on the substance of its terms, is beyond constitutional authority for the executive to negotiate, sign, ratify and implement in the absence of prior Parliamentary authority, by specific Act or statutory framework, which Parliamentary approval(Act) would itself be subject to Constitutional constraints and , moreover, is substantively *ultra vires* and unconstitutional, by way of blatant examples, as follows:

- a) Chapter [2] Article X.08 (rights over water); Chapter [4] Article Section B, Article 4, Chapter [4] Annex 1(living search as plants and animals, and non-living national products such as minerals, including from soils and seabeds), Chapter [21] Appendix 1 Annex X.04, Chapter [25] Article X.10 (trade in forest products), Chapter [29] Article X.04, (forest products) Chapter [29] Article X.05, (raw materials) Chapter [21] Appendix Canada Market Access Offer (Notes to Annex X-03 Sections A and B), unconstitutionally trample on the provinces' exclusive jurisdiction under section 92A and 92(5) and (13) of the **Constitution Act, 1867**, over natural resources and further, Chapter [2] Article X.06 wherein the Federal Executive undertakes to ensure that the treaty provisions are "observed and given effect" by all levels of governments "including Provincial and Municipal" is a blatant trampling over s. 92, 92A, and 93 of the **Constitution Act, 1867**;
- b) Chapter [2] Annex X.05 (Sections 1-6) (wines and spirits), Chapter [3] Annex Canada Tariff Schedule: (Negative list tariff schedule targeting grapes and limiting sugar and alcoholic content), Chapter [41] Declaration on Wines and Spirits, Chapter [6] Article 3, Chapter [6] Article 6, Chapter [6] Article 7, Chapter [6] Annex Cooperation in the field of motor vehicle regulation, Chapter [10] Article X.12 (trading and transfer of securities), Chapter [11] Article X-03, Chapter [11] Article X-05, (licensing and registration for service providers), Chapter [12] Annex I,(service suppliers and independent professionals), Chapter [13] Sections 4 and 5, (recognition of professional qualification),Chapter [14] Article X.2, (licensing and qualification requirements), Chapter [15] Article 2,

Chapter [15] Annex 10,(insurance and financial services), Chapter [21] Article 2, Chapter [13] (mutual recognition of professional qualifications), Chapter [21] Article 14, Chapter [21] Appendix 1 Annex X.05, Chapter [21] Appendix Canada Market Access Offer Annex X.04, Chapter [24] Article 3,(labour and labour standards) Chapter [25] Article X.4 (local Environmental Laws), unconstitutionally trample over Licensing, Regulation of Professional and other jurisdiction over Property and Civil Rights, contrary to section 92(9) and (13) of the **Constitution Act, 1867**;

c) Chapter [7] Sanitary and phytosanitary measures, Chapter [26] Definition of Drug, Chapter [21] Appendix 1 Annex X.02, Chapter [28] Annex II Manufacturing practices for Pharmaceutical Products, Chapter [21] Appendix Annex X-02, unconstitutionally trample over the exclusive Provincial jurisdiction over health, contrary to section 92(7) of the **Constitution Act, 1867**;

d) Chapter [21] Appendix 1 Annex X.02, Chapter [35] Canada Annex I Sector Social Services, Chapter [21] Appendix Annex X-02, as well as other provisions with respect to service providers, unconstitutionally trample over the Provincial exclusive jurisdiction over education, contrary to section 93 of the **Constitution Act, 1867**;

e) Chapter [12] Article 2, Chapter [12] Article 7, Chapter [12] Article 8, Chapter [12] Article 9, Chapter [12] Article 8, Chapter [13] (mutual recognition of professional qualifications), unconstitutionally trample over immigration into the provinces, contrary to section 95 of the **Constitution Act, 1867**, and further inseparably and concurrently trample over the jurisdiction of the Regulation over Health, Professions, and Property and Civil Rights under s. 92 (7), (9) and (13);

f) Chapter [33] Article 14.1 – 7. Section 1-3(dispute resolution) Chapter [3] Article 9 Section 4, Chapter [3] Article 14, Chapter [10] Article X.21 (1G), Chapter [10] Article X.42, Chapter [19] Article X-03, Chapter [24] Article 11,

Chapter [30] Article X.01, Chapter [30] Article X.03, Chapter [33] Article 14.16, Chapter [33] Article 14.3, unconstitutionally trample on judicial independence and violate the constitutional right to a fair and independent judiciary in Canada, and in fact eliminate the Canadian judiciary, on matters affecting the physical situs of property, and rights, on Canadian soil, and under the Canadian Constitution by establishing ISDA tribunal(s) contrary to s. 96- 101 of the **Constitution Act, 1867**, as well as the structural unwritten Constitutional rights to a fair and independent judiciary as well as under s. 7 of the **Charter** where the same right is mirrored;

g) Chapter [22] Article 9.2, Chapter [22] Article 4, Chapter [22] Article 2, Chapter [22] Article 1.2, Chapter [22] Article 3, Chapter [22] Article 10, Chapter [22] Article 4A, Chapter [28] Annex 2-1.(f) which determine the right(s) on Health provisions, including pharmaceutical drugs ,other medication, vitamins, herbs and food supplements, and which place the rights of foreign investors over those of government, over healthcare, impact and violate the Plaintiff's rights pursuant to sections 2 and 7 of the **Charter** as it impacts on their life, liberty and security interests and rights in violating their right(s) to freedom of conscience under s. 2, as well as violating their physical and psychological integrity, under s. 7 of the **Charter**, with respect to access and choice of healthcare including drugs and other medication, vitamins, herbs and food supplements;

h) Chapter [3] Annex X.5, impacts and violates the Plaintiff's rights pursuant to section 2 and 7 of the **Charter** as it impacts their life, liberty and security interests and food supply choices and transparency over the composition of food in the same fashion and for the same reasons outlined in g);

(i) Chapter [9], which eliminates government subsidies (Federal, Provincial or Municipal) except for Culture, as well as Chapter [20] Article 4, which places state enterprises and monopolies by Act of Parliament, (whether Federal, provincial, or Municipal), on the same plane as private, foreign investors, as well

as Chapter [21] which requires that government procurement of goods, services or supplies (whether such government procurement is Federal, Provincial or Municipal), must place foreign, private investors on the same plane as Canadian suppliers, which effectively and blatantly :

- tramples on the jurisdiction of Provinces and Municipalities, and s.92, 92A and 93, of the **Constitution Act, 1867**;
- as well as, with respect to the **Charter**, violate and tramples on the governments' (particularly Provincial and Municipal, but also Federal) ability and duty to devise programs under s.2, 6(3),(4),7 and s.15(2) of the **Charter**, and further restricts such subsidies, monopolies , and state enterprises, from effecting social, health, and educational and other programs under s. 2, 6(3),(4), 7, and 15(2) of the **Charter**;

(j) Chapter [32] articles X.05, X.06, and X. 09, “the Exceptions” clause, which sees exceptions to the treaty, restricted to matters of National Security, Taxation, and Cultural Industries, has the net effect of having foreign, private “investment” and “investors”, as defined in Chapter [10], over-ride the constitutional order under **Constitution Acts, 1867- 1982**, including but not restricted to s. 92, 92A, and 93 of the **Constitution Act, 1867**, as well as s. 2, 3, 6, 7, and 15 of the **Charter**, all by Federal Executive fiat and action outside the scope of Federal jurisdiction;

k) that all such violations, set out above, in substance, and by means of Executive action, further breach the Plaintiff's constitutional rights to the Rule of Law, Constitutionalism, and Federalism, and their rights as citizens, that the Executive will abide by the constitutional order, and framework, and limits which give it its very authority to act.

26. The Plaintiff, the Honourable Paul Helleger, P.C. and other co-plaintiffs state that their rights are violated as follows:

- a) The breach of the constitutional order, rule of law and constitutionalism by the Executive as set out above;
- b) The breach of their **Charter** rights as set out above in the within statement of claim;
- c) Paying compensation, through their taxes, for unconstitutional acts of the Executive both,
 - (i) In breach of their constitutional rights as set out above; and
 - (ii) In breach of their right to no taxation without representation in the elimination of Parliamentary approval of the treaty;
 - (iii) By infringing on their right to vote, under s. 3 of the **Charter**, as inseparably tied to the breach of no taxation without representation;
 - (iv) By imposing unlawful taxation, to the proportion necessary to pay for compensation for the treaty rights of foreign investors which cannot be pursued due to constitutional constraints beyond the competence of the Federal Parliament and/or Executive.

RELIEF SOUGHT

27. The Plaintiffs therefore claim and request:

- a) The relief set out in paragraphs 1–6 of the within claim;
- b) Interim relief, by way of stay or interim injunction, pending the determination of the within action; and
- c) Costs of this action, and any such further relief as counsel may advise the Court and that this Court may grant.

The Plaintiffs propose that this action be tried at Toronto.

Dated at Toronto this st 21 day of October, 2016



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Solicitor for the Plaintiff

Court File No.:

FEDERAL COURT

B E T W E E N:

THE HONOURABLE PAUL HELLEYER, P.C.

ET. AL.

Plaintiffs

- and -

THE RIGHT HONOURABLE JUSTIN

TRUDEAU, ET. AL.

Defendants

STATEMENT OF CLAIM

(Pursuant to s.17(1) and (5)(b)
Federal Courts Act, and s.24(1)
 And s.52 of the *Constitution Act, 1982*)
 (Filed this day of October, 2016)

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Solicitor for the Plaintiffs

I HEREBY CERTIFY that the above document is a true copy of
 the original issued out of / filed in the Court on the _____
 day of _____ A.D. 20____
 Dated this _____ day of _____ 20____
 TAINA MERO
 REGISTRY OFFICER
 AGENT DU GREFFIER