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Digging for Dividends

The use and abuse of investor-state dispute settlement by Canadian investors abroad

Hadrian Mertins-Kirkwood and Ben Smith

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ABOUT THE AUTHORS

Hadrian Mertins-Kirkwood is a senior researcher with the Canadian Centre for Policy Alternatives where he focuses on international trade and climate policy.

Ben Smith is a MA student in the Department of Political Science at Colorado State University where he studies the politics of international investment and trade.

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Executive summary

INVESTOR–STATE DISPUTE SETTLEMENT (ISDS) is a system that allows foreign investors to sue governments in private tribunals over public policy measures that affect the profitability of their investments. ISDS is typically used as an enforcement mechanism for the investment provisions found in trade and investment agreements between two or more countries. For the governments consenting to this system, the potential for punitive payouts to foreign investors is rationalized by the promise of greater inward investment and by the benefits afforded to a country's own investors operating abroad.

Canada has long been a proponent of ISDS as part of its trade and investment regime, yet Canada's experience with ISDS at home has been overwhelmingly negative. Under the North American Free Trade Agreement (NAFTA), the Canadian government has been sued more than either the U.S. or Mexico—resulting in hundreds of millions of dollars in damages and government backtracking on public interest regulations—while Canadian investors in the U.S. and Mexico have never won an ISDS case.

The failure of NAFTA's ISDS system for Canada was acknowledged in the recently negotiated United States–Mexico-Canada Agreement (USMCA). For the first time in a Canadian investment agreement, ISDS was scaled back rather than expanded. Describing the change, Canada's foreign affairs minister echoed the long-standing concerns of labour unions, social justice movements, environmental activists and other critics that investor–state arbitration "elevates the rights of corporations over those of sovereign governments."

Nevertheless, Canada continues to promote and entrench ISDS through its trade and investment agreements outside North America. Understanding the Canadian government's persistence in advancing a controversial system that, by the current government's own admission, has failed Canada and Canadian investors under NAFTA, requires us to look beyond North America to Canada's experience with ISDS in the rest of the world.

Whereas only one ISDS case has ever been brought against Canada by a country other than the U.S. or Mexico, Canadian investors have initiated at least 43 ISDS claims against countries outside North America through the end of 2018. This study documents and analyzes each of those cases to arrive at a more comprehensive understanding of Canada's experience with the ISDS regime.

Overall, we find that the prevailing use of ISDS by Canadian investors outside North America follows a common pattern: a Canadian firm in the mining or energy sector operating in a developing country brings a claim disputing a resource management or environmental policy measure of that country. Specifically, we find the following:

- Canadian investors in the mining, oil and gas industries were behind 70% of Canadian ISDS cases outside North America even though the extractive sector accounts for only 9% of the domestic economy and 22% of Canadian investment abroad.
- Canadian investors targeted developing countries in 86% of Canadian ISDS cases outside North America even though only 41% of total Canadian investment abroad is hosted by developing countries. Specifically, half of cases were brought against countries in South and Central America.
- Canadian investors challenged resource management measures in 44% of Canadian ISDS cases outside North America and environmental protection measures in 23% of cases.

Environmental policy is the fastest-growing trigger for ISDS cases involving Canadian investors. Colombia's recent efforts to protect a sensitive ecosystem, which triggered three separate ISDS claims by Canadian mining companies, is illustrative of the trend. As governments around the world accelerate their efforts to reduce greenhouse gas emissions to mitigate the worst effects of climate change, the potential for ISDS cases to delay and obstruct action is a serious ecological and economic concern.

Canadian investors have lost the majority of decided ISDS cases, but their poor overall record in these disputes does not reflect an anti-investor

bias in the ISDS system. Whereas states can only hope to "not lose" an ISDS case, the potential for investors to win lucrative payouts encourages companies to launch claims for compensation even on tenuous grounds. Total compensation awarded to Canadian firms in decided ISDS cases and related settlements is approximately US$4.4 billion (about $5.9 billion) with an additional US$6 billion claimed in ongoing cases.

In light of these massive financial awards, third-party profiteering from the ISDS system is a growing concern. Financial speculators are increasingly engaging in third-party funding of ISDS cases. Rather than invest in the company directly, hedge funds and specialized investment firms buy a stake in the ISDS claim itself and receive a share of the award if the tribunal decides in the investor's favour. Shadowy third-party funding is being used to encourage and sustain ISDS cases that would not otherwise be viable.

We conclude that the ISDS system may be serving the interests of litigious Canadian corporations outside North America—at no direct expense to the Canadian government—but the risks to the citizens of Canada's trading partners are unacceptably high. Canada cannot continue to defend and propagate a system that undermines the right of foreign governments (especially in developing countries) to act in the public interest simply because Canada has not been targeted by investors from those countries.

To address the abuses of the ISDS regime by Canadian investors operating abroad we make a number of recommendations to the Canadian government, including the following:

- The Canadian government should remove ISDS from all existing trade and investment agreements and refrain from including ISDS mechanisms in future treaties.
- The Canadian government should clarify existing trade and investment agreements to ensure investment provisions do not apply to non-discriminatory laws or regulations taken in good faith to protect the public interest.
- The Canadian government should encourage greater transparency in the dispute settlement system by requiring that all instances of third-party funding are disclosed in disputes involving a Canadian investment agreement.

Canadian investors abroad have many reasonable alternatives to the treaty-based ISDS regime for protecting their investments, including the domestic court systems of host countries, political risk insurance and contract-based arbitration.

Introduction

INVESTOR–STATE DISPUTE SETTLEMENT (ISDS) is a controversial system for enforcing the rights of foreign investors in international trade and investment agreements. If a government bound by this system makes a public policy decision that harms a covered investment, the investor can seek monetary damages as compensation through a binding arbitration process. The vast majority of investment agreements in force around the world include some form of ISDS.[1]

Canada is a long-standing advocate of the ISDS system. The North American Free Trade Agreement (NAFTA) came into force with an ISDS mechanism in 1994 and the Canadian government has since negotiated dozens of other deals that include enforcement mechanisms modelled on NAFTA. The Canadian business lobby was and remains an especially vocal supporter of this approach.[2] Proponents of ISDS contend that the right of investors to directly challenge sovereign states is necessary to uphold the rule of law and to provide a predictable, secure investment climate.[3] For governments consenting to this system, the potential for punitive payouts to foreign investors is rationalized by the promise of greater inward investment and the protection that country's own investors receive abroad.

Yet Canada's experience with the ISDS system in NAFTA has been overwhelmingly negative on all fronts. Canada has been sued far more often than either the U.S. or Mexico, has lost eight of those cases and has paid out more than $200 million in damages while backtracking on regulatory measures taken in the public interest.[4] Governments in Canada have had

to change their internal processes for vetting laws and regulations to give special consideration to the powerful rights of foreign investors.[5] NAFTA's ISDS system has consequently been criticized by Canadian labour unions, environmental groups and social justice organizations for limiting the state's capacity to act in the public interest in key areas of public policy. Moreover, there is little evidence that ISDS is a determining factor in attracting inward investment to developed countries.[6] The only clear winners of NAFTA Chapter 11 have been litigious American multinational corporations—Canadian (or Mexican) investors have never won a NAFTA dispute against the U.S.—but even in the U.S., political and public opinion regarding ISDS is generally negative.[7]

Mounting opposition to the NAFTA ISDS system in all three countries ultimately led to its curtailment in the renegotiated United States–Mexico-Canada Agreement (USMCA).[8] If and when the USMCA comes into force to replace NAFTA, it will mark the first time a new Canadian free trade agreement has reversed rather than expanded enforcement rights for investors.[9] Justifying the decision, Foreign Affairs Minister Chrystia Freeland claimed that the removal of ISDS in the USMCA "strengthened our government's right to regulate in the public interest, to protect public health and the environment."[10]

On the surface, Freeland's statement marks a dramatic departure in Canadian trade and investment policy. Indeed, given the ignominious history of ISDS in Canada, the importance of its removal should not be understated. Nevertheless, Canadian negotiators and the Canadian business community remain committed to expanding the ISDS system in other agreements, including through the recently ratified Trans-Pacific Partnership.[11] Why would the Canadian government, with the backing of business lobbyists, continue to push for a system that was, by the government's own admission, so unsuccessful in NAFTA? Answering that question requires us to look beyond the North American experience toward the use of ISDS by Canadian investors in the rest of the world.

In this study, we document every publicly reported ISDS case involving a Canadian investor outside of North America to develop a more complete picture of Canada's role in the ISDS system and, ultimately, to better understand the continued support of the ISDS system within Canada's political and economic elite. This report builds on our previous study, titled *A Losing Proposition: The Failure of Canadian ISDS Policy at Home and Abroad*,[12] which documented known ISDS cases involving Canadian investors up to 2015. The present report updates the database of cases and expands on the analysis.

First, we briefly explain how investor–state dispute settlement works and summarize the main criticisms of the system. Second, we present a quantitative analysis of the 43 known cases of Canadian investors using ISDS outside of NAFTA. We find that the ISDS system has predominantly been used by Canadian resource firms to sue developing countries for resource management and environmental policy decisions. Third, we discuss two important themes in the use of ISDS by Canadian investors: the rise of third-party funding, where speculators buy into ISDS claims for a chance at a major payout, and the growing incidence of environmental policies triggering investor disputes.

We conclude that, rather than acting as a remedy of last resort, ISDS is widely and increasingly being used by Canadian firms to bully developing countries acting in the public interest. Challenges to environmental policy are especially problematic. Abuses of the ISDS system threaten not only the citizens of the countries where Canadian companies invest, but also broader global efforts to mitigate and adapt to climate change.

Ultimately, we argue that the ISDS system should be eliminated. We offer a set of recommendations for reforming Canada's current foreign investment protection model to prioritize the ability of states to act in the public interest while accommodating investors' expectations of stability and security.

Understanding Canada's investor–state dispute settlement regime

INVESTOR–STATE DISPUTE SETTLEMENT is a quasi-judicial system that allows foreign investors to enforce the terms of an international investment agreement signed between two or more states. If a government takes an action that violates the agreement, typically in a manner that is alleged to have negatively affected the profitability of a covered investment, the aggrieved investor can invoke a binding arbitration process to seek compensation.[13] Arbitration awards generally do not allow for judicial review.

There is no single ISDS system in use around the world. Although a handful of centralized bodies facilitate the majority of ISDS cases, most notably the International Centre for Settlement of Investment Disputes (ICSID), the specific rights and procedural rules in each case are set out in the relevant investment agreement. For Canadian firms engaging in the ISDS system abroad, those agreements fall into three general categories.

First, foreign investor protection agreements (FIPAs) are bilateral investment treaties (BITs) signed between Canada and one other country. These treaties predominantly cover investment flows between the two countries, although they can also apply to investments from a third country that flow through Canada or the FIPA partner. To date, Canada has consented to 37 FIPAs that are in force and is in the process of negotiating or ratifying another

22 treaties.[14] Most of these agreements employ an ISDS system to enforce the investment provisions in the treaty.

Second, regional free trade agreements (FTAs) are signed between Canada and one or more other countries. FTAs encompass a much broader range of issues than FIPAs but typically include similar investment provisions in one or more dedicated investment chapters. By the end of 2018, Canada had brought 14 FTAs into force covering trading relations with 44 countries. Another 12 FTAs covering 42 countries are at varying stages of completeness. Like Canada's FIPAs, the majority of Canada's FTAs include an ISDS mechanism for enforcing investment protections.

Taken together, Canadian FIPAs and FTAs cover Canadian investments in 69 countries. Some are covered by more than one agreement. Approximately 83% of all Canadian investment abroad is covered by one of these agreements, including 68% of investment outside the United States and Mexico.[15] A further 49 countries are involved in negotiations over the establishment of new trade or investment agreements with Canada, but they are generally much smaller economies. If every prospective investment agreement was brought into force today, only a further 7% of Canadian investment abroad would be covered.

As we discuss in more detail below, Canadian investors often channel their investments through multiple foreign subsidiaries, which provides those investors with recourse to any trade agreements signed by any of the foreign governments in question. Consequently, ISDS coverage for Canadian investors via trade and investment agreements is even greater in practice than the preceding figures suggest.

The third category of agreements that makes ISDS available to Canadian investors are project-specific contracts signed between investors and governments. These private agreements are limited in scope to a particular investment, but they can function in a similar manner to an international investment agreement if the parties choose to include an ISDS mechanism. If an investment is covered by more than one contract or international agreement, the investor can choose to initiate arbitration under any of the applicable ISDS systems.

For the purposes of this study, all of the FIPAs, FTAs and contracts that allow for ISDS, with either a Canadian investor or the government of Canada as a party, are understood to constitute the Canadian ISDS regime. Remarkably, this web of investor protections barely existed 30 years ago. The proliferation of Canadian investment agreements has elevated ISDS from mainly a poorly understood concession in the NAFTA negotiations to a

central pillar of Canada's international economic policy. No longer a benefit that investors negotiate for themselves in the marketplace, ISDS is now a core protection that is secured directly by the state and made available to a significant proportion of Canadian investors around the world.

The spread of ISDS is problematic for a variety of well-documented reasons, some of which will be explored in more detail later in this report. First, the ISDS system is only "judicial" insofar as it resembles a court process, where an adjudicator hears arguments brought by a litigant and a defendant and then renders a binding decision. As Gus Van Harten and other ISDS critics have argued, the system lacks the impartiality and independence of a legitimate judicial system.[16] In most cases, the members of an arbitral panel are appointed by the parties on an ad hoc basis and their decisions are subject to little or no review in any court, whether national or international. Conflicts of interest, whether real or perceived, are commonplace as individual lawyers and specialized law firms move back and forth between representing investors in one case and representing states—or even acting as arbitrators—in the next. Furthermore, arbitrators are paid on a for-profit basis in a context where only foreign investors can bring claims, which incentivizes the proliferation of costly, drawn-out disputes that feed a lucrative arbitration industry.[17]

Second, the ISDS system raises fundamental questions about state sovereignty. The arbitration process takes place in a supranational forum (i.e., outside of any domestic court system), which effectively raises the legal standing of a foreign investor to that of a sovereign state. By subjecting public decisions to the will of a private tribunal, ISDS undermines democratic governance and constrains regulatory flexibility. Although arbitrators cannot directly overturn public policy, they can award extensive monetary damages to the investor. The very risk of a massive financial penalty can influence governments to change, withdraw or avert public policy measures taken in the public interest.[18]

Third, the ISDS system is inherently imbalanced because investors can sue states but cannot themselves be the target of suits from governments. It also offers no recourse for citizens or workers harmed by the actions of a foreign investor. Crucially, the pro-investor bias of the ISDS system benefits only one category of private actors (i.e., foreign investors) without providing any benefits to domestic investors. In practice, the ISDS system is used mostly, and most lucratively, by the largest multinational corporations and wealthiest individual investors that can effectively navigate the extremely expensive and complex arbitration system.[19]

Overall, the investor–state dispute settlement system serves to protect the investments of the most powerful international investors without subjecting those investors to commensurate responsibility or liability. The proliferation of ISDS systems around the world now ensures that these privileged investors receive extraordinary legal protections nearly everywhere they choose to invest. Conversely, the principal casualty of the ISDS regime is the broader public interest, which is often sacrificed or attacked by an arbitration process that does not afford any standing to public concerns.

The following analysis of Canadian investors' use of ISDS abroad is grounded in this critical understanding of the international arbitration system. Within this regime we are predominantly concerned with treaty-based ISDS, since contract-based ISDS, as we discuss in the conclusion, avoids many of the same pitfalls.

Analysis of investor–state disputes involving Canadian investors outside North America

AS OF DECEMBER 31, 2018, there were 43 known cases of Canadian investors using ISDS outside of NAFTA (see "Why exclude NAFTA?"). In most cases, the governments involved acknowledged and publicized the disputes. Publicly-traded corporations must also disclose arbitration claims to their investors. Some disputes are not officially recognized by either party, but since ISDS claims typically impact communities in the host country as well as various stakeholders in the investor's home country, local journalists and foreign business reporters often expose those cases in the press. Nevertheless, there may be additional cases involving a Canadian investor that are not captured in this study. The Canada-China FIPA in particular permits an unprecedented degree of secrecy in ISDS cases, so complaints brought under that agreement are unlikely to be made public.

For each known case, we collected and analyzed a variety of data, including details about the investor, the timeline of the tribunal process, and the value of damages claimed and awarded. We also coded each case according to the primary industry of the investor, the disputed government measure and the outcome of the case. The methodology for coding the cases

Why exclude NAFTA?

Our study excludes all claims lodged under the North American Free Trade Agreement for two main reasons. First, the impact of ISDS between Canada, the United States and Mexico is well-documented by Scott Sinclair in the CCPA report *Canada's Track Record Under NAFTA Chapter 11: North American Investor–State Disputes to January 2018*.[47] The present study is designed as a complement and companion to Sinclair's report. Together they capture the universe of publicly reported ISDS claims involving Canada and Canadian investors.

Second, the Canada-U.S.-Mexico relationship is unique and not necessarily representative of Canada's experience with the ISDS regime more broadly. As Sinclair demonstrates, Canada has largely been on the defensive when it comes to investor–state disputes under NAFTA. Far more investors from the U.S. have sued Canada—and won—than the reverse. In contrast, as we shall see, the use of ISDS outside North America is almost exclusively a story of Canadian-based multinational companies suing developing countries without any corresponding challenges to Canada. Separating NAFTA from every other Canadian investment agreement allows us to identify two distinct narratives.

The North American situation is further differentiated by the high-profile curtailment of ISDS in the United States–Mexico-Canada Agreement (USMCA), which is slated to replace NAFTA. Assuming the new deal is ratified, it will mark the first time Canada has rolled back ISDS in an investment treaty. In the rest of the world, the ISDS model established in NAFTA still characterizes Canada's approach to investment treaty negotiations.

is available in Appendix A of this report. The full database of cases, including brief descriptions of the major issues in each case, is available in Appendix B.

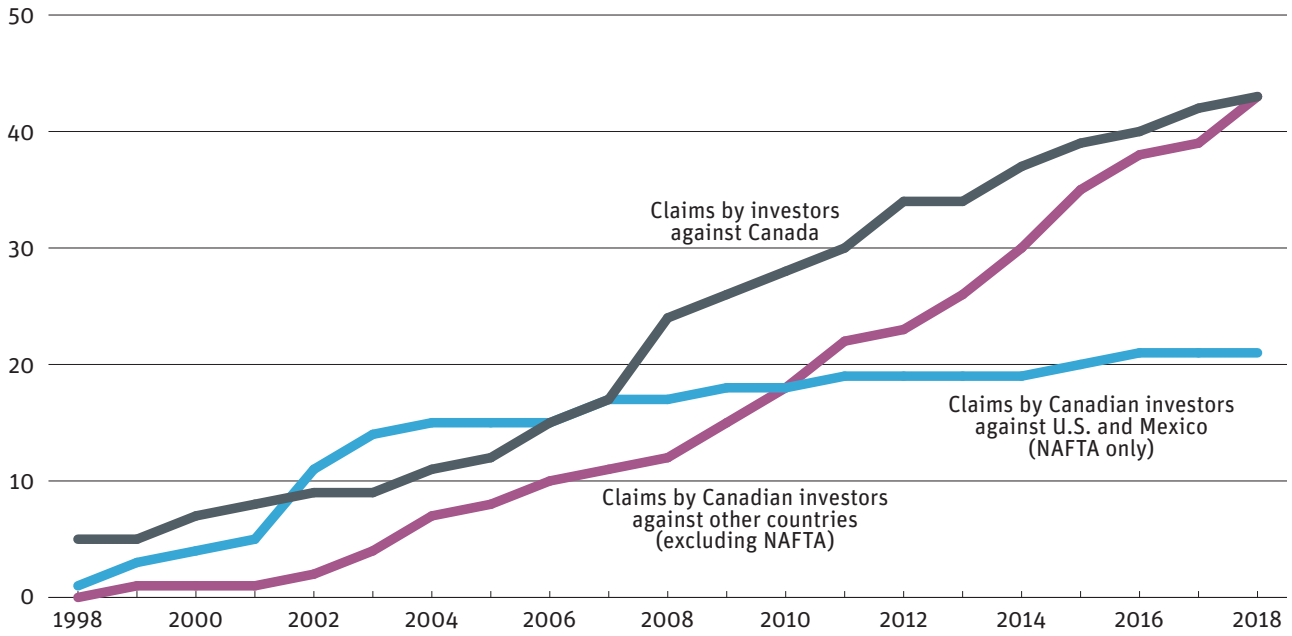
In this section, we present a quantitative analysis of the database to identify patterns in the use of ISDS by Canadian investors abroad.

Volume of cases

The first known case of a Canadian investor invoking ISDS outside of NAFTA was in 1999. The total number of cases has climbed steadily over the past two decades and accelerated in the past 10 years to reach 43 in total. As a point of comparison, Canadian investors' claims under NAFTA mostly plateaued in 2004 (see *Figure 1*) and now account for only a third of all ISDS claims involving Canadian investors. It may be that the repeated failure of Canadian investors to win disputes against the United States has discouraged Canadian firms from bringing new NAFTA claims.

The ISDS system has also been used in 43 cases to bring claims against the Canadian government. However, of the cases involving Canada as a

FIGURE 1 Number of ISDS cases involving Canada and Canadian investors (running total by year)



defendant, all but one—a 2016 case brought by the Egyptian firm Global Telecom Holdings S.A.E. under the Canada-Egypt FIPA—were brought by American or Mexican corporations through NAFTA. It should be reiterated that the Canada-China FIPA is unique among Canadian investment agreements in the secrecy it offers to investors, so there may be claims brought against Canada by Chinese companies that have not yet been revealed. Nevertheless, of the 69 countries covered by a Canadian FIPA or FTA, investors from 66 of them have never invoked ISDS against Canada in a publicly reported case.

Indeed, once investors from the United States are excluded, the Canadian ISDS regime appears to have been used almost exclusively by Canadian investors operating abroad, which reflects the one-sided investment relationship between Canada and most of its other trading partners. For the developing countries that are not major investors in Canada, the ISDS regime echoes and reinforces the exploitative historical pattern of Western powers seeking to extract value from the Global South.[20]

Forecasting future trends is difficult given the unpredictability of the ISDS system. We might expect claims against Canada to taper in the coming years due the removal of ISDS from the USMCA. However, a single contentious policy—for example, a regulatory measure intended to reduce oil and

gas production—could spark a sudden flurry of cases against Canada from investors in Europe, China and elsewhere. Based on the historical trendline, it seems likely Canadian investors will continue to bring a handful of new cases against foreign governments each year, especially as new FIPAs and FTAs come into force, but no one can predict the trend with any certainty.

Investor nationality

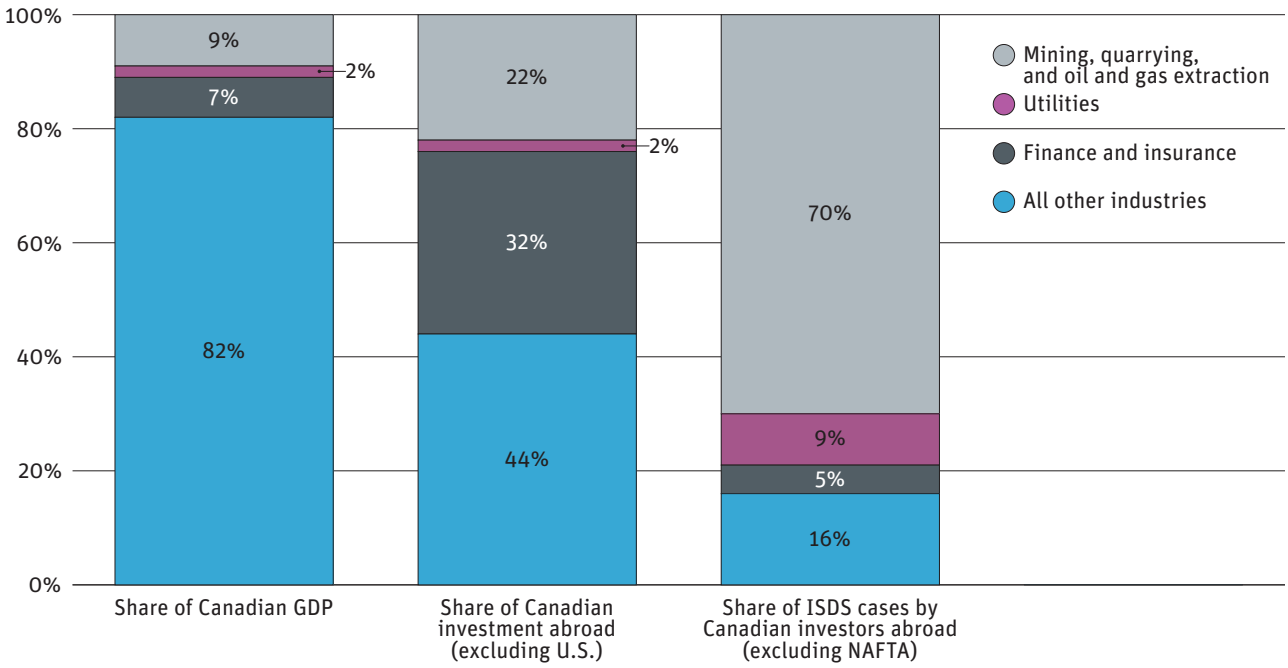
The "Canadian" cases in our study do not necessarily involve Canadian investors and Canadian investment treaties. A notable proportion of the investors in our study engaged in treaty shopping (also referred to as forum shopping or venue shopping), which means the investor used a shell company in a third country to gain access to investment protections they would not otherwise be entitled to.

Specifically, we identify nine cases of Canadian investors who registered shell companies in other countries to access the ISDS system in a non-Canadian investment treaty or contract. For example, in *South American Silver v Bolivia*, the Vancouver-based mining company launched an ISDS claim through its Bermudan subsidiary under the U.K.-Bolivia investment treaty. Technically speaking, these ISDS cases could be said not to involve Canadian investors, since the foreign shell company initiated the claim. Nevertheless, we include these cases in our study because they involve Canadian investors ultimately and for all practical purposes.

We also identify three cases of non-Canadian investors registering a shell company in Canada to lodge an ISDS claim through a Canadian investment treaty. Although these are not Canadian investors in practice, we include these cases because they are Canadian-registered corporations employing Canadian investment treaties. For example, in *Rusoro v Venezuela*, the Russian-owned-and-operated mining company, which is nominally headquartered in Vancouver, launched an ISDS claim under the Canada-Venezuela investment treaty.

Overall, 28 of the 43 cases in our database (65%) involve a Canadian free trade or investment agreement. The remainder are split between private contracts and non-Canadian investment treaties. Canadian investors' use of ISDS abroad is, therefore, not wholly dependent on the proliferation of Canadian investment agreements.

FIGURE 2 Comparison of Canadian GDP, investment abroad and ISDS cases abroad by industry



Notes Data for GDP and investment abroad are for 2017. The share of Canadian investment abroad should also exclude Mexico, but data broken down by industry for individual countries (besides the United States) were not available at the time of writing. Industries are defined by two-digit North American Industry Classification System (NAICS) code.

Sources Statistics Canada, "Table 36-10-0434-01: Gross domestic product (GDP) at basic prices, by industry, monthly (x 1,000,000)," last modified November 4, 2018; and Statistics Canada, "Table 36-10-0009-01: International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by North American Industry Classification System (NAICS) and region, annual (x 1,000,000)," last modified November 4, 2018.

Investor industries

Canadian companies are active around the world in a wide variety of sectors, yet the use of ISDS by Canadian investors outside North America is dramatically and disproportionately concentrated in one industry. The extractive sector accounts for 9% of Canada's gross domestic product and 22% of Canada's foreign investment outside the United States, yet it accounts for 70% of all ISDS cases in our database (see *Figure 2*). Specifically, of the 43 cases in our study, 26 involve mining companies, followed by four investors in the oil and gas sector.

Electricity generation (utilities) is also overrepresented in Canadian ISDS cases. It is the second most common industry in our database but one of the smaller sectors in terms of Canadian GDP and foreign investment. In contrast, finance and insurance is the largest industrial category for Canadian investment abroad, but that presence is not reflected in the use of ISDS by Canadian investors.

TABLE 1 Targets of Canadian investor–state disputes by country and number of claims

Country	Number of claims
Argentina, Bangladesh, Barbados, Bolivia, Croatia, Czech Republic, Democratic Republic of the Congo, El Salvador, Kyrgyzstan, Mongolia, Niger, Peru, Poland, Romania, Serbia, Slovakia, Spain, Sri Lanka, United Arab Emirates	1
Costa Rica, Ecuador, Kenya	3
Colombia, Kazakhstan	4
Venezuela	7

Countries targeted

Canadian investors have initiated ISDS claims against 25 countries outside of North America (see *Table 1*). The most common targets are Venezuela (7 cases), Colombia (4 cases) and Kazakhstan (4 cases). Overall, South and Central America account for about half of cases with the remainder distributed between Africa, Asia and Europe.

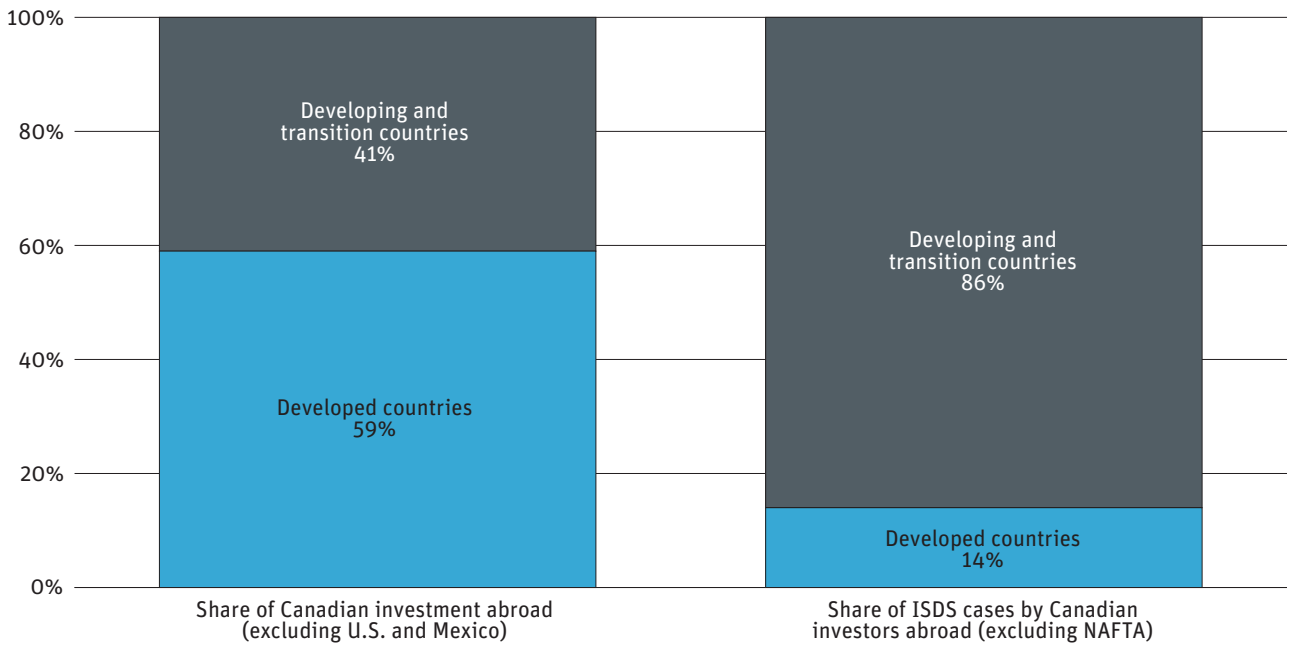
The vast majority of cases target developing countries and countries in transition even though the majority of Canadian investment outside of North America is in developed countries (see *Figure 3*).

Government measures challenged

Cases in our database are coded based on the state's ultimate policy decision and not necessarily the proximate cause that the investor identified in their ISDS claim (see Appendix A). For example, an investor may dispute a cancelled mining concession on the grounds of discriminatory treatment, but that complaint is distinct from the government's rationale for the policy, which might range from national security to local economic development to environmental protection.

Following this approach, energy policies or other resource management decisions by the host government account for the largest share (44%) of ISDS cases involving Canadian investors abroad (see *Figure 4*). Specific examples of government measures disputed by investors include the denial of resource development permits, the nationalization of mining projects and the cancellation of energy supply contracts, but these narrow complaints

FIGURE 3 Comparison of Canadian investment abroad and ISDS cases abroad by target country's level of development



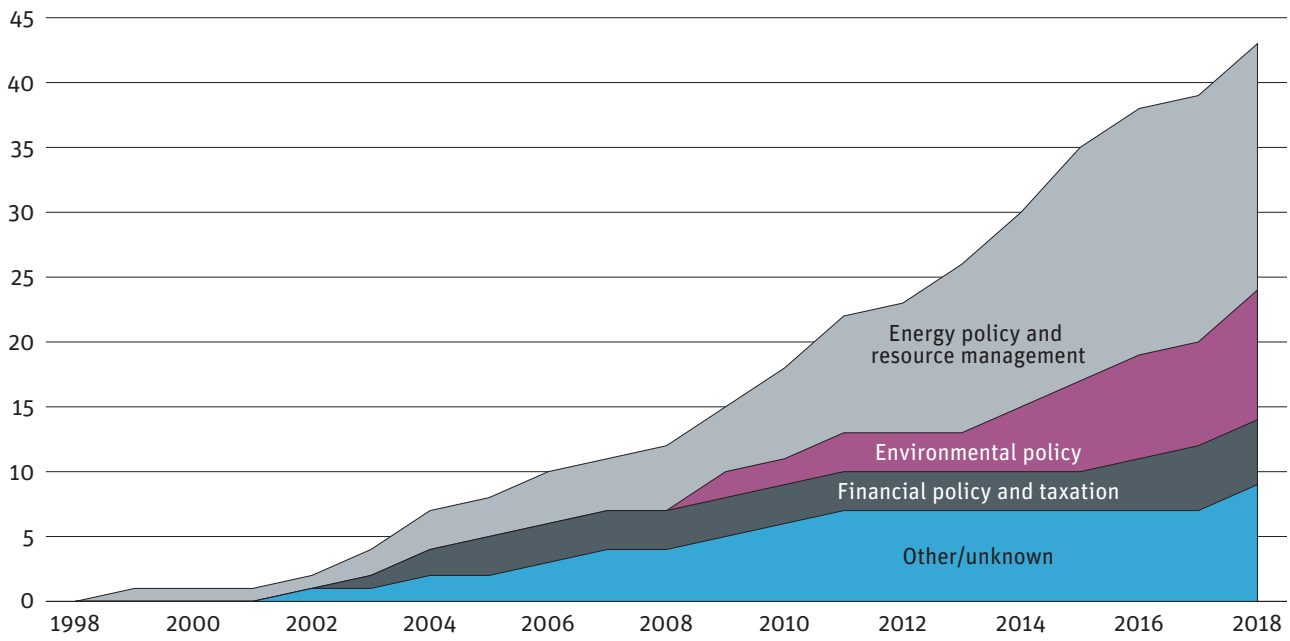
Notes Data for investment abroad are for 2017. Countries are grouped by UNCTAD classification.
Sources Statistics Canada, "Table 36-10-0008-01: International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by country, annual (x 1,000,000)," last modified November 6, 2018. United Nations Conference on Trade and Development, "Development status groups and composition," last modified June 22, 2018, available at http://unctadstat.unctad.org/EN/Classifications.html.

relate to an array of broader issues such as national economic development, economic diversification and energy market stability.

The next most common area of dispute (23% of cases)—and the fastest growing area over the past decade—is environmental policy. Examples of disputed measures include prohibitions on mining activities that pollute drinking water, rejected or delayed environmental permits, and the state takeover of ecologically damaging resource projects. Although these government measures are also resource management decisions, they are distinguished from the previous category by their predominantly environmental justification.

The preponderance of energy and environmental issues is directly related to the large number of Canadian resource and energy companies lodging ISDS claims. Canadian mining companies in particular have repeatedly used ISDS to challenge alleged obstacles to new or established extraction projects. The case of Canadian mining company Pacific Rim challenging the Republic of El Salvador for its refusal to provide a gold mining permit is typical. In that

FIGURE 4 Government measures challenged in ISDS cases involving Canadian investors outside North America (running total by year)



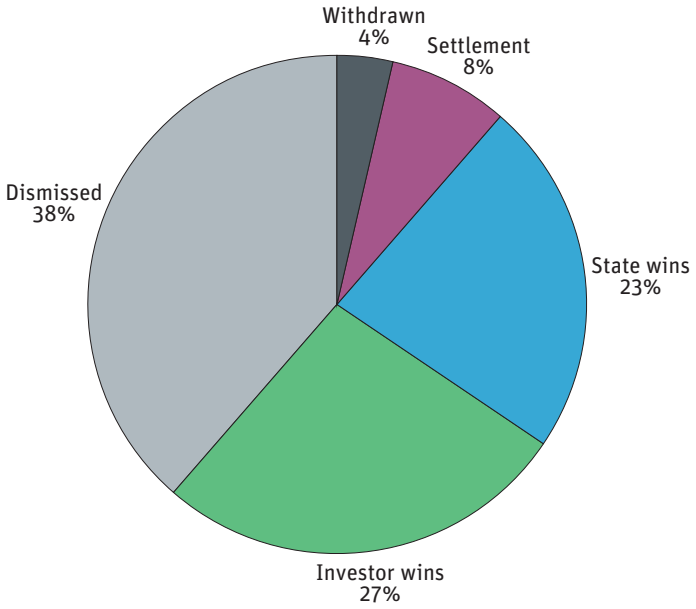
case, widespread public protests over the humanitarian and environmental costs of mining provoked the state to impose a de facto moratorium on new projects. Although the state's action was non-discriminatory and taken in the public interest, Pacific Rim nonetheless brought a claim for hundreds of millions of dollars in compensation.[21]

Other areas of dispute for Canadian investors include financial policies, such as currency controls, and cases related to the administration of justice, such as a failure to uphold a domestic court decision in the investor's favour. These cases often involve Canadian energy and resource companies.

Case outcomes

ISDS cases typically take several years to reach a conclusion. Of the 43 cases in our database, 17 disputes are still working their way through the tribunal process. The oldest ongoing case in our database was initiated in 2011. Damage claims in these 17 outstanding cases total US$6 billion.

FIGURE 5 Outcomes of decided ISDS cases involving Canadian investors outside North America



Of the 26 concluded cases in our study, only 13 were formally decided in favour of either the state or the investor (see *Figure 5*). In those cases where the tribunal ruled on the merits of the claim, defending states have won on six occasions and Canadian investors have won on seven. In two other cases, the state and the investor are known to have negotiated a settlement outside of the tribunal process that involved compensation to the investor. Total compensation awarded to Canadian investors in concluded ISDS cases and related settlements amounts to US$4.4 billion on claims of US$19.5 billion, although not all of those awards have yet been paid out by governments.

Many cases never make it to a final award. Just over 38% of the cases in our database were dismissed by the tribunal on jurisdictional grounds before the merits of the case could be heard. In those cases, the tribunal determined that either the government measure or the investor was not covered by the relevant investment treaty.

In one case, *Bank of Nova Scotia v Argentina*, the investor unilaterally withdrew the claim, possibly as part of an undisclosed settlement.

Discussion

Based on the preceding analysis, we identify a clear, three-part pattern in the predominant use of ISDS by Canadian investors outside North America: (1) a Canadian firm in the mining or energy sector brings a claim against (2) a developing country for (3) a resource management or environmental policy measure. Of the 43 cases in our database, 21 (49%) meet all three criteria and a further 13 (30%) meet two out of the three. Notably, this pattern is on the rise. Of cases initiated in the past decade, 58% fit the narrative.

This pattern is not consistent with the profile of all Canadian foreign investment outside North America. Most Canadian investment is in finance, insurance and other service industries in developed countries, especially in Western Europe. Canadian mining in developing countries, especially in South and Central America, represents a minority of Canada's foreign investment position.

Other important trends include the prevalence of treaty shopping, whereby a foreign investor incorporates a shell company in a third country to access an ISDS system they would not otherwise have access to. In 28% of the cases in our study the investor's headquarters or ultimate owner was not located in the country under which the ISDS claim was initiated. The use of ISDS by Canadian firms is only loosely tied to the proliferation of Canadian investment agreements.

We also observe a marked increase in environmental policy disputes. The first instance of an environmental measure being challenged by a Canadian investor in our database was in 2009, but since then nearly a third of all new cases have involved environmental policy.

The outcomes of the 26 decided cases involving Canadian investors can be interpreted in different ways. On the one hand, the investors in our study have only won seven ISDS cases and reached two favourable settlements for an overall success rate of 35%. In the remainder of cases the state either won on the merits of its argument or the investor's claim was thrown out entirely. In this regard, the ISDS system may be seen as a relatively balanced system with a bias toward defendant states. The bias looks even stronger if NAFTA is included, because Canadian firms have never won a case against the governments of the United States or Mexico.

Proponents of ISDS point to the ratio of state wins to investor wins as evidence for the fairness of the system.[22] However, another perspective on the relatively low success rate of investors points to a systematic pro-investor bias in the ISDS system. Foreign investors have the potential to win massive

awards through international arbitration, but they cannot be the target of cases themselves, so investors have a strong incentive to initiate claims even on tenuous grounds. Although many claims do not succeed, it is still worthwhile for investors to roll the dice and absorb the legal costs (or claim bankruptcy) in the event of a loss. Moreover, if a claim does not succeed at first, investors can sometimes bring the claim again under slightly different circumstances. For example, in *World Wide Minerals v Kazakhstan* the tribunal dismissed the firm's initial claim on the grounds that the issue was time-barred, but three years later the company brought a new claim under a different investment treaty that was allowed to proceed.

In contrast, states can only "not lose" a dispute.[23] Even where a tribunal rules in favour of a government, the award is limited to legal costs and the temporary preservation of the state's policy space. When a state does lose a case, the damages can be severe, especially for developing countries. For example, Canadian companies have won nearly US$3 billion in disputes with Venezuela, which is already struggling with a series of financial crises. Furthermore, even where ISDS does not formally lead to monetary damages against a state it can still have a negative impact on public policy. The mere presence of ISDS in a country can cause policy-makers to avoid making decisions in the public interest for fear of triggering an investor–state dispute. The extent of this "regulatory chill" is difficult to measure but the evidence for its existence is strong.[24] Notably, the chilling effect applies in all industries where foreign investors are active, even if few formal ISDS claims have been filed (e.g., in the finance and insurance industry).

Overall, our analysis suggests a clear and growing trend of Canadian resource companies using ISDS to challenge environmental policy and other resource management decisions in developing countries. Although Canadian investors have lost the majority of their ISDS cases, respondent countries are still faced with significant legal and human resource costs and must reckon with the risk of losing future cases. Importantly, these same ISDS systems are not being used by foreign investors in Canada. The exclusive beneficiaries to date of the Canadian ISDS regime outside North America are Canadian investors.

In the following section, we expand on our quantitative analysis with a discussion of two emerging issues in the use of investor–state dispute settlement by Canadian investors. These themes shed light on investor motives and the experience of respondent states under ISDS.

Emerging issues in the use of investor–state dispute settlement by Canadian investors

IN OUR 2015 report, *A Losing Proposition*, we investigated two case studies of Canadian investors using ISDS abroad. The first, *Pac Rim v El Salvador*, illustrated the systematic power imbalances in the ISDS system between well-resourced multinational corporations and vulnerable developing countries. The second, *Khan Resources v Mongolia*, provided an argument for the utility of contract-based dispute settlement as an alternative to treaty-based arbitration (under FIPAs or FTAs).

In this section, we discuss two additional, emerging themes in the use of ISDS by Canadian investors abroad. The first theme is third-party funding, whereby financial institutions invest in ISDS claims directly—rather than investing in the company lodging the ISDS complaint—for a chance of winning a share of the award. We highlight examples in Costa Rica and elsewhere. The second theme is the rise of environmental policy as a specific source of disputes with consequences for environmental protection. We highlight Colombia's efforts to protect vulnerable ecosystems, which triggered a string of ISDS claims by Canadian investors.

Third-party funding of investor–state disputes

Third-party funding (TPF) is a process that allows investors to outsource the legal costs of pursuing an ISDS claim to willing hedge funds and litigation financiers. Many of these firms exist solely to provide financing to the legal market, which in the context of international arbitration means they invest directly into ISDS claims rather than investing in the underlying corporations or investments. The funders, which are predominantly based in London and New York, collect a percentage of the arbitral award should the investor win the dispute.

While profit-seeking strategies related to the legal market have an established history, third-party financing of ISDS claims only gained prominence following the 2008 global financial crisis. At that time, speculative financiers began looking for investment vehicles that were not correlated with other asset classes. International arbitration met this requirement as the outcome of a case was not tied to fluctuations in the stock or bond markets. The arbitration financing sector also offered an attractive risk-return ratio during uncertain economic times.[25] Multinational corporations have benefited from the rise of TPF, as it allows them to pursue damages through ISDS while keeping the associated costs off their annual balance sheets.

According to industry leader Burford Capital, there was a 414% increase in the use of litigation financing between 2013 and 2017. The firm alone committed US$1.34 billion to new investments in 2017, which was a 30-fold increase since 2013.[26] Some of the growth in this area was fuelled by a number of high-profile cases involving Canadian investors. For example, in April 2016, an ISDS tribunal ruled in favor of the Canadian mining company Crystallex in its dispute with Venezuela, awarding US$1.4 billion, including interest, in compensation.[27] Crystallex had previously signed a financing agreement with New York–based hedge fund Tenor Capital Management in June 2012. If and when the award is paid out, Tenor looks set to collect over 50% of the payout at a significant profit.[28]

In general, the use of third-party financing in investor–state arbitration highlights the primacy of private authority in the international investment regime. The ability for private financial firms to prop up or encourage investment disputes has further tilted the balance of power within the ISDS system toward private interests.[29] The use of third-party funding by Canadian investors in ISDS cases reflects these general concerns. In addition, we identify three issues specific to the use of TPF by Canadian-based corporations.

First, patterns in the use of TPF by Canadian investors are consistent with the broader patterns for all Canadian ISDS cases abroad. That is, the main users of TPF appear to be Canadian companies from the extractive sector pursuing claims against governments in Latin America. In fact, every recent case where third-party funding was disclosed involved mining companies. Alongside four claims made against governments in Latin America, three claims were brought against Romania, Kyrgyzstan and Spain.

However, there is reason to doubt that these cases are representative of the true universe of ISDS claims made by Canadian firms involving TPF. Much like the ISDS system as a whole, third-party funding is shrouded in secrecy, so there are likely other cases of TPF that have not been disclosed.

Second, for Canadian investors, third-party funding has acted as a gilded thumb on a scale already unbalanced toward their corporate interests. The pending *Infinito Gold v Costa Rica* case provides a particularly egregious example of TPF being used to backstop the ISDS system in favour of investors.

Infinito Gold, a Calgary-based gold mining company, had been involved in a lengthy domestic legal dispute with the Costa Rican government over mining concessions it acquired in the country in 1993. Following significant public opposition to the mining project and a subsequent ban on open-pit mining, Costa Rica's domestic courts reached a decision in 2010 that left Infinito unable to proceed with the mining project. In legal limbo, Infinito opted to register an arbitration claim under the Canada–Costa Rica BIT. However, after just a year of formal proceedings at the International Center for Settlement of Investment Disputes, Infinito released a public statement declaring that it was US$160 million in debt, and that all of the directors and officers of the company had resigned. Additionally, Infinito's major shareholder and creditor declared that he would not contribute further capital to save the company from insolvency.[30] Since for all practical purposes the claimant was no longer in business, the Costa Rican government filed a request with ICSID to dismiss the case. The tribunal invited Infinito to respond to Costa Rica's request for case dismissal but received no reply for several months. During this hiatus, Infinito's new management entered into a financing agreement with an unknown third party looking to profit from the dispute, which propped up the company long enough to continue pursuing their ISDS claim.[31]

Third, the use of TPF in Canadian ISDS cases suggests that third-party funders are not always solely motivated by the potential financial benefits of ISDS awards. Evidence of politically motivated financing can be found in *Rusoro v Venezuela*, where London-based financier Calunius Capital provided

the legal fees for the Vancouver-based mining company and is now set to collect a sizeable share of the US$1.28 billion settlement that was reached with the Venezuelan government. At the time the funding arrangement was made public, Calunius posted an article to its website titled "Rusoro and Calunius join forces to fight Venezuela nationalisation."[32] With the caveat that corporate public relations exercises do not necessarily reflect a firm's political agenda, this particular framing of investor–state arbitration implies a political dimension to ISDS funding arrangements. If foreign investors and their financiers conceive of ISDS as a tool for combatting public policy, it reinforces the concerns of critics that the system works to extend corporate power at the expense of state sovereignty and public interest regulation.

In sum, Canadian mining companies have used third-party funding to alleviate the expenses associated with pursuing ISDS claims against governments, especially in Latin America. Crucially, as demonstrated by the case of *Infinito Gold v Costa Rica*, the availability of third-party funding has the potential to encourage, sustain and bolster ISDS claims that would not otherwise be viable. The lack of transparency surrounding third-party funding also leaves open the possibility that financing agreements, such as the one used in *Rusoro v Venezuela*, are offered not only for the potential financial reward, but also for the opportunity to challenge public policies that are unpopular with financial stakeholders.

Investor challenges to environmental policy

Environmental policy is the fastest-growing trigger for investor–state disputes involving Canadian investors. The trend is illustrated by a recent set of cases involving Canadian mining companies in Colombia.

After decades of unregulated mining in the country, Colombia instituted a new law in 2001 that prohibited mining in protected regions. In 2010, the law was clarified to apply to the *páramos*, high-altitude ecosystems concentrated in the Andes region of South America with unique evolutionary and biological value.[33] Andean *páramos* also provide significant benefits to nearby human settlements. In Colombia, 70% of the country's drinking water originates from the *páramos*.[34]

The 2010 law included an important loophole: pre-existing mining concessions were exempted, which enabled a number of foreign firms to develop mining operations within the boundaries of designated *páramos* for several more years. However, public opposition and legal challenges from

groups such as the Committee for the Defence of Water and the Santurbán Páramo succeeded in escalating the issue to the Colombian Constitutional Court, which ruled in 2016 that all mining in the *páramos* was illegal.[35] The court also ruled that public interests supersede private interests and, as a result, affected mining companies would not be able to claim compensation for lost permits.[36]

In response to the ruling, three separate Canadian mining firms with operations in Colombia initiated ISDS claims through the Canada-Colombia Free Trade Agreement. In December 2016, Eco Oro Mineral Corp filed a notice of arbitration claiming US$300 million in damages, which it later raised to US$764 million on the grounds of expropriation and a failure to provide fair and equitable treatment (FET).[37] In March 2018, Red Eagle Exploration announced its intent to pursue arbitration, though no documents have yet been released.[38] Finally, in April 2018, Galway Gold registered its formal notice of complaint, though again no documents have yet been made public.[39] All three cases are still in their early stages, but by all indications they will proceed to a tribunal ruling.[40]

Whether or not the claims succeed, they highlight a number of issues with the use of ISDS by Canadian investors. First, the government measure in dispute is, by all accounts, a reasonable policy taken in the public interest. The decision to protect the *páramo* ecosystems was made on valid scientific grounds out of concern for human and environmental health. Moreover, the Colombian government did not expropriate these firms' assets for its own profit. In fact, the state has foregone any royalty or taxation revenues it would have collected had these mining projects proceeded. Nevertheless, because of investor recourse to ISDS, the state may now be liable for hundreds of millions of dollars in damages to foreign corporations.

Second, by invoking investor–state dispute settlement, these Canadian firms have elected to bypass the Colombian court system. Immediately escalating to supranational arbitration undermines the legitimacy of domestic courts, which should be capable of judging companies' claims for compensation and making an independent determination before a firm resorts to ISDS. Moreover, because the specific measure at the heart of this dispute is a legal ruling by the Colombian Constitutional Court, invoking ISDS means subjecting the judgement of an independent judiciary on a matter of constitutional law to the scrutiny of a secretive, private trade law tribunal. The tribunal cannot directly overturn the court's ruling, but a large enough award could pressure the Colombian government into negotiating a settlement that includes changes to the law.[41]

Third, the political, bureaucratic and legal costs of defending against three or more simultaneous ISDS claims will be significant for the government of Colombia even if it ultimately wins the disputes. Cases usually take years to resolve and could drag on up to a decade. If the country does lose one or more cases in the end, the monetary damages could also create a burden on Colombia's public finances. However, the greater danger posed by these ISDS cases is their influence on future policy-making. Regulatory chill is difficult to demonstrate or measure, but a lengthy and costly legal battle over the country's mining laws may discourage Colombia (or other countries subject to similar treaties) from pursuing environmental protection measures in the future.

In sum, the trend of Canadian firms challenging environmental policies in developing countries is evident in the case of Colombia's recent efforts to protect the *páramo* ecosystem. Despite the Colombian government acting in the public interest in accordance with domestic law, the ISDS system in the Canada-Colombia FTA permitted three Canadian mining companies to claim compensation totalling hundreds of millions of dollars. The negative consequences of ISDS in this case are not only monetary, but also in the threat posed to future environmental policy-making.

From a global perspective, the risk of environmental policies triggering ISDS suits is especially concerning in the context of efforts to combat climate change. Reducing greenhouse gas emissions to mitigate global warming will require policies to limit the extraction and combustion of fossil fuels. However, government measures to control the supply of energy resources or otherwise intervene in resource markets may violate the investment provisions of many international agreements.[42] Governments around the world may soon find that the ISDS systems in their investment treaties pose a serious obstacle to climate action. The recent cases of *TransCanada v United States* and *Vattenfall v Germany* provide cautionary examples of fossil fuel corporations challenging climate policies through ISDS.

Conclusion and recommendations

THE GLOBAL ASCENT of trade and investment liberalization over the past four decades has sown political divisions and fomented popular resistance around the world. Among other issues, workers decry the erosion of labour standards and outsourcing of jobs that free trade agreements facilitate; human rights activists point out how the spread of intellectual property protections in international treaties has made essential medicines unaffordable; and environmentalists condemn the disregard for ecosystems and the atmosphere inherent in deals designed to advance the single-minded pursuit of economic growth. Yet few elements of the liberalization agenda have been more controversial than the investor–state dispute settlement system, which allows foreign investors to sue governments in response to public policies that affect the profitability of their investments.

In this study we have documented and analyzed every known case of a Canadian investor using the ISDS system to sue a government outside North America. The patterns that emerge stand in stark contrast to Canada's experience under NAFTA, which has occupied the majority of Canadians' attention on this issue. Whereas under NAFTA Canada was a loser on all fronts—the Canadian government was frequently targeted by American investors while Canadian investors never succeeded in ISDS claims against the U.S. or Mexico—the Canadian experience abroad is reversed. Outside North America, Canadian investors have been on the offensive, occasion-

ally winning lucrative awards in ISDS decisions, while investors from other countries have almost never invoked the ISDS system against Canada.

These two distinct narratives help us understand why Canada would concede the ISDS system in the USMCA, going so far as to acknowledge that ISDS "elevates the rights of corporations over those of sovereign governments," while simultaneously defending and propagating the ISDS system with Canada's other trading partners.[43] The system may not have served the Canadian government's interests in its relationship with the United States, but ISDS has served Canadian companies operating in the rest of the world at very little direct cost to Canada.

Unfortunately, what's good for Canadian-based resource companies is not necessarily in the best interests of Canadians as a whole and certainly not in the global public interest. Not only have the repeated abuses of Canadian firms in developing countries caused harm to vulnerable people and ecosystems, but they have also done serious damage to Canada's international reputation.[44] The emergence of third-party funding of ISDS cases illustrates the malicious character of the investment arbitration industry. Financiers and speculators now view investor–state dispute cases as opportunities for profit regardless of the viability of the underlying business. Furthermore, the ISDS system is increasingly being used to attack public policies designed to protect the environment. In light of growing global efforts to combat catastrophic climate change, the threat that ISDS poses to global climate policy-making is potentially disastrous.

Canadian investors might reasonably hope for some assurance of protection before they invest abroad, but the current treaty-based ISDS regime is not the solution. Below, we outline options for phasing out Canada's ISDS regime and reforming investment protection treaties to ensure the protection and promotion of democratic decision-making, at home and abroad, while offering investors a reasonable degree of security for their investments.

Recommendations

Given the risks posed by the investor–state dispute settlement system to democratic decision-making and public interest regulation—in Canada and for Canada's trading partners—**the Canadian government should remove ISDS from all existing trade and investment agreements and refrain from including an ISDS mechanism in future deals.** The recently concluded United States–Mexico-Canada Agreement provides a precedent

and a model for removing the system from an existing treaty. Recognizing that Canadian firms often exploit the ISDS systems in non-Canadian treaties, the Canadian government should encourage other countries to remove ISDS from all investment treaties or, at a minimum, to exclude Canadian firms engaging in treaty shopping from accessing the benefits of those agreements. Efforts by other countries to eliminate or curtail ISDS should be encouraged and supported by the Canadian government, such as the recent initiatives in South Africa, New Zealand and Ecuador.

Recognizing that ISDS will not be phased out immediately, the Canadian government should take steps to mitigate the growth and potential harm of third-party funding. Prohibiting the use of TPF entirely is preferable and Canada should advance that position through ICSID and other multilateral organizations, but this may be difficult to implement or enforce internationally. At minimum, **the Canadian government should encourage greater transparency by requiring that all instances of third-party funding are disclosed in ISDS cases involving a Canadian investment agreement**. Greater transparency in TPF is needed to prevent abuse and could be mandated by reforming existing investment treaties.[45]

In addition to mandatory disclosure, **the Canadian government should implement measures requiring claimants using TPF to submit security for costs**. This is a payment made upfront by the claimant, so that in the event they lose the case, and are subsequently held responsible for legal fees, they are able to reimburse the respondent state's legal costs. On several occasions claimants have been unable to pay states' legal costs due to insufficient funds, thus requiring the state to cover its own legal expenses out of taxpayer funds.[46]

Even without ISDS, the investment provisions in Canadian treaties—minimum standards of treatment, fair and equitable treatment and indirect expropriation, among others—give foreign investors extraordinary legal protections at the expense of social and environmental considerations. **The Canadian government should clarify existing trade and investment agreements to ensure investment provisions do not apply to non-discriminatory laws or regulations taken in good faith to protect the public interest.** Efforts to empower workers, protect public health or combat climate change, for example, should not face any barrier from a trade or investment agreement.

Corporations and individuals will reasonably seek a degree of legal certainty before investing abroad, but the ISDS system, which socializes much of the risk of foreign investment, is excessive. Instead, **Canadian investors**

abroad should seek out one of the many reasonable alternatives to ISDS for protecting their investments. First, investors claiming illegal expropriation of their investments or other allegedly unfair treatment at the hands of the state can bring disputes through domestic court systems. The majority of Canadian investment is in developed countries with well-developed and reputable legal systems. Second, where an investor has reason to believe domestic courts will not uphold their legal rights, they can negotiate an investor–state dispute settlement mechanism into the terms of their project contract with the host government. Although still vulnerable to the abuses of treaty-based ISDS, project-based dispute settlement is limited in scope, which reduces the risk of future regulatory chill. Third, investors can purchase political risk insurance to insulate against unexpected government actions affecting their investments. Finally, where a treaty provides for state-to-state dispute settlement, investors can escalate an alleged violation to their home government, which can then invoke arbitration on their behalf.

Appendix A

Methodology

IN ADDITION TO the raw data collected for each case (e.g., dates, parties, claim values), we categorize each ISDS case according to the investor's industry, the government measure challenged, and the case outcome. The following definitions have been designed to avoid overlap between categories, but where a case may reasonably fall into more than one category the most relevant category is used.

Investor industries

For each case, we identify the primary industry of the investor. Many multinational corporations are engaged in multiple industries, so we limit our categorization to the specific area of the dispute. For example, some claims surrounding resource management decisions are brought by hedge funds or other corporate owners that are ostensibly in the financial industry. We nevertheless classify these cases as resource sector disputes.

Each industry is then assigned a corresponding North American Industry Classification System (Canada 2017 Version 2.0) two-digit code, which permits a comparison to standard data sources.

TABLE 2 Classification of case outcomes

Category	Definition
Dismissed	The tribunal dismissed the entire claim (usually on jurisdictional grounds) before the merits of the case could be heard.
Inactive	The case did not reach a decision through the tribunal process nor was it formally withdrawn by the claimant.
Investor wins	The tribunal decided fully or partially in favour of the claimant and awarded monetary damages.
Pending	The tribunal is currently hearing the case but a decision has not yet been reached or announced.
Settlement	The parties negotiated a settlement outside of the formal arbitration process. A settlement usually includes the withdrawal of the arbitration case.
State wins	The tribunal decided in favour of the state by rejecting the claimant's case on its merits.
Withdrawn	The case was formally withdrawn by the claimant without a settlement.

Case outcomes

For each case, we identify the overall outcome of the dispute. The official range of ISDS outcomes is unduly narrow, so we incorporate additional categories to better represent the breadth of possible outcomes (see *Table 2*). For example, in numerous cases the investor's claim was dismissed on jurisdictional grounds, which is technically a win for the defending government, but these are not clearly "state wins" since the merits of the case were never debated. Our narrower definition of state and investor wins provides a more nuanced and useful picture of arbitration decisions.

Government measures challenged

For each case, we identify the primary government measure at the core of the dispute (see *Table 3*). The actual measure in question does not always align with the investor's claim, so some discretion is required. For example, in several cases an investor alleges expropriation of a resource asset due to rejected permits or other regulatory hurdles, but they do not name the environmental policy underpinning the alleged expropriation. We still code these cases as "environmental policy" since it is the root issue at play, even if that policy only indirectly provoked the ISDS case.

TABLE 3 Classification of government measures challenged

Category	Definition
Administration of justice	The party's legal system failed to uphold a foreign investor's rights under domestic law. The government may have failed to respect a previous court decision (or even an ISDS decision) in the investor's favour.
Agricultural and industrial policy	The government acted to manage the agricultural industry or another industrial sector (excluding energy and resources) with adverse consequences for a foreign investor. The government may have imposed controls on the production, import or export of certain agricultural products, or the government may have imposed local development criteria or other restrictions on industrial investment.
Cultural policy	The government acted to protect or promote cultural heritage or a domestic cultural industry, including the telecommunications and broadcasting sectors, with adverse consequences for a foreign investor.
Energy policy and resource management	The government acted to manage the energy or resource sector for reasons other than environmental protection with adverse consequences for a foreign investor. The government may have invoked national security interests, energy security concerns or the stability of the energy market as reasons for the decision to take ownership of a project, impose pricing controls or otherwise intervene in the energy and resource markets.
Environmental policy	The government acted to protect the environment or combat climate change with adverse consequences for a foreign investor. The government may have rejected or withdrawn approval for a project on environmental grounds or otherwise changed the conditions for an existing investment based on new environmental evidence.
Financial policy and taxation	The government enacted a fiscal or monetary policy with adverse consequences for a foreign investor, such as the introduction (or removal) of a tax subsidy for certain kinds of investors. The government may have introduced new regulations for the banking and financial sectors, but the measure was not intended as industrial policy.
Health policy and pharmaceutical regulation	The government acted to protect public health or the health care system with adverse consequences for an investor. The government may have imposed new regulatory standards or delayed the approval process for new pharmaceuticals.
Property and land rights enforcement	The government failed to uphold a foreign investor's ownership rights over land or other private property (excluding intellectual property rights in the health and culture industries). The government may have abetted or permitted the degradation or expropriation of a foreign investor's land and physical assets by non-state actors.
Public services and government procurement policy	The government's monopoly control over a service or service contract had adverse consequences for a foreign investor. A public service may be in competition with a private supplier, or a government procurement contract may have imposed restrictions on foreign suppliers.
Social and other public policy	Excluding measures captured in other categories (e.g., health, cultural, environmental or industrial policy), a government acted to protect the public interest or advance a social priority with adverse consequences for a foreign investor. A government may have applied controls on citizenship or immigration, imposed sectoral restrictions on moral grounds (e.g., gambling), promoted rights for Indigenous peoples or other marginalized groups, or introduced labour law reforms, among other possible measures.
Tariffs and trade remedies	A government imposed tariffs or duties, or otherwise deliberately restricted trade, with adverse effects on a foreign investor. The government may have acted in response to a perceived trade barrier in the other party.
Transportation policy	The government acted to control the transportation of people or goods within or between the parties, including policies restricting or managing transportation by truck, ship, rail and air.
Unknown	The government measure cannot be identified based on available information.

Appendix B

Table of ISDS claims by Canadian investors outside North America through December 31, 2018

Short title	Case details	Description	
Mihaly v Sri Lanka	**Claimant** Mihaly International Canada Ltd. (Oakville, ON) **Via** Mihaly International Corp. (United States) **Respondent** Sri Lanka **Date initiated** July 29, 1999 **Treaty invoked** U.S.–Sri Lanka BIT	**Issue** In February 1993, Mihaly International, a Canadian financial services company, won the temporary exclusive right to develop a proposal for a thermal power station in Sri Lanka. Mihaly began development of the project immediately, although a contract for construction, ownership and operation of the power station was never signed. When Sri Lanka ultimately decided not to contract Mihaly for the project, the company brought a claim against the government through its American subsidiary under the U.S.–Sri Lanka BIT. It sought reimbursement for its expenditures on the proposal and for lost future profits. **Industry** Energy (electricity) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** On March 15, 2002, the tribunal ruled that Mihaly's Canadian ownership did not disqualify its American subsidiary from filing a claim under the BIT, despite Sri Lanka's objections. However, the tribunal also decided that the disputed project did not qualify as a protected investment under the BIT due to its provisional nature. Therefore, the tribunal lacked jurisdiction over the claim. **Outcome** Dismissed
Hussein Nuaman Soufraki v UAE	**Claimant** Hussein Nuaman Soufraki (Canada) **Via** Hussein Nuaman Soufraki (Italy) **Respondent** United Arab Emirates **Date initiated** May 16, 2002 **Treaty invoked** Italy-UAE BIT	**Issue** In October 2000, Hussein Soufraki, a Canadian investor, won a 30-year concession to develop, manage and operate the Port of Al Hamriya. The government of the United Arab Emirates subsequently cancelled the concession, provoking Mr. Soufraki to file an arbitration claim for damages of up to US$2.5 billion. Mr. Soufraki brought the claim under the Italy-UAE BIT based on his Italian nationality by birth, even though he legally gave up his Italian citizenship when he acquired Canadian citizenship in 1991. **Industry** Private investor (transportation) **Type of measure challenged** Administration of justice **Amount claimed** US$2,500 million	**Status** On June 5, 2007, the tribunal ruled that the investor did not have Italian nationality and it therefore lacked jurisdiction over the claim. **Outcome** Dismissed
EnCana v Ecuador	**Claimant** EnCana Corp. (Calgary, AB) **Respondent** Ecuador **Date initiated** March 14, 2003 **Treaty invoked** Canada-Ecuador BIT	**Issue** EnCana, a Canadian energy company, disputed changes to the Ecuadorian tax regime that reduced or denied value-added tax credits and exploration refunds to oil companies. EnCana claimed that credits and refunds owed to its Ecuadorian subsidiaries, AEC Ecuador Ltd. and City Oriente Ltd., both incorporated in Barbados, were effectively expropriated. The company claimed that Ecuador's tax reforms violated several provisions in the Canada-Ecuador BIT, including the fair and equitable treatment, national treatment, and expropriation provisions. **Industry** Energy (oil and gas) **Type of measure challenged** Financial policy and taxation **Amount claimed** US$80 million	**Status** On February 3, 2006, the tribunal dismissed the fair and equitable treatment and national treatment claims on the grounds that tax-related measures were not subject to the BIT (except under circumstances not applicable to the case). The tribunal did consider the expropriation claim on its merits but ruled against EnCana in a split decision. Notably, an American company, Occidental Exploration, brought an analogous claim against Ecuador under the U.S.-Ecuador BIT in 2002. In that case, the tribunal ruled in favour of the investor and awarded US$75 million. **Outcome** State wins

Short title	Case details	Description	
TG World v Niger	**Claimant** TG World Energy Corp. (Calgary, AB) **Via** TG World Petroleum Ltd. (Bahamas) **Respondent** Niger **Date initiated** November 13, 2003 **Treaty invoked** Contract	**Issue** TG World Energy, a Canadian energy company, owned concessions to the Ténéré Block of oil and gas reserves in Niger through its Bahamian-incorporated subsidiary, TG World Petroleum. In September 2003, the government of Niger terminated the concessions and in November effectively granted them to a competitor, China National Petroleum Corp. (CNPC) and its affiliates. TG World subsequently brought a claim against Niger to ICSID's little-used conciliation commission, which issues non-binding dispute resolutions. **Industry** Energy (oil and gas) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** The parties reached an "out-of-court" settlement in December 2004, which saw CNPC assume all costs for the Ténéré Block project while TG World retained a 20% carried interest. **Outcome** Settlement
Alasdair Ross Anderson v Costa Rica	**Claimant** Alasdair Ross Anderson et al. (Canada) **Respondent** Costa Rica **Date initiated** May 10, 2004 **Treaty invoked** Canada–Costa Rica BIT	**Issue** Between 1998 and 2002, more than 6,000 investors bought into a currency exchange scheme operated by Costa Rican nationals that promised extremely high returns on a minimum initial investment of $10,000. In 2002, the operation was revealed to be a Ponzi scheme. In 2004, 137 Canadian investors who had lost their deposits in the scheme brought "separate and distinct" arbitration claims against the government of Costa Rica, although they were consolidated into a single case for arbitration. The investors claimed compensation for their deposits on the grounds that the government had failed to provide proper vigilance and regulatory supervision. **Industry** Private investor (finance) **Type of measure challenged** Financial policy and taxation **Amount claimed** Unknown	**Status** On May 19, 2010, the tribunal decided that the deposits amounted to personal loans, not "investments" as defined in the BIT, and were therefore not subject to protection. The tribunal ruled that it lacked jurisdiction over the claim. **Outcome** Dismissed
Vannessa Ventures (Infinito Gold) v Venezuela	**Claimant** Vannessa Ventures Ltd. (now Infinito Gold Ltd.) (Calgary, AB) **Respondent** Venezuela **Date initiated** July 9, 2004 **Treaty invoked** Canada-Venezuela BIT	**Issue** Vannessa Ventures, a Canadian mining company, acquired concessions to the Las Cristinas mine in July 2001 in a private sale that the government considered illegal. In November 2001, the mine was seized by a Venezuelan state-owned enterprise and the Venezuelan government subsequently changed the law in order to take legal control of the mine. In 2002, the government granted new concessions to Las Cristinas to Crystallex, a different Canadian mining company. Between 2001 and 2003, Vannessa Ventures launched 10 unsuccessful domestic court challenges before finally turning to international arbitration under the Canada-Venezuela BIT in 2004. The company alleged expropriation and a breach of fair and equitable treatment, claiming more than US$1 billion in damages. Vannessa Ventures changed its name to Infinito Gold in May 2008. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$1,045 million	**Status** On January 16, 2013, the tribunal unanimously rejected Vannessa Ventures' claim on its merits. The tribunal decided that there had been no discriminatory treatment or violation of rights under the BIT. **Outcome** State wins
Mr. Nedjeljko Ulemek v Croatia	**Claimant** Mr. Nedjeljko Ulemek (Canada) **Respondent** Croatia **Date initiated** 2004 **Treaty invoked** Canada-Croatia BIT	**Issue** Nedjeljko Ulemek left behind an investment in Jugoturbina Select, a Croatian office supplies venture, when he left the country for Canada during the Croatian War of Independence in the early 1990s. He claimed that, as a consequence of the war and various state actions, he had suffered discrimination, unfair treatment, and expropriation. **Industry** Private investor (manufacturing) **Type of measure challenged** Unknown **Amount claimed** US$2.6 million	**Status** On May 25, 2008, the tribunal reportedly ruled that the actions of the Croatian government had not been in violation of the BIT and it consequently rejected the investor's claim, although no official documents have been released. **Outcome** State wins

Short title	Case details	Description	
Bank of Nova Scotia v Argentina	**Claimant** Bank of Nova Scotia (Toronto, ON) **Respondent** Argentina **Date initiated** April 7, 2005 **Treaty invoked** Canada-Argentina BIT	**Issue** The Bank of Nova Scotia's Argentine subsidiary, Scotiabank Quilmes, collapsed as a result of actions taken by the Argentine government during the country's banking crisis in 2002. Those actions—specifically, the forced conversion of U.S.-dollar deposits into pesos—were later ruled illegal by Argentina's Supreme Court. The Bank of Nova Scotia sought compensation on the grounds of discrimination and expropriation under the Argentina-Canada BIT. **Industry** Finance (banking) **Type of measure challenged** Financial policy and taxation **Amount claimed** US$600 million	**Status** In July 2011, the bank reportedly withdrew its claim against Argentina, although no documents or official statements have been released. **Outcome** Withdrawn
Quadrant Pacific Growth & Canasco v Costa Rica	**Claimant** Quadrant Pacific Growth Fund L.P. and Canasco Holdings Inc. (Vancouver, BC) **Respondent** Costa Rica **Date initiated** December 28, 2006 **Treaty invoked** Canada–Costa Rica BIT	**Issue** Quadrant Pacific Growth Fund and Canasco Holdings, both Canadian companies, owned a citrus plantation in Costa Rica. Beginning in April 2003, one of their citrus farms was occupied by agrarian squatters, who have certain legal protections in Costa Rica. Although eventually the occupation was ruled illegal, local police were unable to remove the trespassers until September 2005. The companies claim that business was significantly disrupted during this time and that the squatters caused significant damage to the property. The companies brought an arbitration claim against the government of Costa Rica on the grounds that the government failed to protect its investment as required by the Canada–Costa Rica BIT. **Industry** Agriculture **Type of measure challenged** Property and land rights enforcement **Amount claimed** US$20 million	**Status** Proceedings began in 2008 but stumbled in November 2009 when Quadrant Pacific and Canasco failed to pay their share of the ongoing arbitration costs and their legal counsel withdrew. On October 27, 2010, the tribunal decided to discontinue proceedings on the grounds of non-payment by the parties. Quadrant Pacific and Canasco were ordered to pay the entire cost of the proceedings. **Outcome** Dismissed
World Wide Minerals v Kazakhstan (1)	**Claimant** World Wide Minerals Ltd. (Toronto, ON) **Respondent** Kazakhstan **Date initiated** June 28, 1905 **Treaty invoked** Contract	**Issue** World Wide Minerals (WWM), a Canadian mining company, briefly managed and operated a uranium processing facility under contract with the government of Kazakhstan beginning in 1996. Shortly thereafter, the government imposed a series of new bureaucratic and regulatory measures, which WWM claimed were a breach of contract. WWM's uranium facility subsequently went bankrupt and was confiscated by the state. WWM brought a series of claims against Kazakhstan through the US domestic court system before filing an international arbitration claim under UNCITRAL rules in 2006. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** On December 22, 2010, the tribunal reportedly ruled that under Kazakh law the investor's claims were time-barred (WWM waited too long before bringing the case to arbitration), although no official documents have been released. **Outcome** Dismissed
Frontier Petroleum Services v Czech Republic	**Claimant** Frontier Petroleum Services Ltd. (Calgary, AB) **Respondent** Czech Republic **Date initiated** December 3, 2007 **Treaty invoked** Canada–Czech Republic BIT	**Issue** In 2000, Frontier Petroleum Services (FPS), a Canadian company, invested in a joint venture with Moravan-Aeroplanes (MA), a Czech company, to manufacture aircraft in the Czech Republic. After MA allegedly breached the contract in 2002, FPS initiated criminal proceedings against the company and members of its board of directors. FPS also launched an arbitration case against MA at the Stockholm Chamber of Commerce in 2003. Although it lost the domestic cases, FPS won the arbitration case and was awarded damages. However, MA did not compensate FPS and the Czech court system did not recognize or enforce the award. In 2007, FPS launched an arbitration claim against the Czech government for failing to protect its investment and accord it fair and equitable treatment pursuant to the Canada–Czech Republic BIT. **Industry** Manufacturing (aerospace) **Type of measure challenged** Administration of justice **Amount claimed** US$20 million	**Status** On November 12, 2010, the tribunal ruled that the Czech courts were within their rights to reject the Stockholm award since it was incompatible with domestic bankruptcy rules. All of FPS' claims were rejected on their merits. **Outcome** State wins

Short title	Case details	Description	
Nova Scotia Power v Venezuela (1)	**Claimant** Nova Scotia Power Inc. (Halifax, NS) **Respondent** Venezuela **Date initiated** October 1, 2008 **Treaty invoked** Canada-Venezuela BIT	**Issue** In 1999, Nova Scotia Power Inc. (NSPI), a Canadian energy company, negotiated a long-term coal supply contract with a Venezuelan state-owned enterprise that facilitated regular coal shipments to NSPI at a fixed price. Shipments continued until December 2007, when the contract was abruptly cancelled by a government directive. The company alleged that the breach of contract was illegal and brought an arbitration claim against Venezuela under the Canada-Venezuela BIT. The company opted for UNCITRAL arbitration even though the BIT requires ICSID arbitration if available. **Industry** Energy (electricity) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** On April 22, 2010, the tribunal ruled that it was inappropriate for NSPI to bring a claim under UNCITRAL rules since ICSID arbitration was available at the time. The tribunal decided that it lacked jurisdiction over the claim. On August 30, 2010, the tribunal ordered NSPI to pay Venezuela's legal costs. **Outcome** Dismissed
Pac Rim (OceanaGold) v El Salvador	**Claimant** Pacific Rim Mining Corp. (now OceanaGold Corp.) (Vancouver, BC) **Via** Pac Rim Cayman LLC (United States) **Respondent** El Salvador **Date initiated** April 30, 2009 **Treaty invoked** Dominican Republic–Central America FTA (DR-CAFTA)	**Issue** In 2002, Pacific Rim Mining Corp., a Canadian mining company, received an exploration licence for the El Dorado gold mine in El Salvador's Cabañas region. In 2004, the company transferred ownership of the mine to its Cayman-registered subsidiary, Pac Rim Cayman LLC, through which it applied for an exploitation permit to open the mine. In the face of significant public opposition to new mining projects, on humanitarian and environmental grounds, the government of El Salvador delayed approval of the El Dorado mine for several years before finally announcing in 2008 that it would grant no new mining concessions. Pacific Rim moved its Cayman-based subsidiary to the United States in 2007. In 2009, it launched an arbitration claim for US$77 million against El Salvador under the Dominican Republic–Central America FTA (DR-CAFTA) to which the U.S. is a party. Pacific Rim also alleged violations of El Salvador's domestic laws covering mining and foreign investment. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$77 million	**Status** In October 2016, the tribunal dismissed the investor's claims on their merits. The tribunal ordered the investor to pay the government of El Salvador US$8 million in compensation. **Outcome** State wins
Gold Reserve v Venezuela	**Claimant** Gold Reserve Inc. (Washington, USA) **Via** Gold Reserve Inc. (Canada) **Respondent** Venezuela **Date initiated** October 21, 2009 **Treaty invoked** Canada-Venezuela BIT	**Issue** In 1992, Gold Reserve, an American mining company based in the state of Washington, acquired a concession for the Brisas gold and copper mine in central Venezuela. In 1999, Gold Reserve transferred ownership of the mine to a shell company incorporated in Canada. Between 1997 and 2009, Gold Reserve worked to develop the project, although its applications for permits to open the mine were repeatedly denied on environmental grounds. Relations between Gold Reserve and the government of Venezuela deteriorated until, in March 2009, the state revoked the concession and subsequently took control of the project. The government claimed that uncontrolled mining was causing serious environmental deterioration to rivers and biodiversity in the region. Later that year, Gold Reserve brought an arbitration case against Venezuela through its Canadian shell company under the Canada-Venezuela BIT. It alleged violations of the provisions on fair and equitable treatment, full protection and security, most favoured nation, and expropriation. Gold Reserve initially sought up to US$5 billion in compensation for lost future profits, but later reduced its claim to just over US$1.7 billion. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$1,735 million	**Status** The tribunal dismissed Venezuela's jurisdictional objection that Gold Reserve was effectively an American company and therefore not protected by the Canada-Venezuela BIT. The tribunal noted that the Canadian government had provided diplomatic assistance to Gold Reserve, implicitly endorsing its Canadian nationality. On September 22, 2014, the tribunal rejected several of Gold Reserve's claims but agreed that Venezuela had failed to accord fair and equitable treatment to the investor. The tribunal awarded Gold Reserve US$713 million in damages plus interest and legal costs. **Outcome** Investor wins
Peter A. Allard v Barbados	**Claimant** Peter A. Allard (Canada) **Respondent** Barbados **Date initiated** September 8, 2009 **Treaty invoked** Canada-Barbados BIT	**Issue** Peter Allard, a Canadian investor, acquired 34 acres of wetlands in Barbados in 1994, which he developed into an eco-tourism project over the next 15 years. Mr. Allard alleges that the government of Barbados, by failing to prevent environmental degradation of the wetlands as required by both international and domestic law, caused extensive damage to his investment. In 2009, he brought an arbitration claim against Barbados under the Canada-Barbados BIT. **Industry** Private investor (tourism) **Type of measure challenged** Property and land rights enforcement **Amount claimed** US$35 million	**Status** In June 2016, the tribunal rejected Peter Allard's claims on their merits and ordered Allard to reimburse the government of Barbados approximately US$3,000,000 in arbitration and legal costs. **Outcome** State wins

Short title	Case details	Description	
Niko Resources v Bangladesh	**Claimant** Niko Resources Ltd. (Calgary, AB) **Via** Niko Resources (Bangladesh) Ltd. (Barbados) **Respondent** Bangladesh **Date initiated** April 1, 2010 **Treaty invoked** Contract	**Issue** In 2003, Niko Resources, a Canadian energy company, entered into a joint venture agreement (JVA) with two Bangladeshi state-owned enterprises, Petrobangla and BAPEX, to develop the Feni natural gas field in Bangladesh. Niko began producing gas at the Feni site in 2004, but two disastrous gas blowouts in 2005, for which Niko was found legally responsible, resulted in a Supreme Court injunction against any payments to the company. Niko was also investigated for corruption in both Bangladesh and Canada during this time. Niko denied both the corruption charges and liability for the blowouts and continued to operate the Feni project. In 2006, Niko completed a gas purchase and sale agreement (GPSA) with Petrobangla and BAPEX, but both state-owned enterprises withheld payments as required by the injunction. In 2010, Niko brought an ICSID arbitration claim against Petrobangla, BAPEX and the government of Bangladesh through its Barbadian subsidiary. The company sought to resolve liability for the blowouts under the JVA. Niko also claimed payment from Petrobangla under the GPSA. **Industry** Energy (oil and gas) **Type of measure challenged** Administration of justice **Amount claimed** US$35.71 million	**Status** On August 19, 2013, the tribunal dismissed the respondents' jurisdictional objection that Niko was actually a Canadian company, which was not a full party to the ICSID convention at the time. However, the tribunal did find that Bangladesh never consented to ICSID arbitration since the government was not explicitly party to either the JVA or GPSA. The tribunal consequently ruled that it lacked jurisdiction over the claim made against the state. Niko's arbitration case proceeded against Petrobangla and BAPEX at ICSID. **Outcome** Dismissed
Nova Scotia Power v Venezuela (2)	**Claimant** Nova Scotia Power Inc. (Halifax, NS) **Respondent** Venezuela **Date initiated** November 2, 2010 **Treaty invoked** Canada-Venezuela BIT	**Issue** After its earlier claim was dismissed on jurisdictional grounds (see above), Nova Scotia Power Inc. (NSPI) brought a new claim against Venezuela through the Canada-Venezuela BIT in 2010. This time the company opted for ICSID arbitration in accordance with the BIT. **Industry** Energy (electricity) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$180 million	**Status** On April 30, 2014, the tribunal ruled that NSPI's contract with the Venezuelan supplier did not constitute an "investment" as defined in the BIT and therefore did not qualify for protection. The tribunal consequently rejected the claim on jurisdictional grounds. **Outcome** Dismissed
First Quantum Minerals v DR Congo	**Claimant** First Quantum Minerals Ltd. et al. (Vancouver, BC) **Respondent** Democratic Republic of the Congo **Date initiated** 2010 **Treaty invoked** Contract	**Issue** First Quantum, a Canadian mining company, acquired the Kolwezi tailings project in the Democratic Republic of the Congo (DRC) in 2006. With several partners, including the World Bank's International Finance Corporation, First Quantum committed to a significant investment in the mine, although it never actually began production. In August 2009, the DRC requested the voluntary cancellation of the project. When First Quantum and its partners refused, the government seized the mine. The government then issued a new permit for the Kolwezi project to a subsidiary of the Kazakhstan-based Eurasian Natural Resources Corp. (ENRC). First Quantum challenged ENRC and the DRC through every available channel, including an arbitration claim lodged against the DRC at the International Chamber of Commerce in 2010. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$2,000 million	**Status** On January 5, 2012, First Quantum announced a surprise settlement with ENRC, who agreed to pay US$1.25 billion for First Quantum's assets in—and legal claims to—the Kolwezi project. As a condition of the settlement, First Quantum agreed to drop its litigation against ENRC and its arbitration case against the DRC. No documents from either case have yet been made public. **Outcome** Settlement
Khan Resources v Mongolia	**Claimant** Khan Resources Inc. et al. (Toronto, ON) **Respondent** Mongolia **Date initiated** January 10, 2011 **Treaty invoked** Contract	**Issue** Between 2003 and 2005, Khan Resources, a Canadian mining company, acquired rights to the Dornod uranium project in eastern Mongolia. Khan invested in the development of the project between 2005 and 2009 with construction of an open-pit mine scheduled to begin later that year. In August 2009, Mongolia announced an intergovernmental joint venture with Russia to develop the Dornod project. In April 2010, the government of Mongolia invalidated Khan's licences. Khan successfully challenged the move in the domestic courts, but the government ignored the rulings. Khan and its affiliates brought an international arbitration case against Mongolia in 2011 claiming expropriation under the terms of their contract with the government as well as Mongolia's investment law. Khan's Dutch-registered sister company also alleged violations of the Energy Charter Treaty to which both Mongolia and the Netherlands are party. **Industry** Resources (mining) **Type of measure challenged** Administration of justice **Amount claimed** US$200 million	**Status** In March 2015, the tribunal ruled in Khan's favour. It upheld jurisdiction over all claims and awarded US$80 million in compensation for the expropriated project plus interest and legal costs totalling roughly US$100 million. The government originally disputed the award and refused to pay full compensation. In May 2016, Khan agreed to settle for US$70 million in lieu of the full award. **Outcome** Investor wins

Short title	Case details	Description	
Crystallex v Venezuela	**Claimant** Crystallex International Corp. (Toronto, ON) **Respondent** Venezuela **Date initiated** February 16, 2011 **Treaty invoked** Canada-Venezuela BIT	**Issue** Crystallex, a Canadian mining company, acquired rights to the Las Cristinas mine in 2002. The government of Venezuela had seized the mine a year earlier from another Canadian mining company (see Vannessa Ventures case above). A dispute arose between Crystallex and the government as early as 2008, when the company first signalled its willingness to arbitrate. After Venezuela terminated Crystallex's mine operation contract in 2011, the company followed through on its threat and registered an ICSID arbitration claim under the Canada-Venezuela BIT. Crystallex claimed nearly US$4 billion in compensation for violations of the BIT's provisions on expropriation, fair and equitable treatment, and discrimination. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$3,800 million	**Status** In April 2016, the tribunal ruled that Venezuela had breached the BIT. Venezuela was ordered to pay Crystallex US$1.2 billion in compensation for the damages it suffered. **Outcome** Investor wins
Zamora Gold v Ecuador	**Claimant** Zamora Gold Corp. (Ecuador) **Via** Zamora Gold Corp. (Canada) **Respondent** Ecuador **Date initiated** 2011 **Treaty invoked** Canada-Ecuador BIT	**Issue** Zamora Gold, an Ecuadorian mining company incorporated in Canada, alleges that seven of its mining sites were expropriated by the government of Ecuador in April 2010. In 2011, the company brought an arbitration claim against Ecuador under the Canada-Ecuador BIT through its Canadian-registered shell company. No documents related to the case have yet been made public. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending
Copper Mesa v Ecuador	**Claimant** Copper Mesa Mining Corp. (Vancouver, BC) **Respondent** Ecuador **Date initiated** 2011 **Treaty invoked** Canada-Ecuador BIT	**Issue** Copper Mesa, a Canadian mining company, began operating in Ecuador in 2004 and acquired concessions to a number of areas, including the massive Junín region in western Ecuador. Public opposition to the Junín project was fierce and led to protests, clashes with police and legal challenges against the company. In 2008, the government of Ecuador nullified Copper Mesa's claim to the Junín concession for failing to provide an environmental impact study. In 2011, Copper Mesa brought an arbitration claim against Ecuador under the Canada-Ecuador BIT. The company alleges expropriation of two of its mining concessions. No documents related to the case have yet been made public. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$70 million	**Status** In March 2016, the tribunal ruled that Ecuador had breached the investment treaty and must pay Copper Mesa approximately US$19 million in compensation. In August 2018, the investor released a public statement declaring that both parties had reached a settlement agreement related to the distribution of payments toward the total award figure. **Outcome** Investor wins
Rusoro v Venezuela	**Claimant** Rusoro Mining Ltd. (Moscow, Russia) **Via** Rusoro Mining Ltd. (Canada) **Respondent** Venezuela **Date initiated** July 17, 2012 **Treaty invoked** Canada-Venezuela BIT	**Issue** Rusoro, a Russian mining company incorporated in Canada, owned several gold mining concessions in Venezuela. The company alleges that a series of changes to the country's legal regime for gold marketing led to the effective nationalization of its concessions. In 2012, Rusoro brought a claim against Venezuela for just over US$3 billion under the Canada-Venezuela BIT. The company reduced its claim to US$2.3 billion net of taxes in its final request for relief. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$2,319 million	**Status** In August 2016, the tribunal ruled that the government of Venezuela had breached the BIT by expropriating Rusoro's investment and ordered Venezuela to pay the investor US$966 million plus all costs associated with the arbitration proceedings. In October 2018, the parties entered into a settlement agreement. The government of Venezuela agreed to pay Rusoro US$1.28 billion in exchange for the claimant's mining data and full release from the arbitration award. **Outcome** Investor wins

Short title	Case details	Description	
South American Silver (TriMetals Mining) v Bolivia	**Claimant** South American Silver Corp. (now TriMetals Mining Inc.) (Vancouver, BC) **Via** South American Silver Ltd. (Bermuda) **Respondent** **BoliVia** **Date initiated** April 30, 2013 **Treaty invoked** U.K.-Bolivia BIT	**Issue** In 2006, South American Silver (SAS), a Canadian mining company, acquired the Malku Khota silver mine in central Bolivia through its Bermudan shell company. SAS began exploration and development activities in the region but relations with local Indigenous groups quickly deteriorated. Violence between the company and local communities broke out, including a death and hostage taking, which provoked massive public protests in La Paz, the Bolivian capital, in May 2012. Responding to public pressure, the government of Bolivia ended SAS' mining concession by Supreme Decree in August 2012. Bolivia's assessment of the value of the project was US$19 million, which it was prepared to pay in compensation, but SAS claimed a much higher valuation. In 2013, the company brought an arbitration claim for US$386 million against Bolivia through its Bermudan shell company under the U.K.-Bolivia BIT. SAS alleges expropriation and violations of the fair and equitable treatment and national treatment provisions. South American Silver changed its name to TriMetals Mining in 2014. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$385.7 million	**Status** In November 2018, the tribunal ruled in favour of the investor but only awarded compensation for the amount of the original investment (approximately US$18.7 million). The Bolivian government was also ordered to pay interest in the amount of US$9 million, for total compensation of approximately US$28 million. **Outcome** Investor wins
Stans Energy v Kyrgyzstan	**Claimant** Stans Energy Corp. (Toronto, ON) **Respondent** Kyrgyzstan **Date initiated** October 30, 2013 **Treaty invoked** Moscow Convention on Protection of the Rights of the Investor	**Issue** In 2009, Stans, a Canadian mining company, acquired a licence to the Kutessay II rare earths project in northern Kyrgyzstan. Government prosecutors challenged the licensing process and in April 2013 won an injunction against Stans in the domestic courts, which brought work on the project to a standstill. In October 2013, Stans brought an arbitration claim for US$118 million to the Moscow Chamber of Commerce. The company alleged "expropriatory and unlawful treatment" under the Moscow Convention on the Protection of the Rights of Investors, an obscure investment treaty to which Kyrgyzstan is bound as a member of the Commonwealth of Independent States (CIS). **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$117.8 million	**Status** In July 2014, Stans announced that the tribunal had ruled in its favour and awarded compensation of US$117.7 million plus legal fees. However, the government of Kyrgyzstan rejected the tribunal's ruling on jurisdictional grounds, refused to pay the award and then sought to annul the decision in the Moscow courts. After its initial appeals were dismissed, Kyrgyzstan won its case at the Moscow Circuit Court. Stans is appealing that decision and has brought a separate challenge against Kyrgyzstan to the Ontario Court of Justice. The legal battle continues. **Outcome** Pending
World Wide Minerals v Kazakhstan (2)	**Claimant** World Wide Minerals Ltd. (Toronto, ON) **Respondent** Kazakhstan **Date initiated** December 16, 2013 **Treaty invoked** Canada-USSR BIT	**Issue** World Wide Minerals (WWM), a Canadian mining company, operated a uranium processing facility in Kazakhstan in the mid-1990s before it went bankrupt and was confiscated by the state. After its initial arbitration claim was dismissed in 2010 (see above), WWM brought a new case against the government of Kazakhstan in 2013. This time, the company invoked the 1989 Canada-USSR BIT on the grounds that Kazakhstan, as a former Soviet state, is bound by its provisions. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** In January 2016, an arbitration tribunal convened under UNCITRAL rules found that the claims brought forward by the claimant were admissible under the Canada-USSR BIT. The claim is ongoing, but the jurisdictional decision has since prompted more cases to be brought against the government of Kazakhstan. **Outcome** Pending
Vanoil Energy v Kenya	**Claimant** Vanoil Energy Ltd. (Vancouver, BC) **Respondent** Kenya **Date initiated** July 7, 2014 **Treaty invoked** Contract	**Issue** Vanoil, a Canadian oil and gas company, acquired exploration rights to large areas of the Anza Basin in southeastern Kenya through a production-sharing contract (PSC) negotiated with the government in 2007. In 2013, public opposition and local unrest significantly disrupted the project and the government refused to extend the PSC. Vanoil alleges that the government failed to adequately protect the site in accordance with the contract. In 2014, Vanoil brought an arbitration claim against the government of Kenya under the terms of the PSC. The company says it is seeking more than US$150 million in compensation, although no official documents have yet been released. **Industry** Energy (oil and gas) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$150 million	**Status** Claim is apparently ongoing, although no official documents have been released and there is no evidence of the claim being formally registered with a known arbitration body. **Outcome** Pending

Short title	Case details	Description	
Infinito Gold v Costa Rica	**Claimant** Infinito Gold Ltd. (Calgary, AB) **Respondent** Costa Rica **Date initiated** February 10, 2014 **Treaty invoked** Canada–Costa Rica BIT	**Issue** Starting in 1993, Infinito Gold, a Canadian mining company, acquired a series of concessions to develop a gold mine in the Crucitas region of northern Costa Rica. The project provoked significant public opposition, which culminated in a nationwide ban on open-pit mining in 2010. Activists also brought a series of lawsuits against the company for humanitarian and environmental violations. In 2010, two public interest lawsuits that had been brought against Infinito Gold reached contradictory conclusions. One dismissed all objections to the Crucitas mine while the other required an injunction against the project, leaving Infinito Gold in a legal limbo. In 2014, the company brought an arbitration claim against the government of Costa Rica under the Canada–Costa Rica BIT. Infinito Gold claims compensation for expropriation and the violation of fair and equitable treatment under the BIT. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$94 million	**Status** Proceedings were initially delayed by the investor's financial problems, but in December 2015, Infinito Gold entered into a litigation financing agreement with an unknown third party to keep the case alive. In December 2017, the tribunal confirmed the case would proceed, although a decision on jurisdiction was delayed to the merits phase of the proceedings. Claim is ongoing. **Outcome** Pending
Belmont Resources & EuroGas Inc. v Slovakia	**Claimant** Belmont Resources Inc. et al. (Vancouver, BC) **Respondent** Slovakia **Date initiated** June 25, 2014 **Treaty invoked** Canada-Slovakia BIT	**Issue** Belmont Resources, a Canadian mining company, and EuroGas, an American resource company, jointly controlled the Gemerská Poloma talc deposit in Slovakia. In 2005, the government of Slovakia revoked the companies' rights to the mine and granted them to a Slovak competitor. The Supreme Court of Slovakia subsequently ruled the government's actions to be illegal. In 2010, EuroGas threatened arbitration against Slovakia. In 2014, Belmont joined EuroGas in bringing a joint claim for several billion dollars in damages under the Canada- Slovakia BIT and U.S.-Slovakia BIT, respectively. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$3,200 million	**Status** In August 2017, the tribunal ruled that it lacked jurisdiction and thus dismissed the case. Both parties were found to be responsible for their own legal fees and arbitration costs. In December 2017, the claimants registered annulment proceedings that are currently pending. **Outcome** Dismissed
Bear Creek v Peru	**Claimant** Bear Creek Mining Corp. (Vancouver, BC) **Respondent** Peru **Date initiated** August 11, 2014 **Treaty invoked** Canada-Peru FTA	**Issue** Bear Creek, a Canadian mining company, owned rights to the Santa Ana silver deposit in southern Peru. In early 2011, the proposed mine became the target of increasingly violent protests and in June 2011 the government of Peru revoked Bear Creek's concession by Supreme Decree. Opponents say the mine risks contaminating nearby Lake Titicaca, but Bear Creek denies any environmental risk. In 2014, the company successfully challenged the decree in the domestic courts. In August of the same year, Bear Creek brought a parallel arbitration case against Peru under the Canada-Peru FTA as insurance against settlement talks breaking down. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$522 million	**Status** In November 2017, the tribunal ruled in favour of the investor and ordered Peru to pay US$18 million in damages plus 75% of the investor's legal fees for total compensation to Bear Creek of approximately US$24 million. **Outcome** Investor wins
WalAm Energy v Kenya	**Claimant** WalAm Energy Inc. (Calgary, AB) **Respondent** Kenya **Date initiated** February 23, 2015 **Treaty invoked** Contract	**Issue** In 2007, WalAm Energy, a Canadian renewable energy company, acquired concessions to the Suswa geothermal field in central Kenya. In 2012, the government of Kenya cancelled the licence and seized the field on the grounds that the company had failed to carry out a required environmental assessment. In 2015, the company brought an ICSID arbitration claim against the government. **Industry** Energy (electricity) **Type of measure challenged** Environmental policy **Amount claimed** Unknown	**Status** In March 2017, the tribunal issued a preliminary decision confirming its jurisdiction over the dispute. In May 2018, Kenya filed an application for security for costs, which suggests the government is concerned that WalAm may not be able to pay their legal fees if the tribunal rules in the state's favour. **Outcome** Pending

Short title	Case details	Description	
Pacific Wildcat Resources v Kenya	**Claimant** Pacific Wildcat Resources Corp. (West Kelowna, BC) **Via** Cortec Pty Ltd. & Stirling Capital Ltd. (United Kingdom) **Respondent** Kenya **Date initiated** June 18, 2015 **Treaty invoked** U.K.-Kenya BIT	**Issue** In 2010, Pacific Wildcat, a Canadian mining company, acquired rights to the Mrima Hills rare earth minerals project in the Kwale region of southern Kenya through two U.K.-registered subsidiaries. The company valued the site at more than US$60 billion and, in March 2013, secured a licence extension of 21 years. However, in August of that year, shortly following the Kenyan general election, the government revoked Pacific Wildcat's claim to the project as part of a nationwide re-evaluation of mining licences. The company challenged the government measure in the domestic courts but ultimately lost the case. In 2015, Pacific Wildcat used its U.K.-registered subsidiaries to bring an ICSID arbitration claim against the government through the U.K.-Kenya BIT. The company alleges expropriation and a breach of fair and equitable treatment under the BIT. No official documents have yet been released. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** On October 22, 2018, the tribunal dismissed Pacific Wildcat's claims on jurisdictional grounds and ordered the company to pay the Kenyan government US$3.5 million in legal and arbitral costs. **Outcome** Dismissed
Gabriel Resources v Romania	**Claimant** Gabriel Resources Ltd. (Toronto, ON) **Respondent** Romania **Date initiated** July 21, 2015 **Treaty invoked** Canada-Romania BIT	**Issue** In 2000, Gabriel Resources, a Canadian mining company, acquired a licence to the Roșia Montană gold and silver mine in western Romania. The project would be the largest open-pit mine in Europe, although the company has so far been unable to secure all the necessary permits to begin operations. The project is deeply unpopular in Romania. Starting in 2013, protesters organized daily demonstrations in dozens of Romanian cities for 18 straight months. The proposed mine has also been the subject of extensive contentious legal and legislative disputes. So far, the government has been unable to pass a new law that would allow the project to proceed. In 2015, the company and its U.K.-registered affiliate brought an ICSID arbitration claim against the government under the terms of the Canada-Romania BIT and the U.K.-Romania BIT. No official documents have yet been released. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$4,400 million	**Status** In June 2018, Romania's culture minister requested that a vote on nominating the Roșia Montană site for UNESCO World Heritage status be delayed until after the arbitration is concluded. Claim is ongoing. **Outcome** Pending
Corcoesto v Spain	**Claimant** Edgewater Exploration Ltd. (Vancouver, BC) **Via** Corcoesto (Panama) **Respondent** Spain **Date initiated** October 21, 2015 **Treaty invoked** Panama-Spain BIT	**Issue** In October 2015, Corcoesto, S.A., the wholly-owned subsidiary of Canadian mining company Edgewater Exploration Ltd., notified the government of Spain of its intent to submit an arbitration claim under the Panama-Spain BIT. The dispute relates to the Autonomous Community of Galacia's decision to terminate Edgewater's mining concessions over doubts that the mining company had the technical or financial capacity to advance the mining project. Local protests were also influential in the dispute, with communities in the northwest of Spain concerned over the possible use of cyanide in the extraction process. ClaimTrading Ltd., a London-based litigation financing broker, was responsible for sourcing the third-party funding for Edgewater's arbitration claim. No official documents have been released. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending
Kazakhstan Goldfields Corp v Kazakhstan	**Claimant** Kazakhstan Goldfields Corp (Toronto, ON) **Respondent** Kazakhstan **Date initiated** October 23, 2015 **Treaty invoked** Canada-USSR BIT	**Issue** In response to the jurisdictional ruling in the second World-Wide Minerals (WWM) v Kazakhstan dispute—where the tribunal ruled that Kazakhstan is bound by the 1989 Canada-Soviet Union BIT—another Canadian mining company, Kazakhstan Goldfields Corp., submitted a claim for arbitration against Kazakhstan under the same treaty. Kazakhstan Goldfields and its subsidiary Gold Pool LP claim damages from Kazakhstan's decision to terminate mining privileges in 1997. Kazakhstan Goldfields originally initiated a contract-based arbitration in 1997 and sought damages in the amount of US$65 million, but that dispute was never resolved. No official documents from the ISDS case have been released. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$65 million	**Status** Claim is ongoing. **Outcome** Pending

Short title	Case details	Description	
Alhambra Resources v Kazakhstan	**Claimant** Alhambra Resources Ltd. (Calgary, AB) **Via** Alhambra Cooperatief U.A. (Netherlands) **Respondent** Kazakhstan **Date initiated** December 14, 2015 **Treaty invoked** Netherlands-Kazakhstan BIT	**Issue** In December 2015, Alhambra Resources, a Canadian mining company, notified the government of Kazakhstan of its intent to submit an investment arbitration claim under the 2002 Kazakhstan-Netherlands BIT. Alhambra claims to have a wholly-owned Dutch subsidiary through which it will bring the case, although the name of the subsidiary is omitted from the claimant's notice of intent. The dispute relates to the government's declaration that Alhambra's Kazakhstan-based subsidiary, Sage Creek Gold, was bankrupt. According to the claimants, the government's assessment of taxes and withholding of financing and mining approvals led to Sage Creek Gold's economic downturn. **Industry** Resources (mining) **Type of measure challenged** Financial policy and taxation **Amount claimed** US$100 million	**Status** Claim is ongoing. **Outcome** Pending
Eco Oro Minerals Corp v Colombia	**Claimant** Eco Oro Minerals Corp. (Vancouver, BC) **Respondent** Colombia **Date initiated** March 7, 2016 **Treaty invoked** Canada-Colombia FTA	**Issue** In 1994, Eco Oro Minerals—known then as Greystar Resources Ltd.—acquired the Angostura gold mine in Colombia. In 2014, the Colombian Ministry of Environment passed a resolution that prohibited mining projects in the Colombian páramo, a high-altitude ecosystem that provides approximately 70% of Colombia's drinking water. While the Angostura concession was originally exempted from the resolution, the Colombian Constitutional Court tightened the regulation in 2016, thereby nullifying Eco's exemption. Eco Oro Minerals initially claimed damages of approximately US$300 million but later raised the claim to US$764 million. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** US$764 million	**Status** Claim is ongoing. **Outcome** Pending
Lumina Copper v Poland	**Claimant** Lumina Copper (Vancouver, BC) **Respondent** Poland **Date initiated** September 20, 2016 **Treaty invoked** Canada-Poland BIT	**Issue** Following a series of disputes in 2014, Lumina Copper, a subsidiary of Canadian mining company First Quantum Minerals, submitted a claim for arbitration under the Canada-Poland BIT. The dispute concerns Poland's Ministry of Environment awarding valuable copper extraction permits to KGHM, a partly state-owned mining firm. Miezdi Copper Corp., a subsidiary of Lumina Copper, alleges that the Polish government reneged on two promised copper mining permits that were later awarded to KGHM. Lumina Copper is claiming damages of at least US$100 million. Limited procedural details are available at this time. **Industry** Resources (mining) **Type of measure challenged** Energy policy and resource management **Amount claimed** US$100 million	**Status** Claim is ongoing. **Outcome** Pending
Air Canada v Venezuela	**Claimant** Air Canada (Montreal, QC) **Respondent** Venezuela **Date initiated** January 13, 2017 **Treaty invoked** Canada-Venezuela BIT	**Issue** In January 2017, Air Canada registered an arbitration claim against Venezuela under the Canada-Venezuela BIT. The dispute revolves around Air Canada's decision to suspend services to Venezuela following protests that began in 2014. The airline was subsequently unable to repatriate funds it had remaining in Venezuela due to currency controls introduced by the Maduro administration. No official documents have yet to be released. **Industry** Transportation (airline) **Type of measure challenged** Financial policy and taxation **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending

Short title	Case details	Description	
Gran Colombia Gold v Colombia	**Claimant** Gran Colombia Gold Inc. (Toronto, ON) **Respondent** Colombia **Date initiated** February 27, 2017 **Treaty invoked** Canada-Colombia FTA	**Issue** In February 2017, Gran Colombia Gold Corp., a Canadian mining company, served the Republic of Colombia with a notice of arbitration under the Canada-Colombia BIT. The dispute concerns a gold mine in the Segovia region. Since September 2016, local miners have been staging protests and demonstrations in Segovia to put pressure on the Colombian government to formalize mining in the area. According to Gran Colombia, the civil unrest in the area has not been properly managed, resulting in interferences with their own mining activities. Gran Colombia is claiming damages of US$700 million. No official documents have been released. **Industry** Resources (mining) **Type of measure challenged** Property and land rights enforcement **Amount claimed** US$700 million	**Status** Claim is ongoing. **Outcome** Pending
Rand Investments v Serbia	**Claimant** Rand Investments Ltd. (Vancouver, BC) **Respondent** Serbia **Date initiated** March 22, 2018 **Treaty invoked** Canada-Serbia BIT; Serbia-Cyprus BIT	**Issue** In March 2018, Rand Investments Ltd., a Canadian private equity firm, registered an arbitration claim with ICSID against the Republic of Serbia. The dispute relates to an agricultural enterprise in Serbia, but few details are presently available. The dispute may be connected to a 2017 agricultural law that restricted domestic farmland sales to foreign enterprises. The handful of claimants listed alongside Rand Investments include four Canadian nationals: William Rand, Kathleen Rand, Allison Rand and Robert Rand. No official documents have been released. **Industry** Agriculture **Type of measure challenged** Agricultural and industrial policy **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending
Galway Gold v Colombia	**Claimant** Galway Gold Inc. (Toronto, ON) **Respondent** Colombia **Date initiated** March 27, 2018 **Treaty invoked** Canada-Colombia FTA	**Issue** In April 2018, Galway Gold, a Canadian mining company, submitted an arbitration claim under the Canada-Colombia FTA following the Colombian government's decision to prohibit mining activities in the páramo, a high-altitude ecosystem. Galway Gold's decision to pursue arbitration comes after a 2016 ruling by the Colombian Constitutional Court upheld an earlier decision by the Ministry of Environment to prohibit mining activities in all páramo ecosystems. The Court ruled that public interests supersede private interests, as the páramo provides approximately 70% of the country's water supply. No official documents have been released. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending
Red Eagle Exploration v Colombia	**Claimant** Red Eagle Exploration Ltd. (Vancouver, BC) **Respondent** Colombia **Date initiated** April 18, 2018 **Treaty invoked** Canada-Colombia FTA	**Issue** In 2009, Red Eagle Exploration Ltd., a Canadian mining company, acquired the Vetas mining concession in Santander, Colombia. In 2016, the Colombian Constitutional Court upheld a regulatory ban on mining activities in the páramo, Colombia's high-altitude ecosystem. Red Eagle subsequently initiated discussions with the Colombian government over the damages associated with the portion of the Vetas mining concession located within the páramo. After Canadian mining companies Eco Oro Minerals and Galway Gold announced ISDS cases related to the same government measure (see above), Red Eagle registered an arbitration claim with ICSID to seek compensation. No official documents have been released. **Industry** Resources (mining) **Type of measure challenged** Environmental policy **Amount claimed** Unknown	**Status** Claim is ongoing. **Outcome** Pending

Notes

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