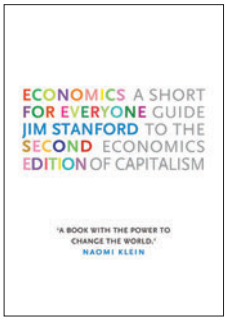
MONITOR

Canadian Centre for Policy Alternatives, July/August 2015

SCORE: $800,000,000

CAN WE STOP THE NEXT WAVE OF TRADE LAWSUITS?

Economics is too important to be left to the economists.



ECONOMICS FOR EVERYONE
A SHORT GUIDE TO THE ECONOMICS OF CAPITALISM (SECOND EDITION)

BY JIM STANFORD

Economics for Everyone, now published in second edition, is an antidote to the abstract and ideological way that economics is normally taught and reported. Key concepts such as finance, competition and wages are explored, and their importance to everyday life is revealed. Stanford answers questions such as "Do workers need capitalists?", "Why does capitalism harm the environment?", and "What really happens on the stock market?".

The book will appeal to those working for a fairer world, and students of social sciences who need to engage with economics. It is illustrated with humorous and educational cartoons by Tony Biddle, and is supported with a comprehensive set of web-based course materials for popular economics courses.

Jim Stanford is an economist with Unifor and writes an economics column for the Globe and Mail, appears regularly on CBC TV's *Bottom Line* panel, and is the vice-president of the Canadian Centre for Policy Alternatives.

TO ORDER YOUR COPY: WWW.POLICYALTERNATIVES.CA | 613-563-1341

July/August 2015

MONITOR

ISSN 1198-497X
CANADA POST PUBLICATION 40009942

CCPA MONITOR IS PUBLISHED 6 TIMES A YEAR BY THE CANADIAN CENTRE FOR POLICY ALTERNATIVES.

THE OPINIONS EXPRESSED IN THE CCPA MONITOR ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE CCPA.

PLEASE SEND FEEDBACK TO MONITOR@POLICYALTERNATIVES.CA.

EDITOR: STUART TREW
SENIOR DESIGNER: TIM SCARTH
LAYOUT: SUSAN PURTELL
EDITORIAL BOARD: BRUCE CAMPBELL, KERRI-ANNE FINN, SETH KLEIN, KATE MCINTURFF, ERIKA SHAKER, EMILY TURK

CCPA NATIONAL OFFICE:
500-251 BANK ST., OTTAWA, ON K2P 1X3
TEL: 613-563-1341 | FAX: 613-233-1458
CCPA@POLICYALTERNATIVES.CA
WWW.POLICYALTERNATIVES.CA
TWITTER: @CCPA
FACEBOOK.COM/POLICYALTERNATIVES

CCPA BC OFFICE:
1400-207 WEST HASTINGS ST.,
VANCOUVER, BC V6B 1H7
TEL: 604-801-5121 | FAX: 604-801-5122
CCPABC@POLICYALTERNATIVES.CA

CCPA MANITOBA OFFICE:
UNIT 205-765 MAIN ST., WINNIPEG, MB R2W 3N5
TEL: 204-927-3200 | FAX: 204-927-3201
CCPAMB@POLICYALTERNATIVES.CA

CCPA NOVA SCOTIA OFFICE:
P.O. BOX 8355, HALIFAX, NS B3K 5M1
TEL: 902-240-0926
CCPANS@POLICYALTERNATIVES.CA

CCPA ONTARIO OFFICE:
10 DUNDAS STREET EAST,
P.O. BOX 47129, TORONTO, ON, M5B 0A1
TEL: 416-598-5985
CCPAON@POLICYALTERNATIVES.CA

CCPA SASKATCHEWAN OFFICE:
2ND FLOOR, 2138 MCINTYRE STREET
REGINA, SK S4P 2R7
TEL: 306-924-3372 | FAX: 306-586-5177
CCPASASK@SASKTEL.NET

CCPA
CANADIAN CENTRE for POLICY ALTERNATIVES
CENTRE CANADIEN de POLITIQUES ALTERNATIVES

Contributors

Ricardo Acuña
is the executive director of the Parkland Institute, an Alberta-wide, non-partisan research centre situated within the Faculty of Arts at the University of Alberta.

Rick Arnold
is a retired Canadian social activist born in Venezuela. In the early 1980s, he and his partner Bev lived in Costa Rica while overseeing the CUSO Central America program. In the 1990s, Rick was the executive director of Horizons of Friendship, which focuses on community development in Mesoamerica. He then spent nearly a decade as the co-ordinator of Common Frontiers, a Canadian network opposed to "free trade," while advocating for fair trade and the millennial Indigenous concept of *buen vivir*—living well with others.

Larry Brown
is the president of the CCPA's Members' Council and the national secretary-treasurer of the National Union of Public and General Employees.

Pia Eberhardt
is a researcher and campaigner on EU trade and investment policy with the Brussels-based Corporate Europe Observatory, which works to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy-making.

Hazel Gabe
is an Ottawa-based fiction and non-fiction writer.

Remie Geoffroi
has been working as a professional illustrator for over 15 years with high-profile international clients and publications, including Billboard, ESPN, GQ and the Wall Street Journal.

Jennifer Moore
is the Latin American program co-ordinator at MiningWatch Canada.

René Guerra Salazar
is the director of SalvAide.

Chandra Siddan
is a Toronto-based writer and filmmaker. She is a frequent contributor of film reviews to the *Monitor*.

Scott Sinclair
is a senior research fellow with the CCPA and director of the organization's Trade and Investment Research Project.

Claude Vaillancourt
is a novelist, essayist and professor at the University of Quebec in Montreal (UQAM). He is the president of ATTAC-Québec (Association for the Taxation of Financial Transactions and for Citizen Action) and a frequent media commentator on Canada's trade and investment policy. You can find his writing at www.claudevaillancourt.net.

Gus Van Harten
is an associate professor at Osgoode Hall Law School in Toronto, where he teaches administrative law and international investment law.

Paul Weinberg
is a Hamilton, Ontario-based freelance writer. His work appears in rabble.ca and NOW magazine.

Stuart Trew

Why State Invaders?

ON MAY 27, the federal government announced it had signed a foreign investment promotion and protection agreement (FIPA) with Guinea. It didn't make the news, and why would it? Two-way trade between Canada and the West African nation was $61.2 million in 2014 — the same amount put towards Parliament Hill security in the 2015 federal budget. There is so little Canadian investment in the country it doesn't register in government statistics. There is no Guinean investment in Canada, and with an economy 282 times smaller than our own that is not about to change. Despite government claims to the contrary, there is no solid evidence FIPAs actually *promote* investment, as the name suggests.

So why sign the deal? Well, there is *some* Canadian investment in Guinea. Rio Tinto Alcan, with headquarters in Montreal, is part owner and operator of a bauxite mine, the lease on which expires in 2038. Parent company Rio Tinto also has dibs on the Simandou iron ore project, which it calls "one of the largest-known undeveloped high-grade iron ore resources in the world." The company's concession will enable the development of "the largest mine and infrastructure project ever undertaken in Africa," which includes "the progressive development of a 100 million tonne per annum mine, a 650-kilometre trans-Guinean railway and a new deep-water port."

Canadian companies owned $27 million worth of Guinean mining and infrastructure assets in 2013. While that may seem small, with KPMG predicting Guinea will be the fourth-largest bauxite producer in the world by 2017, there's a much bigger booty to be had. Until now, political instability — decades under one dictatorship or another, a 2009 freeze in diplomatic ties with La Francophonie, a coup and transition to civilian government in 2010, and the recent Ebola epidemic — has made developing the country's mineral deposits difficult. But after a second free election in 2013, global mining companies are swarming, looking for an edge.

Canada concluded its FIPA negotiations with Guinea only three months after those elections, and only eight months after the Guinean government announced it was further lowering royalties and export taxes on bauxite — perhaps based on advice from the Canada-funded African Mineral Development Centre, established in March that year to foster an "investment-friendly mining sector." The FIPA announcement was as low profile as the one this May, but Canada's mining sector was effusive.

The Mining Association of Canada (MAC) praised the "strategic" investment deal because it will "help ensure that Canadian mining investment is supported and protected in these important emerging markets." The association added that Canada's FIPAs — there are about 30 in force with another 20 in the pipes — provide companies that are making long-term investments with an "added layer of confidence." It's the confidence that comes from knowing any further delays in production, possible increases to the royalty rate, community resistance to mining projects or even future political unrest will be paid for by the unsuspecting Guinean people, not company shareholders (page 33). Of all the international agreements and conventions out there, none is stronger than a bilateral investment treaty.

We planned this issue on the theme of State Invaders, a spin on the retro video game Space Invaders where players must fight off wave after wave of alien bombing. A special, feature starting on page 16 exposes the ways corporations and investors use treaties like the FIPA with Guinea, NAFTA's chapter 11 and other free trade deals to undermine democratic decision-making. The courts can only protect us so much from these relentless lawsuits, as Player 1 on the cover is finding out. Investor–state dispute settlement (ISDS) gives investors extra-legal rights to be compensated when government action, even the legal passage of rules and regulations, impacts their profits. The federal government should appreciate how anti-democratic this system is: Canada has faced more ISDS cases than any other developed country in the world. Unfortunately, it doesn't seem to care.

An interesting thing happened as the rest of the issue came together. In reading about Canada's policies on tax havens (page 42), its low royalty rates on national resource extraction (page 14) and insistence, as a condition of international aid, that other countries lower theirs (page 46), and the hyperactive signing of FIPAs with underdeveloped but resource-rich countries, a picture emerges of what an "energy superpower" actually looks like. There's almost no chance Canada will be sued by a Guinean investor. In an immediate sense, the FIPA is another corporate handout to Canada's mining companies abroad. But in accepting the ISDS regime so completely, by inserting investor "rights" into deals with China, Europe, South Korea and (through the TPP) Japan, Canadian democracy is fundamentally weakened. M

Letters

The role of FINTRAC

Matthew Behrens's article in the April issue of *The Monitor* ("FINTRAC: Canada's Invasive Financial War Against Terror," page 30) makes a number of statements that misrepresent FINTRAC's mandate and operations.

To begin, FINTRAC does not provide the names of cardholders to credit card companies for the purpose of determining if a cardholder is a politically exposed foreign person. In fact, FINTRAC does not provide any information on individuals or entities to the businesses that are subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), as doing so would be contrary to the law. FINTRAC does not have the authority to access the bank accounts, including credit card accounts, of individuals and businesses in Canada, or to monitor their financial activities. Furthermore, there is no requirement under the PCMLTFA or any other law for businesses subject to the legislation to send information to FINTRAC with respect to a politically exposed foreign person.

Mr. Behrens also made erroneous links between the determination of politically exposed foreign persons, immigration and terrorism. Citizenship, residence status and birthplace are not factors in determining whether or not someone is a politically exposed foreign person. The sole criterion in this respect is whether or not a person or a member of that person's family has held certain specified high ranking positions or offices in, or on behalf of, a foreign country, such as a head of state or a head of government.

With respect to Mr. Behrens's suggestion that FINTRAC's database is shared with the RCMP, CSIS and the CBSA, I would like to make it clear that the PCMLTFA prohibits anyone outside of FINTRAC from accessing its database. FINTRAC operates at arm's length and is independent from the law enforcement, national security and other agencies that are authorized to receive its financial intelligence. In addition, the PCMLTFA clearly defines what information FINTRAC can disclose and sets out specific thresholds that must be met before FINTRAC is able to disclose it.

FINTRAC builds its financial intelligence from the information provided by businesses subject to the PCMLTFA, and it does so strictly in accordance with the law. Under our legislation, our priority is to safeguard the personal information that we receive. This is fundamentally the reason why FINTRAC was created. The protection of personal information is embedded in the way we carry out our work, the way we handle information, and the way we analyze and disclose financial intelligence to our partners.

In its 2013 audit report of FINTRAC, the Office of the Privacy Commissioner stated that auditors found that personal information had been used for the purpose for which it was obtained, and that FINTRAC's disclosures were tightly controlled and made in accordance with the legislation. Contrary to what Mr. Behrens's article implies, FINTRAC accepted the privacy commissioner's recommendations for improvement and implemented additional changes to its systems to address some outstanding issues from a previous audit.

The financial intelligence that FINTRAC discloses to its regime partners helps to protect the safety of Canadians and the integrity of Canada's financial system. It assists money laundering investigations in the context of a wider variety of criminal investigations where the origins of the suspected criminal proceeds are linked to drug trafficking, fraud, tax evasion and other criminal offences. Last year, FINTRAC also provided 234 disclosures of financial intelligence to its regime partners to assist them in their investigations of terrorism financing and threats to the security of Canada. These partners have recognized the valuable assistance FINTRAC provided to their investigations. For example, the RCMP has acknowledged FINTRAC's contribution to Project Smooth, which led to the arrest of two individuals for conspiring to carry out a terrorist attack against a VIA passenger train travelling from New York to Toronto.

I have not touched on all of the errors in the article by Mr. Behrens. I will close by simply reiterating that FINTRAC is committed to helping police and national security agencies protect Canadians and the integrity of Canada's financial system, while safeguarding the personal information of Canadians.

Darren Gibb, manager (communications), Financial Transactions and Reports Analysis Centre of Canada

Author's response

Darren Gibb's letter suffers from a siloed interpretation of FINTRAC's activities that was undercut, in 2006, by Justice Dennis O'Connor's exhaustive study and detailed recommendations for how Canada can avoid another rendition to torture like the case of Maher Arar.

In his report, *A New Review Mechanism for the RCMP's National Security Activities*, Justice O'Connor writes: "FINTRAC's activities have the potential to significantly affect the lives of individuals. Much of the information it deals with is highly

confidential. To the extent that suspected threats to national security or criminal activity are identified *and information passed on to the RCMP, CSIS or a foreign agency*, there could be further impacts on individual rights and interests." (Emphasis mine.)

O'Connor continues: "It is precisely because the CBSA, CIC, Transport Canada, FINTRAC and DFAIT have the power to significantly affect the lives and rights of individuals, because their national security activities are not transparent, and because their activities are integrated with both CSIS and the RCMP, that the question of accountability is so important. In my view, FINTRAC is a prime candidate for independent review."

A decade later, there is still no independent oversight of FINTRAC (or, really, any other state security agency). FINTRAC's enabling legislation permits it to share information, on the lowest standard available (reasonable grounds to suspect), with state security agencies that have a lengthy record of complicity in human rights abuses. Worryingly, the law guarantees employees immunity from any action they may take "in good faith." True, FINTRAC does not (as far as we know, for there is no transparency) peer directly into our bank accounts. Rather, it does so by proxy, relying on the mandated reporting of thousands of institutions across the country that enjoy immunity from any reporting they may do.

Mr. Gibb is alarmed that the supervisor at my credit card company told me that he receives names from the government to check for "politically exposed foreign person" (PEFP) status. It may be possible the supervisor was confused about the origin of the PEFP interrogations, given most institutions are confused by complex regulations, and in this case the burden of determining who among their clients is a PEFP. At the same time, it is naïve to think that, having made such a determination, it will not be reported to FINTRAC. It is likewise hard to believe that citizenship and immigration status are not factored in to PEFP determinations; for obvious reasons, most affected individuals will likely not have been born in this country.

While FINTRAC touts its "arm's length" status, Section 42(2) of the PCMLTFA states the "Minister may direct the Centre on any matter that, in the Minister's opinion, materially affects public policy or the strategic direction of the Centre."

Mr. Gibb gives FINTRAC too much credit regarding the 2013 federal privacy commissioner's report, which found the agency had made only "limited progress in addressing five of ten audit recommendations made in 2009," including with respect to the receipt and retention of information it should not have in its possession, "instances of non-compliance with established security policies," "security procedures not always followed," "inconsistent data minimization practices," and FINTRAC's refusal to destroy information that is not related to its mandate.

While Mr. Gibb claims that other agencies do not access FINTRAC databases, they can certainly request and receive information on specific individuals such as the hypothetical Muslim cleric in my article. Indeed, Mr. Gibb acknowledges FINTRAC makes such disclosures almost daily. Yet if financing of terrorism is such a concern, why are there not subsequently hundreds of prosecutions? If the Muslim cleric is among the 234 disclosures made last year, and no charges result, what happens to the information FINTRAC provided? Does it stay in a file for suspicious characters at CSIS and the RCMP? The O'Connor and Iacobucci inquiries spoke of the dangers in such a regime.

These questions were addressed by University of Toronto law professor Anita Anand who, in testifying before the Senate on May 4, said "Canadians involved may have no guilt at all and no reason to be in that database, yet they are in the database through no choice of their own." She pointedly asked whether the FINTRAC regime has been "effective in combating and preventing terrorist financing." Her conclusion: "we do not have evidence of the benefits of this very expensive and complicated regime," a declaration backed by a 2013 Senate report. Ms. Anand said she also has no faith in FINTRAC's reassurances about privacy protection.

Mr. Gibb's job as communications manager is naturally to defend the organization's mandate and activities, and not to acknowledge its errors, failures or potential abuses. That is understandable, but not acceptable.

Matthew Behrens,
Toronto, Ont.

Fixing the Senate

I found Helen Forsey's article on Senate reform stimulating ("Envisioning a People's Senate," April 2015, page 27). Currently Upper House appointments are made in the U.K. by an appointments commission consisting of a chair, reps from all political parties and three non-political people. In some Caribbean countries appointments alternate between the prime minister, the leader of the opposition and the governor general. This minor change could take place immediately in Canada while awaiting thorough Senate reform.

The Hon. Lois Wilson,
former independent Senator (1998–2002)

Send us your feedback and thoughts:
monitor@policyalternatives.ca

New from the CCPA

#JobsFriday

What's the job scene like in Ontario, region by region? Since January, **CCPA–Ontario Economist Kaylie Tiessen** has been analyzing Statistics Canada's monthly job numbers and identifying trends in her quarterly **#JobsFriday** provincial updates. Her May 8 update contrasts Ontario budget predictions of 78,000 new jobs by year's end with the labour market performance to date.

To follow #JobsFriday and read past editions, visit www.ccpaontario.ca/jobsfriday.

Halifax's Living Wage: $20.10

In order to earn a living wage, a person working a full-time, full-year job in Halifax would need to be paid $20.10 an hour, according to a report released June 1 by the **CCPA–Nova Scotia** in partnership with **United Way Halifax**. The study, ***Working for a Living, Not Living for Work***, uses the Canadian Living Wage Framework to calculate the living wage for Halifax. It takes into account major expenses as well as taxes and transfers for families raising young children based on a 35-hour work week. This calculation ensures a standard of living that promotes well-being and social inclusion for the diversity of families, including single parent families and unattached individuals.

"The living wage is still a conservative figure that doesn't include expenses such as debt repayment, retirement savings beyond CPP, life insurance, mortgage payments or savings to own a home," says **CCPA–NS Research Officer Mary-Dan Johnston**, a co-author. "Paying a living wage is a voluntary commitment that employers can make to directly compensate workers," adds **CCPA–NS Director Christine Saulnier**. "However, as the living wage calculation shows, the more generous government transfers or public services, the less the private wage has to be to cover costs. For example, if we capped child care fees at $10 a day, our living wage could be as much as $3.55 less per hour."

It's an argument Saulnier and the CCPA–NS included in their submission in mid-May to the province's **Regulated Child Care Review**. "Our provincial government allocates only 1% of the budget to the early years, which amounts to spending 0.24% of GDP on our most vulnerable community members, at the most important time of their lives," she says, adding that such investment "creates jobs, fosters labour market participation and a skilled workforce, increases productivity, boosts GDP and tax revenue, reduces poverty and income inequality, advances women's equality and social inclusion, as well as addresses population decline."

Black Arts and Popular Education

This spring issue of **Our Schools/Our Selves** is out. ***Constellations of Black Radical Imagining: Black Arts and Popular Education,*** co-edited by **Luam Kidane** and **Hawa Y. Mire**, is a collective response to the demonstrable lack of educational resources that focus on and speak to continental and diasporic African communities. It explores how Blackness has shaped the ways in which African educators, cultural producers and curators imagine and relate to notions of learning, knowledge production and popular education. You can preview and purchase ($15) the spring issue of Our Schools/Our Selves on the CCPA website.

Government's TFSA Numbers Game

In the 2015 federal budget, the government claims its decision to double the annual cap on Tax Free Savings Account contributions would mostly benefit low- and middle-income earners in Canada. A new CCPA study finds that, based on the exact same data, the opposite is actually true. "The idea that doubling the annual TFSA contribution limit to $10,000 would disproportionately benefit low-income Canadians is pure fantasy. Rather than facing up to the facts, the government tried to hide the truth in misleading charts within Budget 2015," says **CCPA Senior Economist David Macdonald**. "The truth is that TFSAs disproportionately benefit the wealthy."

In his report, ***The Number Games: Are the TFSA Odds Ever In Your Favour?***, Macdonald finds that no matter where you fall on the income ladder, the chances you will maximize your TFSA contributions remain small. For example, 60% of those earning between $20,000 and $40,000 a year (the middle-income classes) don't even have a TFSA, while 70% of those making over $250,000 (the richest 1%) do. For the bottom half of the population (making under $30,000 a year), 5% or fewer have maximized their TFSAs. The bottom 25% of tax filers (those earning less than $10,000 a year) would only see 8% of the potential benefits of doubling the TFSA contribution limit. Meanwhile, the richest 10% (those making over $100,000 a year) would see 22% of the potential benefits of doubling the TFSA contribution limit.

Nothing Natural in LNG Math

As the British Columbia and federal governments continue to push for LNG (liquefied natural gas) development and export, a major new study details the serious environmental

and climate impacts of this project for B.C. **David Hughes**, a former federal geoscientist and expert in unconventional energy, released a report with the **CCPA–BC** this May called ***A Clear Look at LNG: Energy Security, Environmental Implications and Economic Potential***. It considers in detail six possible scenarios for B.C. LNG export development—from not building any terminals to building five, as the province is proposing.

"If B.C. goes ahead with five terminals, it would require four to five times the current B.C. gas production levels," says Hughes. "This means drilling up to 43,000 new fracked wells in the northeast by 2040, and using up to 22,000 Olympic swimming pools of water per year in the fracking process. We're talking about serious environmental impacts."

Beyond the plan's carbon footprint, Hughes warns about Canada's future energy security and the National Energy Board's apparent failure to ensure domestic energy needs can be met. He points out that the NEB has approved 12 LNG export terminals with a total of 251 trillion cubic feet (tcf) of LNG export capacity over a 20- to 25-year lifespan, with a further seven under review. Although few expect more than five terminals to be built, in theory these approvals mean they could be, which would require ten times the surplus gas that the NEB's own modeling has shown to be available.

Challenging TPP Talking Points

In May, as talks quietly continued in Guam between the 12 countries involved in the U.S.-led Trans-Pacific Partnership negotiations, the CCPA released a fact sheet on some of the consequences of the deal for Canadian public policy and the economy.

"Like all current free trade agreements, the TPP is only marginally about trade," said the fact sheet by CCPA **Senior Research Fellow Scott Sinclair** and ***Monitor*** **Editor Stuart Trew**. "A far greater part of the text—thousands of pages in more than 30 chapters—has to do with harmonizing regulations (financial, health and safety standards, etc.), reinforcing intellectual property rights (patents, copyrights), opening up new sectors to privatization and foreign investment (health insurance and education), and putting strict limits on how governments choose to protect the environment or create jobs."

Subsequent to the release of the fact sheet, Trew was invited to discuss the TPP on TVO's *The Agenda with Steve Paikin*. You'll find a link to the broadcast, and the CCPA fact sheet, under the **Trade and Investment Research Project** section of the CCPA website.

For more reports, commentary and infographics from the CCPA's national and provincial offices, visit www.policyalternatives.ca

BERTRAND SCHEPPER

DIGGING A HOLE

On April 8, the Quebec government proudly announced a revamped *Plan Nord*. Premier Philippe Couillard's project, though much less ambitious than Jean Charest's version, appears to be just as risky.

The government wants to invest $2 billion on infrastructure in the North to make it easier for mining companies, usually foreign-owned, to gain access to the resources. By 2035, some $20 billion will have been invested by Hydro-Québec on new projects to reinvigorate the North's economy, though details regarding these investments have not been made available.

The profitability of these efforts for taxpayers was already uncertain when metal prices were at a historic high in 2011. It therefore seems unlikely that the new *Plan Nord* will be cost-effective in a context in which metal prices have been declining for the last four years and where growth in countries like China is the slowest it has been for decades.

Considering the return on royalties for 2015–16 is projected at $65 million, and that mine site rehabilitation costs alone should reach $1.2 billion, going down the mining rabbit hole is not likely to reap many benefits for the people of Quebec. But does the government have a choice?

Developing the extraction sector, despite the government's extreme willingness to help, is not profitable. Of course, some businesses do manage to reap profits, but we tend to forget that Quebec is a minor player on the world stage. At best, it accounts for 0.6% of iron extraction worldwide and around 1% of gold. In fact, we usually fall into the third or fourth quartile when compared to the rest of the world in terms of production costs.

For foreign investors, there are a good number of places more profitable to develop than Quebec. A mining company could simply choose to develop more easily accessible deposits outside of Quebec, where ore density per cubic metre is greater and extraction costs are lower.

If the government fails to insist on the need for local processing of extracted ore, taxpayers are shouldering the risk of developing a mining industry without any actual guarantee of future development. In that case, shouldn't Quebec set aside the idea of paying out-of-pocket for foreign mining companies?

Of course it should. However, the government remains suspiciously silent regarding this issue. Why?

First, in Quebec, metal processing is given many different definitions. Primary or pre-processing, which consists in converting extracted metal into easily exportable pellets, is the most commonly found in the North of Quebec. It does not generate many jobs: processing needs to be further developed to sustain a regional economy. Quebec certainly has more work to do.

Of the 27.5 million tonnes of iron extracted in Quebec, only 11% is processed within the province, according to a study published on behalf of the Board of Trade of Metropolitan Montreal. It shows that each 10% increase in processing (primary, secondary and tertiary) creates around 7,500 jobs and contributes $758 million to GDP.

Why, then, does the state refrain from demanding that a processing plant be built within its borders when it lends $100 million to a Chinese mining company? (*Editor's note: for a possible if only partial answer to this question, see the excerpt of Gus Van Harten's new book,* Sold Down the Yangtze: Canada's Lopsided Investment Deal With China*, on page 24.)* The benefits for regional development would be much greater, both for the population and for the return on investment.

For example, the government of Newfoundland and Labrador demanded that the mining company developing the Voisey's Bay mine also build a $13 million research centre to create more jobs in the area. For their part, Ontario and the Northwest Territories have requested that up to 10% of diamonds extracted on their land be set aside to be cut locally.

Why can't Quebec be as demanding as its neighbours are?

Of the 27.5 million tonnes of iron extracted in Quebec, only 11% is processed within the province.

Bertrand Schepper is a researcher with IRIS, a Montreal-based progressive think tank.

MARC LEE

CARBON EMISSIONS UP IN B.C.

It was a good story while it lasted. Over the past few years, the B.C. government and many in the policy community have spun a tale about the remarkable success of the province's climate action policies, with a big spotlight on the carbon tax as a driver of lower emissions, while B.C.'s economy outperformed the rest of the country. In B.C.'s case, the carbon tax was announced in the February 2008 "green" budget and implemented in July that year. It started at $10 per tonne, with annual $5 increments to the current $30 per tonne, which has been in place since July 2012.

Because of time lags, only a few years of data were available when judgments about B.C.'s climate action success began to roll out. With Canada's new National Inventory Report (NIR) to the UN Framework Convention on Climate Change, we now have data up to 2013, and it's not a pretty story for B.C.

In the supposed era of climate action, the trend for B.C.'s emissions is moving in the wrong direction. Emissions have been rising every year since 2010, and as of 2013 are up 4.3% above 2010 levels. Moreover, if you look closely at the underlying table, the rise is almost entirely explained by the growth of the natural gas industry. On the bright side, however, B.C.'s emissions are down 2.5% relative to 2005 levels, and 3.2% since 2000.

Unfortunately, the new NIR table does not fill in all of the years in between, and astute observers would note that B.C.'s base year for its legislated GHG reduction targets is 2007. The new national report adopted changes in measurement to reflect the latest climate science, so we cannot use previously published numbers from the B.C. government. B.C. has more detailed data available online but the next update won't happen until mid-2016, so their data only go to 2012.

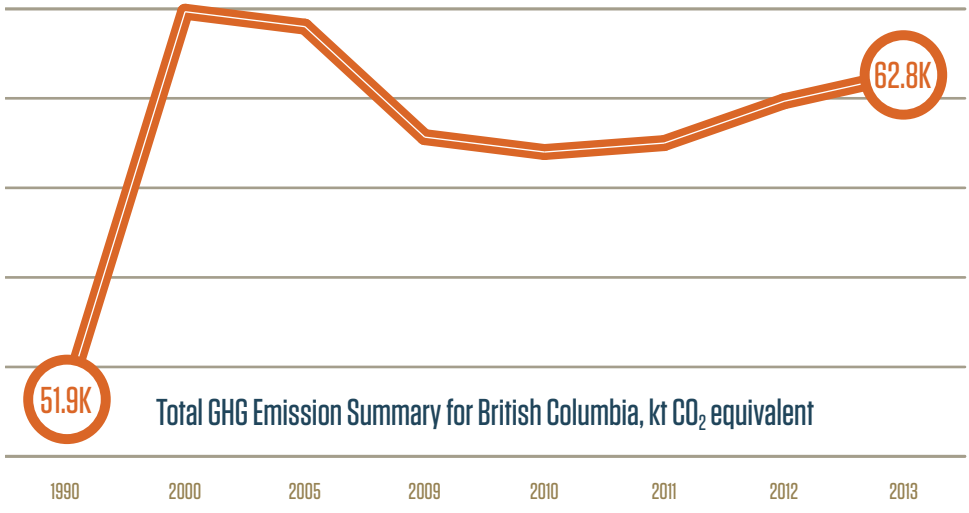
The older numbers show that emissions were already falling by the time B.C.'s 2008 green budget and carbon tax came into play. The data show no change from 2007 to 2008, but a notable 4.6% drop from 2008 to 2009, which accounts for essentially all claimed emissions reductions. And I suspect this is better explained by the 2008 financial crisis and subsequent recession than by the carbon tax.

Why? As of mid-2008, B.C.'s shiny new carbon tax added only 2.3 cents per litre at the gas pump, while prices were already north of $1.40 per litre. Those high prices were driven by market forces, but also by other taxes. You often hear that Canada has "no price on carbon," but fuel taxes are just carbon taxes with a smaller tax base.

B.C.'s motor fuel taxes are substantially larger than the carbon tax then or since, with a general rate of 14.5 cents per litre of gasoline and up to 25.5 cents per litre in Metro Vancouver. The federal excise tax on gasoline of 10 cents per litre, plus GST on the purchase price, is also larger than the carbon tax, even at today's 6.67 cents per litre equivalent ($30 per tonne).

The B.C. government makes the dubious claim that they met their interim GHG reduction target for 2012 of 6% below 2007 levels. Even then, B.C.'s numbers showed only a 4.4% drop, which, as noted, involves a one-time drop from 2008 to 2009. The claim of 6% reduction is based on the purchase of bogus carbon credits (offsets), making it more fiction than fact. There is no detailed reporting on how offsets were used, and the offset regime has massive credibility problems after a scathing auditor general's report in 2013.

Stripping out the bogus offsets, in national terms, B.C.'s performance is nothing special. Going back to the new NIR data, B.C.'s slight drop in emissions since 2005 (2.5%) is similar to Canada as a whole (down 3.1%). Also like B.C., Canada's emissions have been growing since 2009 (up 3.9%). B.C. has fared better than Alberta, whose emissions have shot up 14% since 2005, but Canada's true climate leaders are Quebec (down 8.4%) and especially Ontario (down 19%), which is phasing out coal-fired electricity generation.



OK, what about the storyline that in spite of the new carbon tax B.C.'s economy has outperformed the rest of the country? From 2008 to 2013, B.C.'s economy grew 12.6%, while Canada's grew 15.1%; from 2010 to 2013, B.C. grew 11.5% to the national 13.9%; and even just in 2013, B.C. grew 3.2% and Canada 3.4% (all from CANSIM Table 384-0038). If we go to constant dollars, there is a very slight edge to B.C. over Canada, but it works out to 0.07% per year in GDP growth rates.

So B.C. can claim that the carbon tax has not lead to weaker economic performance than Canada as a whole. But that's not saying much because the carbon tax is still too small to be very effective. Even less so with current oil prices: it would take an additional carbon tax above $200 per tonne just to get prices at the pump back to where they were a year ago.

Bottom line: B.C.'s emissions are on the rise. We need to stop telling fairy tales about the province's climate action policies and its carbon tax (and I say this as a general supporter of carbon taxes). B.C.'s proposed "climate action 2.0" is wishful thinking. So far, all we have is the intention to create a committee to propose further actions.

Meanwhile, we cannot ignore the inconvenient truth about B.C.'s ambition to launch a massive liquefied natural gas industry. If realized, these plans would put into the atmosphere some 200–300 million tonnes of carbon dioxide equivalent per year (four to five times B.C.'s own annual emissions in 2013).

This carbon is currently safely sequestered underground in deep shale formations, and climate action demands it stay that way. The bulk of those emissions would count in the importing country's (Japan or China) emissions inventory, not B.C.'s. But even the smaller amount of emissions in B.C. that do get counted (associated with fracking, processing and getting product onto those LNG tankers) would make it impossible for the province to meet its legislated targets.

Marc Lee is a senior economist with the CCPA–BC. Follow him on Twitter @MarcLeeCCPA.

KATE MCINTURFF

IGNORE WOMEN VOTERS AT YOUR PERIL

The last time we had a federal election in Canada, women cast half a million more votes than men. And I can't help wondering why.

The 2011 leaders' debates lacked almost any mention of how the party platforms were going to address the fact that women work different hours, in different occupations, for different amounts of money. Oh sure, there was lots of talk about the economy and jobs. But jobs for women? Who can say?

Whatever you think about the whole Mars vs. Venus thing, there is no question that men and women are positioned differently within the Canadian economy, that they perform different amounts of care work, they have distinct health care needs, and are subject to distinct forms of violence. All of which means that good public policy has to be tailored to those differences if it is going to work for both women and men. Political platforms need to be tailored to their differences. Political leaders ought to be able to explain what they are going to do for both halves of the population.

The Conservative Party recently announced that they would not be participating in debates hosted by the group of media outlets that traditionally broadcast national leaders' debates. This announcement is part of an ongoing contest over who will debate whom, where and how. But amidst all the jockeying around who stands at which podium in front of whose cam-

Screenshot from the Alliance for Women's Rights website.

era, there has been little discussion of the content of those debates.

It's time to start asking questions about the substance of our election debates, not just the trappings.

Up For Debate, a growing national coalition of over 150 organizations, individuals and local communities, has an idea or two about that.

Thirty years ago, Conservative, Liberal and NDP leaders participated in a publicly broadcast, fully bilingual debate that spoke to women. The issues? Pay equity (still a problem); violence against women (still a problem); access to reproductive and sexual health services (still a problem).

Not only have subsequent governments failed to solve the problems being debated in the 1980s, they haven't really talked much about them in subsequent election debates. The word "women" came up only a handful of times in the 2011 English-language debate. Most of those mentions were as part of the phrase "men and women" (usually "our men and women in uniform"). There was only a single mention of any policy that specifically addressed the different challenges that women and men face in Canadian society (violence against women). So much for mainstreaming.

As we head into what is surely going to be the longest federal campaigning season Canada has ever seen, our political leaders have an opportunity to do things differently. Women aren't a special interest. They are half the population. They vote bigger than their demographics. And spring polls suggest they are a moving target for political parties—with female voter preference shifting significantly over the past four months.

Women voters are paying attention to this election—it's time for political parties to pay attention to them.

Kate McInturff is a senior researcher with the CCPA. You can follow her on Twitter @katemcinturff.

GURPREET PABLA AND DAVID FAIREY

END UNJUST TREATMENT OF FARM WORKERS

On September 15, the B.C. government will increase the general minimum wage by a measly 20 cents, from $10.25 to $10.45, and apply a 2% increase to the minimum piece rates for hand-harvested crops.

Under the Employment Standards Act, farm workers who harvest fruits, berries and certain vegetables (peas, beans and brussels sprouts) are not entitled to receive the minimum hourly wage. The government sets minimum piece rates based on the volume or weight of produce.

For farm workers under the piece rate system, this will be just the second increase since November 2001. On September 15, while the general minimum wage will have increased by 30.6% since 2001, the hand harvester minimum piece rates will have increased by only 7.5%. During this time period, food prices in B.C. will have increased by more than 33%, according to Statistics Canada's Consumer Price Index.

This shoddy treatment of some of the lowest-paid and most precariously employed workers in the province is partly because between 2001 and 2003 the government bowed to pressure from the agricultural industry and made sweeping changes to the Employment Standards Act. These changes stripped farm workers of important rights and benefits, including entitlement to statutory holiday and overtime pay, and reduced their rights to minimum daily hours of pay. The minimum piece rates for the hand-harvesting of crops, which previously included an adjustment of 3.9% in lieu of statutory holiday pay, were reduced by 3.9%.

Then, just prior to the November 2011 minimum wage increase, the fruit, berry and vegetable farm lobby successfully pressured the government again not to increase the minimum piece rates by the 8.6% that the general minimum wage was to be increased by. And then again, on May 1, 2012, when the general minimum hourly wage was increased by 7.9%, no increase was provided for farm worker minimum piece rates.

Let's put the proposed September 2% increase in perspective. For the majority of fruits, berries and vegetables, where the piece rates are based on weight, a 2% increase translates into less than one cent per pound. For example, the piece rate for raspberries will go from 35.7 cents to 36.4 cents per pound. This is unconscionable.

The simplest and fairest solution is to give farm workers who harvest fruits, berries and vegetables the same minimum hourly wage as all other workers in the province, and scrap the minimum piece rate system. If farm owners wanted to maximize the productivity of farm workers they would be free to offer productivity bonuses, as long as the hourly rate of pay was no less than the general minimum wage.

It is obvious that unless the government's treatment of farm workers under the Employment Standards Act changes dramatically, income inequality for the lowest paid British Columbians will continue to increase.

Gurpreet Pabla is a legal advocate with the Progressive Intercultural Community Services Society. **David Fairey** is a labour economist, co-chair of the B.C. Employment Standards Coalition, and a research associate with the CCPA-BC.


BOSS

THE CANADIAN PRESS/NATHAN DENETTE

Hazel Gabe

Reprieve for Omar Khadr

IN A RARE, quick decision from the bench, the Supreme Court of Canada confirmed on May 14 the earlier order of the Alberta Court of Appeal that Omar Khadr should have been classified as a juvenile, thereby serving his sentence in a provincial facility. The Court went on to say that Omar should not have been considered an adult or placed in a federal penitentiary. According to the ruling, Ottawa made a grave mistake in its interpretation of the International Transfer of Offenders Act and should never have treated him the way it did.

Omar's "sentence" in 2010, by an extrajudicial U.S. military commission at Guantanamo Bay, was widely denounced by legal experts and human rights organizations worldwide. However, the sentence itself was not under question by the Court, only how Omar should have been classified upon his return to Canada in 2012.

The practical application of the ruling has to do with whether Omar's sentence should have been served out in a federal prison, as the Crown maintained, or in a provincial facility. An adult sentence would have meant that, if Omar were to return to prison, it would be to a federal penitentiary. Prior to being released on bail, Omar was being held in a provincial facility outside of Edmonton. But initially Ottawa had placed him in a federal penitentiary — for several months in solitary confinement. It took a legal challenge of his adult classification status to seek transfer to a provincial facility, where he was able to access educational programs and opportunities.

The International Transfer of Offenders Act and other treaties govern the transfer of prisoners between countries like the United States and Canada, so that sentences can be served out in a prisoner's home country even if they were administered abroad. This is the basis under which Canada continues to enforce the sentence imposed by the United States. Omar is currently challenging the charges against him in U.S. courts. Other ex-Guantanamo Bay prisoners have successfully challenged their charges this way.

Lawyers for the Crown argued that Omar's sentence should be treated as if it were handed to an adult, despite the fact he was 15 at the time of the alleged offences. In May, the Court agreed with defence lawyers who stated that, since Omar's eight-year U.S. sentence falls under the maximum of life imprisonment for adults in Canada, it must be considered a juvenile sentence in this country.

The ruling has no immediate effect, as Omar is currently free on bail. However, it would be an important consideration if he were to return to prison. With this ruling he would be returned to a provincial prison as before, with access to rehabilitative programs. A lawyer for Amnesty International, giving a ten-minute presentation at the hearing, reminded the bench that the more lenient route is congruent with international law, which makes special provision for children involved in armed conflict and stresses rehabilitation.

Omar received his Guantanamo Bay sentence as part of a plea deal that would allow him to return to Canada. After 11 years in U.S. custody, subjected to ongoing human rights abuses including torture, he was offered the deal as the only escape from indefinite imprisonment.

The U.S. government maintains the right to keep prisoners at Guantanamo Bay irrespective of rulings of innocence or guilt. Although the military commission process does not follow basic legal principles, allows evidence obtained under torture, and is not legally competent to determine innocence or guilt, Omar has been forced to wrangle his way through Canadian courts for justice.

This is his third victory in the Supreme Court, which has consistently ruled in his favour.

This article was originally written for the Free Omar Khadr Now campaign (freeomar.ca). M

The Index

Seek and Hide: Canadian companies paying less tax than ever.

Compiled by Hadrian Mertins-Kirkwood

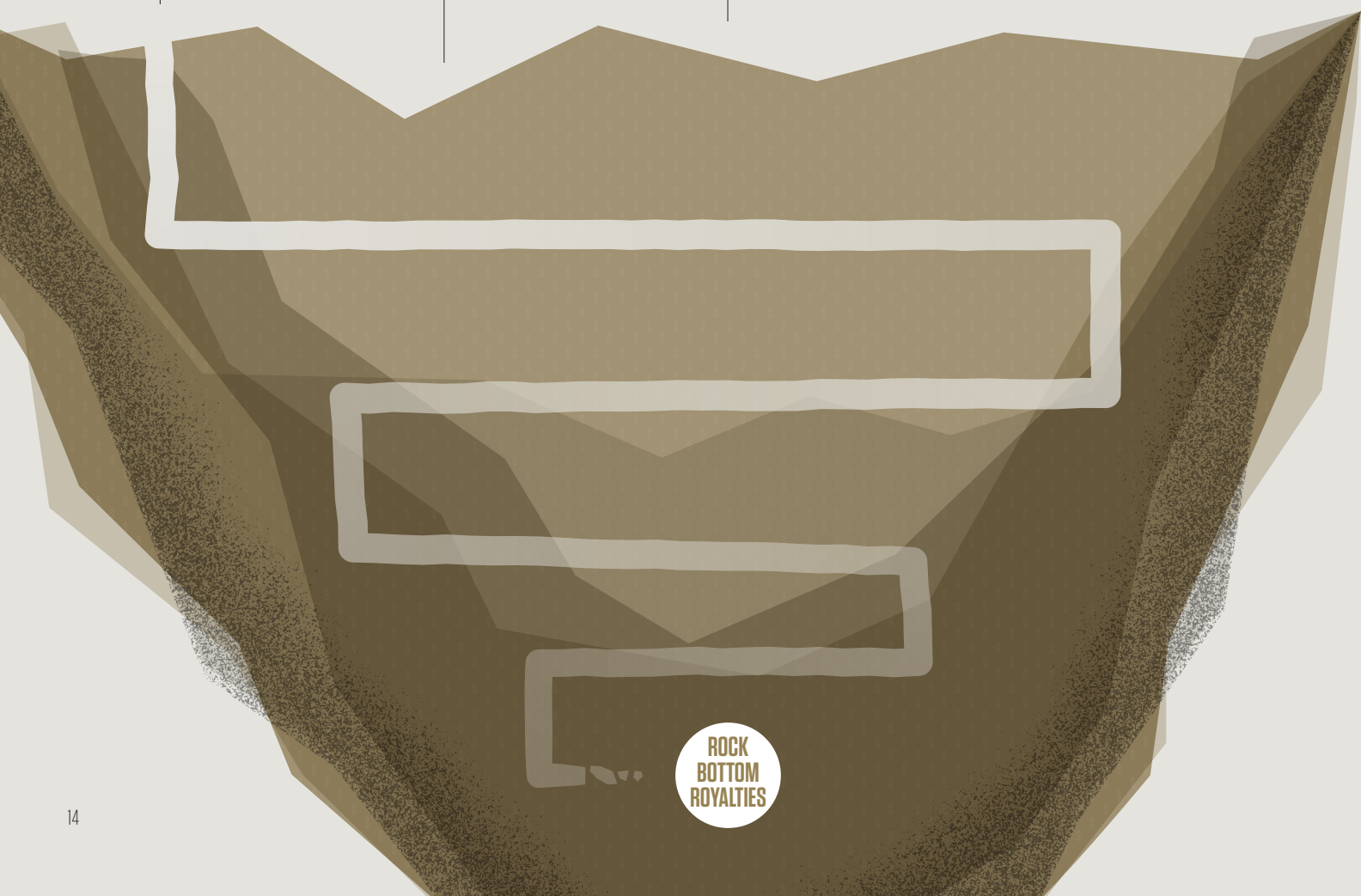
Royalties and taxes paid by mining, oil and gas companies ensure that Canadians receive fair compensation for the extraction of public resources. But are Canadians getting a raw deal?

▸ In 2012, mining companies extracted **$45.9 billion** worth of resources but paid only **$1.8 billion** in taxes and royalties in Canada, an effective public return of **4%**. Mining companies got off easiest in Ontario, where they extracted **$9.5 billion** worth of resources but paid only **$110 million** to the government—a public return of **1.2%**.

▸ Ontario's royalty rate for diamond mining is as much as **14%** and the official tax rate on all other mining profits is **10%**, down from **20%** in 2000, but companies rarely pay even this much. For example, due to loopholes and tax breaks, international mining conglomerate De Beers paid only **$226** in royalties on its northern Ontario diamond mine in 2014, despite generating hundreds of millions of dollars in revenue.

▸ In Alberta, the government introduced a new oil and gas royalty in 2009 that it promised would generate an additional **$2 billion** per year. But in the next five years royalties actually declined by **$13.5 billion** relative to the preceding five years due to a massive calculation error by the government. The effective royalty rate dropped from **14% to 11%** during this time.

▸ Alberta collects **25% to 40%** of profits or approximately **10%** of gross revenue from the oil sands, much less than comparable jurisdictions. The rate in Newfoundland's Hibernia oil field is as much as **50%** of profits plus **7.5%** of gross revenue. Governments in Norway and Saudi Arabia collect **80% and 85%** of profits respectively, three times the effective rate in Alberta. In Venezuela, oil and gas companies pay **40%** of gross revenues, four times Alberta's rate.



Even as governments' share of resource revenues declines in Canada, companies are working harder than ever to avoid paying Canadian taxes.

- Known Canadian "investments" in the world's top ten tax havens reached **$199 billion** in 2014, up from **$161 billion** in 2012. More than **24%** of all Canadian foreign direct investment goes to known tax havens, up from **10%** in the late 1980s.

- Incredibly, Canadian companies and investors have sheltered **$71.2 billion** in Barbados alone. The corporate tax rate on Canadian companies incorporated in Barbados, such as Petro-Canada and Loblaws, is **2.5%**. Canadians have also "invested" **$37 billion** in the Cayman Islands, which has no direct taxation, and **$31 billion** in Luxembourg, which is notoriously secretive.

- Canadian tax avoidance has increased even as the tax rate plummets to new depths. The marginal effective tax rate on new business investment in Canada is **17.5%**—the lowest in the G7—slashed from **33%** in 2006.

- In addition to the revenue lost from corporate tax cuts, the estimated cost of tax avoidance to Canadian governments is **$7.8 billion per year**. Yet Federal budget cuts are forcing the Canada Revenue Agency to shed **3,100 jobs** by 2018. In 2014, **50** highly trained senior managers were laid off in the division responsible for investigating tax evasion.

- Implementing a small financial transactions tax in Canada of **0.5%**—comparable to the U.K.'s Stamp Duty Reserve Tax—would generate an additional **$5 billion** per year.

SOURCES Ontario Ministry of Finance. Ontario Mining Tax (last modified April 9, 2014); Natural Resources Canada. Annual Production Statistics 2012 (last modified January 6, 2015); Erin Weir. "Ontario Diamond Royalty," Progressive Economics Forum (February 2012); Rita Celli. "Diamond royalties a closely guarded secret in Ontario," CBC News (May 12, 2015); Jim Roy. "Billions Foregone: The Decline in Alberta Oil and Gas Royalties," Parkland Institute (April 2015); Dennis Howlett. "Corporate Canada's $199 Billion Secret," Canadians for Tax Fairness (May 19, 2015); PressProgress. "Corporate Canada's cash in tax havens explodes to $199 billion under Stephen Harper" (May 8, 2015); Timothy Sawa. "Tax avoidance: Canada-Barbados tax deal loopholes revealed," CBC News (October 7, 2013); Dennis Howlett. Presentation to the House of Commons Finance Committee (February 14, 2013); Jason Fekete. "Canada Revenue Agency looking to cut auditors despite rise in tax-haven cases," Financial Post (January 2, 2014); Department of Finance. Federal Budget 2015 (April 21, 2015); Canadian Centre for Policy Alternatives. Alternative Federal Budget 2015 (March 19, 2015)

State Invaders

High Scores

PLAYER	SCORE
1. Yukos (vs. Russia)	$50,000,000,000
2. Occidental (vs. Ecuador)	$1,700,000,000
3. ExxonMobil (vs. Venezuela)	$1,600,000,000
4. Eureko (vs. Poland)	$1,600,000,000
5. Gold Reserve (vs. Venezuela)	$740,000,000
6. Stati (vs. Kazakhstan)	$489,000,000
7. CME (vs. Czech Republic)	$270,000,000
8. Azurix (vs. Argentina)	$165,000,000
9. AbitibiBowater (vs. Canada)	$130,000,000
10. Cargill (vs. Mexico)	$90,700,000
11. Corn Products Int'l (vs. Mexico)	$58,380,000
12. Mobil/Murphy (vs. Canada)	$17,000,000
13. Metalcad (vs. Mexico)	$15,600,000
14. Ethyl (vs. Canada)	$13,000,000

Scott Sinclair

INVESTOR VS. STATE

Canada is being pummeled by NAFTA corporate lawsuits. Why do we put up with it?

A system that empowers corporations to sue governments for compensation whenever they feel a policy or decision has interfered with their expected profits sounds like something out of a dystopian future. Sadly, such a system already exists — in a web of thousands of international investment treaties — and Canada is a regular (and strangely willing) target.

When the North American Free Trade Agreement (NAFTA) came into force 21 years ago, there was plenty of debate about its impact on jobs, energy and sovereignty. The environmental movement of the day nearly scuttled the deal on fears it would severely curtail the ability of governments to set strong environmental protection and conservation policies. But these groups were split down the middle by a government proposal for what we can now conclusively call a useless environmental side-agreement, paving the way for NAFTA's ratification.

Unfortunately, at the time much less attention was paid to an obscure investor–state dispute settlement (ISDS) provision in the treaty's investment chapter. It set up a process through which foreign investors could choose to settle disputes with government through binding private arbitration instead of national courts. The dubious rationale for granting this extraordinarily sweeping right to foreign investors was that the Mexican courts of the day were prone to corruption and political interference.

Over two decades later, the ISDS process in NAFTA has become notorious, more so elsewhere than in Canada, though this is changing. Of the 78 investor–state claims filed to date under NAFTA only a handful pertain to the administration of justice in the Mexican courts. Instead, foreign investors targeted a broad range of government measures in North America — especially in the areas of environmental protection and natural resource management — which allegedly impaired corporate profits. Canada has faced 36 ISDS claims, more than any other developed country in the world, and since 2005 we've been hit by 70% of all NAFTA investor lawsuits.

Despite this bruising experience and grim prospects the federal government is hell-bent on expanding ISDS in pending international trade agreements, including treaties with the European Union (EU) and the U.S.-led Trans-Pacific Partnership (TPP). Critics, whose ranks are growing, are left wondering why their government continues to give private, for-profit arbitrators the power to interpret treaties, to decide over questions of public law and to impose fines paid from public funds.

The situation is intolerable. Two recent NAFTA defeats for Canada help us understand exactly why. These cases vindicate long-standing criticisms of investment arbitration in trade and investment agreements. Unfortunately, unless the federal government changes course, they will be neither isolated occurrences nor the last such cases Canada will endure.

Mobil and Murphy vs. Canada

In March, ExxonMobil's Canadian subsidiary and a smaller company, Murphy Oil, jointly won $17.3 million in damages after successfully challenging requirements that companies in the offshore oil sector dedicate a tiny percentage (0.33%) of their revenues to research and development, education and training within the province of Newfoundland and Labrador. It is bad enough that under NAFTA it is illegal to oblige one of the world's most profitable corporations — ExxonMobil earned US$4.94 billion in the first quarter of 2015 despite the downturn in oil prices — to contribute to the local economy in return for access to publicly owned natural resources. But what is especially galling about this case is that Exxon, along with every other company active in the offshore oil sector, had explicitly agreed to abide by provincial R&D commitments. What's more, the provincial and federal governments had assumed quite reasonably these conditions had been exempted from NAFTA.

Newfoundland and Labrador has a history of massive resource projects that bring few benefits to the province and its residents. Determined not to repeat this in the offshore oil sector, in the mid-1980s the province negotiated the Atlantic Accord with the federal government to ensure benefits would accrue to the local economy. Canada filed a reservation (exclusion) under NAFTA that supposedly protected the accord from trade or investment disputes related to its performance requirements (e.g., local content and minimum investment quotas), which are otherwise banned by the free trade deal's investment chapter.

But, in 2012, the NAFTA tribunal rejected Canada's legal arguments that the R&D guidelines fell within the scope of the Canadian reservation for benefits plans under the authority of the Canada–Newfoundland Atlantic Accord Implementation Act. In 2004, those requirements had been toughened after the offshore petroleum board concluded that companies were not meeting their existing R&D pledges. The tribunal, with one arbitration lawyer in dissent, took the very narrow view that the accord and any subordinate measures were excluded from coverage only exactly as they existed in 1994 when NAFTA took effect. No changes could be made to strengthen them, and the discretionary authority under the act, which both Canada and the provincial government had reasonably assumed was protected, could not be exercised to make the R&D requirements more effective.

This restrictive ruling calls into question the efficacy of other Canadian federal and provincial reservations, not only under NAFTA, but also in the pending Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and the TPP. These reservations, of which there are hundreds, are supposed to protect governmental authority in areas ranging from Saskatchewan's limits on foreign ownership of farmland to Ontario's requirements that timber from public lands be processed within Canada. The Mobil/Murphy ruling casts serious doubts about whether these reservations can actually be relied on in a dispute, and it drives home the point that investor–state tribunals will interpret investor rights broadly and exceptions narrowly.

In another harmful twist, the March 2015 ruling, which decided how big a fine Canada had to pay the two U.S. oil companies, determined that so long as the R&D guidelines remain in place, Canada is in "continuing breach" of NAFTA and damages continue to accumulate. The tribunal's $17 million award only covered damages until 2012. ExxonMobil has now filed a new claim for ongoing damages since then.

Proponents of investment arbitration frequently assert that the system does not and "cannot require countries to change any law or regulation," in the words of a recent White House statement. While this is true strictly speaking, investment panels can require governments to pay compensation, and these awards are fully enforceable in domestic courts. As the Mobil/Murphy case shows, the tribunal can order ongoing damages for as long as governments retain the offending measure. Practically speaking, few governments can tolerate this situation and will change the of-

UPS

The multinational courier sought $160 million from Canada, alleging that Canada Post's limited monopoly over letter mail, and its public postal service infrastructure, enabled the public carrier to compete unfairly in express delivery. On May 24, 2007, a NAFTA ISDS tribunal dismissed the investor's claims, though with one arbitrator dissenting to part of the ruling.

fending measure. Given the clear evidence to the contrary, it is specious to argue that democratic authority remains unaffected by ISDS. The Canadian government's repeated and emphatic assurances that regulatory authority has been protected are simply smokescreens designed to fool the public.

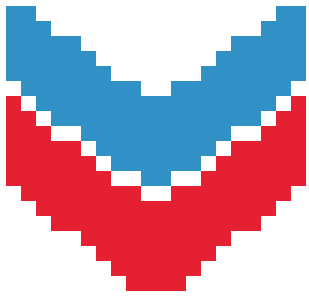
Bilcon vs. Canada

A second disturbing NAFTA loss directly contradicts repeated federal government claims that NAFTA and other free trade and investment deals "do not compromise the environmental protection measures that Canada has implemented." In March, a NAFTA tribunal ruled that a joint federal-provincial environmental assessment, which led to a U.S. firm being denied a permit to build a massive quarry in a sensitive coastal area in Nova Scotia, violated the company's NAFTA investor protections. The U.S. investor, Bilcon, is now seeking over $300 million in damages from the federal government.

In 2007, after three years of extensive study and public consultation involving all interested parties, a joint federal-provincial environmental assessment panel recommended against the quarry and related marine terminal due to their negative environmental and socioeconomic effects. The governments of Nova Scotia and Canada accepted that recommendation, denying approval for the controversial project. It was a rare move for a federal panel, illustrating the seriousness of the environmental concerns.

Bilcon did not appeal any decisions related to the project thorough the domestic courts, even though it had the right to pursue a federal court review of the environmental panel's finding. Instead, and with the help of Canadian lawyer Barry Appleton, it bypassed the Canadian courts and went directly to NAFTA investor–state dispute settlement. The NAFTA tribunal ruled 2-1 that both the environmental assessment process and the subsequent decision to block the project violated the firm's NAFTA guarantees to minimum standards of treatment and national treatment.

Though no Canadian court had ruled on the matter, the NAFTA tribunal determined that the environmental assessment panel had violated Canadian law. The majority on the tribunal felt the criterion of "community core values," which it construed as the primary basis of the environmental assessment panel recommendation against the project, was outside the panel's legal mandate. They also condemned the environmental panel's decision to recommend against the project outright without suggesting changes that might have mitigated its negative impacts and allowed Bilcon to proceed.



CHEVRON

After years of litigation, Ecuador's courts ruled in February 2011 against Chevron in a lawsuit brought by Indigenous groups and farmers, ordering the company to pay US$18 billion (later reduced to US$9.5 billion) to clean up land and water contamination caused by past energy operations. Successive ISDS panels convened under a U.S.-Ecuador Bilateral Investment Treaty have ruled in Chevron's favour, even ordering the Ecuadoran government to block the enforcement of the court award, and suggesting any payment the firm makes would need to be reimbursed by the government.

The minimum standard of treatment protections in NAFTA and other treaties have been rightly criticized as inherently subjective, allowing arbitrators to apply their own preferences and prejudices. Without a doubt, the Bilcon ruling validates these concerns. The tribunal, chaired by a German jurist, was not qualified to judge whether or not Canadian law had been broken. According to many experts, the majority's interpretation of Canadian law was almost certainly wrong. The tribunal "lacked, with the exception of the dissenting member, even a basic understanding of the legal context within which the decisions it was asked to rule on where made," according to environmental law professor Meinhard Doelle.

NAFTA chapter 11 gives private for-profit arbitrators the power to usurp the role of the Canadian courts, which were precluded from ruling on this matter because of the investor's own decision to bypass them. This travesty of justice exemplifies how the ISDS regime privileges foreign investors, elevating them above citizens, legislatures and the courts in violation of the basic principle of equality before the law.

Yet, as the tribunal's dissenting member also stressed, even if federal environmental assessment legislation had *not* been followed to the letter (which was unproven), this should never have

been deemed a violation of NAFTA's guarantees of *minimum* standards of treatment under customary international law. It is the position of all three NAFTA governments that such standards should be interpreted cautiously and only in cases involving the most egregious state conduct.

The Bilcon majority's ruling that the federal and Nova Scotia governments violated NAFTA's national treatment (non-discrimination) rule is also deeply worrying. It equates cases where investors are treated differently to full-fledged discrimination based on nationality. Governments frequently treat investors differently for perfectly legitimate reasons. An investment in an environmentally sensitive region, for example, may be treated differently than an investment in another less fragile or more highly industrialized area, whether the investor is a foreign corporation or a Canadian entity.

The NAFTA tribunal scrutinized examples of what it considered to be comparable projects involving Canadian investors in quarries or marine terminals that had either not been subject to full environmental assessment, approved with mitigation measures or approved outright. This satisfied two arbitrators, with the third again disagreeing, that Bilcon had been treated less favourably in violation of the national treatment rule.

Deciding if the proponents (investors) of completely unrelated projects were treated better or worse is difficult and inherently subjective. The tribunal's decision to equate different, allegedly less-favourable treatment with nationality-based discrimination is troubling. This ruling demonstrates in graphic terms how ISDS enables private arbitrators to hold elected governments to impossible standards of consistency whereby any difference in treatment can be likened, at the arbitrator's discretion, with nationality-based discrimination. Democratic regulation is paralyzed by such presumption.

The environmental assessment panel did its job thoroughly and professionally. It acted well within the legal mandate established jointly by the provincial and federal governments. Its well-reasoned and considered recommendations were welcomed by the majority of residents and acted upon by both levels of government. But the NAFTA ruling has now tainted this all-too-rare victory for environmental protection.

While Bilcon did not get to build its massive quarry, the NAFTA ruling won by the U.S. investor has blown a huge hole in the Canadian environmental assessment process. The dissenting member of the tribunal objected to the majority's ruling as being a "significant intrusion into domestic jurisdiction" that "will create a chill on the operation of environmental review panels." Fittingly, he described it as "a remarkable step backwards" for environmental protection. Unless this ISDS threat is removed, the prospect of second-guessing and punitive monetary damages will cripple future environmental assessment panels, which have already been considerably weakened by Canada's current federal government.

Pro-ISDS propaganda contradicted by facts

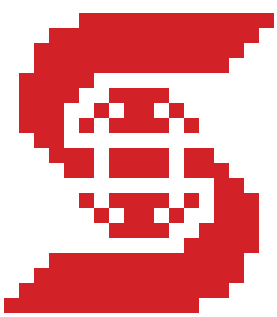
The federal government has barely reacted publicly to either of these troubling NAFTA rulings. A spokesperson for Foreign Affairs, Trade and Development told CBC in late March only that Canada was "disappointed" by the Bilcon decision. The government said it would consult the two provincial governments involved (Newfoundland and Labrador, Nova Scotia) on how to proceed in the face of the Exxon/Murphy and Bilcon losses.

In the wake of these defeats, it should be impossible for the federal government to credibly maintain its insistence that ISDS "does not restrict any level of government from legitimately legislating in the public interest" and that it does not compromise environmental protection or other important public policy objectives. Unfortunately, there is even more pain to come.

Canada currently faces eight pending investor–state claims involving some highly sensitive regulatory matters. In addition to the second claim by ExxonMobil for ongoing damages, these suits challenge a ban on fracking by the Quebec provincial government (Lone Pine), a decision by a Canadian Federal Court to invalidate a pharmaceutical patent on the basis that it was not suffi-

SCOTIABANK

The Bank of Nova Scotia filed a $600 million ISDS claim against Argentina in 2005 to try to recoup investments in a local bank that closed in 2002 following the country's national debt default. The Canadian company dropped its suit in July 2011 after settling with Argentina for an undisclosed amount.



ciently innovative or useful (Eli Lilly), provisions to promote the rapid adoption of renewable energies (Mesa — another Appleton case), and a moratorium on offshore wind projects in Lake Ontario (Windstream). Total penalties sought in just these five cases: about $2 billion.

Legal arguments are now being heard by NAFTA tribunals in the Lone Pine and Eli Lilly cases. A final ruling on the Mesa case involving a challenge to the Ontario Green Energy Act is expected at any time. In many of these pending claims, foreign corporations stand a realistic chance of success. In fact, extrapolating from Canada's past track record, claimants can reasonably be expected to win about half of these ongoing cases. This will surely add to Canada's current tally of seven lost or settled claims and damages totalling over $190 million.

Abuses of ISDS in NAFTA chapter 11 are reaching crisis proportions. Rationally, Canada should be seeking to disengage from this system. Instead, the current federal government is not only still defending ISDS, it is expanding its use. With investor–state arbitration included in CETA, the TPP and dozens of Foreign Investment Protection Agreements (FIPAs) such as the Canada-China deal (see Gus Van Harten on page 24), the share of foreign investments in Canada eligible to bring investor–state claims will increase from 55% under NAFTA to nearly 90%. This is throwing oil on the fire.

In the case of CETA, Canada's current federal government remains strongly committed to investment arbitration even when a significant number of European governments, including powerhouses such as Germany and France, would be happy to drop it from the agreement. A golden opportunity for sane second thought is passing us by.

In the absence of federal leadership, provincial governments have an important role to play. All provincial and territorial governments should review and hopefully revoke support for ISDS. Nova Scotia and Newfoundland and Labrador should stick to their position that the federal government alone must shoulder the costs of the NAFTA fines. Newfoundland and Labrador should also refuse to change its regional development requirements in the Atlantic Accord despite the ongoing pressure of Exxon's lawsuit. The prospect of mounting financial and legal liabilities could pressure the federal government to change its approach to ISDS.

The silver lining to the recent NAFTA losses could be that the costs of the Canadian government's ideological commitment to investment arbitration, both financially and in public policy terms, are becoming clearer to more and more people. There is a powerful and growing global backlash against ISDS. Alarmed by increasingly aggressive recourse to investor–state arbitration by corporations challenging public policy and regulatory measures, including many cases from Canadian mining and resource firms (see next page), governments around the world are seeking to extricate themselves from this anti-democratic feature of modern trade and investment treaties. There is no good excuse why Canada shouldn't join them. **M**

SHELL

In August 2006, Shell Brands International sued Nicaragua under a bilateral investment treaty with the Netherlands. The company, along with several others, claimed the government's seizure of their trademarks—an attempt to force Shell to pay its share of a US$489 million settlement in relation to a sterility-causing pesticide it once sold—was an illegal expropriation of their logos and brands. According to the International Centre for Settlement of Investment Disputes, which provided the venue for the ISDS hearings, Shell Brands International settled with the Nicaraguan government and dropped the suit in 2007.

By Hadrian Mertins-Kirkwood

GONE HUNTIN'

CANADIAN COMPANIES HAVE CHALLENGED GOVERNMENTS ACROSS THE GLOBE

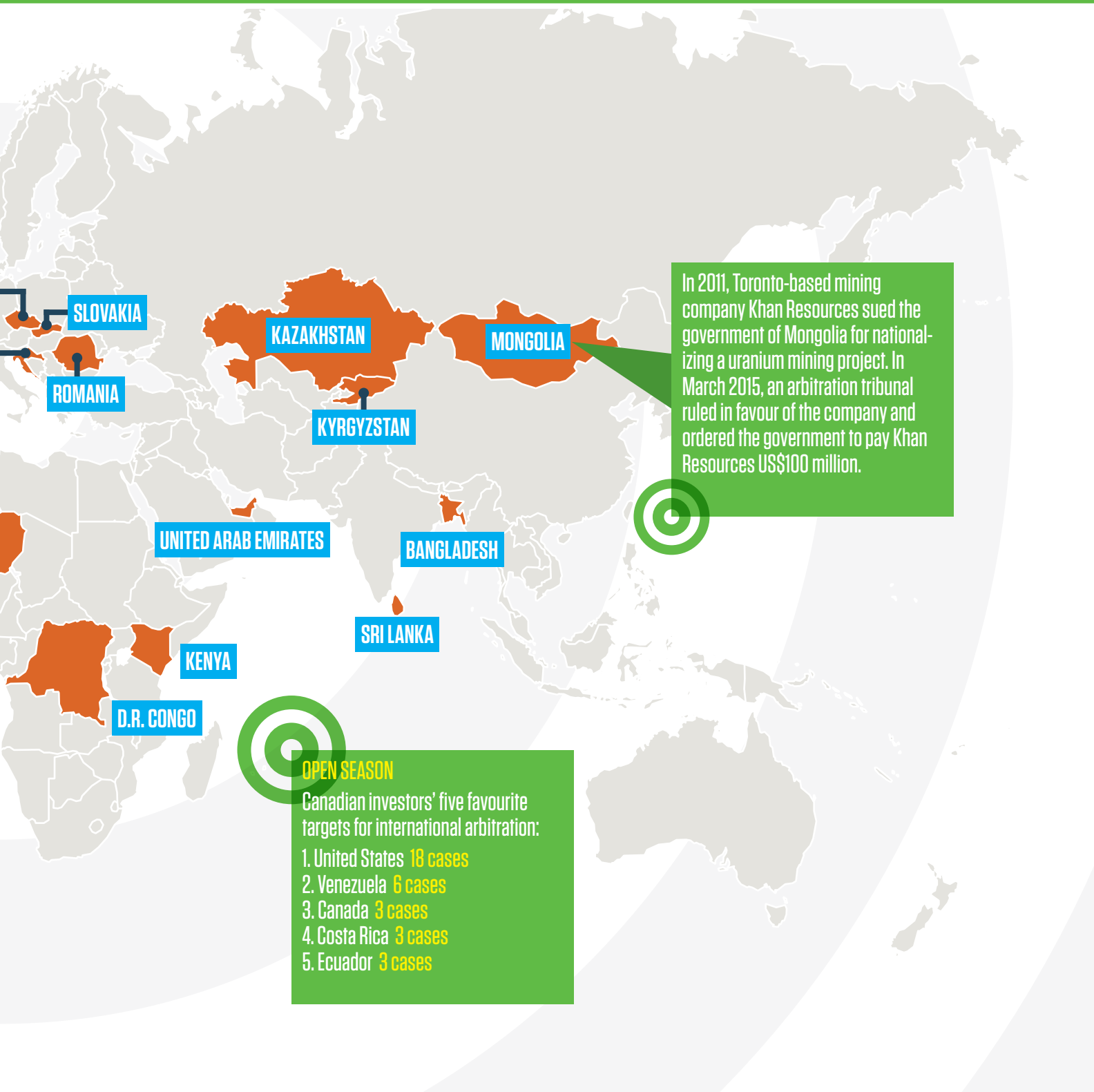
Canada is a hotbed for investor–state dispute settlement (ISDS).

We're the most-sued developed country in the world and we've paid out hundreds of millions of dollars to private investors as a result.

But Canada is also the source of a lot of ISDS activity in other countries. Canadian investors and corporations have brought 54 known ISDS cases against 24 national governments on five continents. Many of these cases involve Canadian resource companies suing sovereign states for environmental regulations and other actions taken in pursuit of social and developmental goals.

Some Canadian investors have even used sneaky "shell" companies registered in other countries to sue the government of Canada, effectively bypassing the domestic court system.

Source: Forthcoming CCPA report.



In 2011, Toronto-based mining company Khan Resources sued the government of Mongolia for nationalizing a uranium mining project. In March 2015, an arbitration tribunal ruled in favour of the company and ordered the government to pay Khan Resources US$100 million.

OPEN SEASON

Canadian investors' five favourite targets for international arbitration:

1. United States 18 cases
2. Venezuela 6 cases
3. Canada 3 cases
4. Costa Rica 3 cases
5. Ecuador 3 cases

Gus Van Harten

A prime minister bends the knee

The following is excerpted from Van Harten's new book, ***Sold Down the Yangtze: Canada's Lopsided Investment Deal with China.*** *The Osgoode Hall law professor is a frequent commentator on Canadian and global investment treaties. He appeared as a witness for the Hupacasath First Nation in its 2013 court challenge to the Canada–China Foreign Investment Promotion and Protection Agreement (FIPA).*

IN 2012, IN Beijing's Great Hall of the Peoples, Prime Minister Stephen Harper agreed to a Foreign Investment Promotion and Protection Agreement — or FIPA — with China. Canada's federal government has concluded 27 FIPAs with other countries, none nearly as big and powerful a country as China. [This number does not include the Canada–Serbia FIPA, which was ratified after the book went to print, or the China FIPA itself. Canada has, therefore, ratified a total of 29 FIPAs.] Compared to the other FIPAs, the China FIPA is more one-sided, more secretive, and more enduring. Shocking as it sounds, the FIPA will bind Canada for at least 31 years.

In my new book, I show how the FIPA is lopsided, how it gives Chinese investors an enclave legal status in Canada, and how its promoters misled Canadians about the deal. In other words, I explain how Canada got sold down the Yangtze.

It began with a compromise on human rights. In 2006, Prime Minister Harper made an official trip to Asia. He was asked by Chinese officials to limit the discussion to trade alone. Harper refused and was denied a meeting with the Chinese president, Hu Jintao. Harper said admirably, "I don't think Canadians want us to sell out important Canadian values... They don't want us to sell out to the almighty dollar."

Five years later, Harper had changed his tune. *Globe and Mail* correspondent Mark MacKinnon called it Harper's Chinese lesson. "Within three years of that 'almighty dollar' comment, Mr. Harper reversed course in his China policy," he wrote. "By 2011, Mr. Harper had buried the human rights agenda so deeply that he refused to even utter the name of jailed Nobel Peace Prize winner Liu Xiaobo while he was on an official visit to China."

But there was more to Harper's Chinese lesson than a compromise on human rights. In the summer of 2011, the Harper Government moved to concede important Canadian goals and values in a FIPA with China that had been stymied for over a decade. By early 2012, the FIPA was finalized for Canada, long term.

For China, the FIPA fits a strategy. The strategy is to buy into other countries' resources and extract as much value from them as possible. It is to maximize profits and wages for Chinese companies and workers from the extraction of resources abroad. It is to transfer raw materials to China for processing and to capture foreign technology in order to fuel China's factory of the world. It is to use a strong economy at home to nurture globally competitive companies, and to open up the home economy only after those companies are ready to dominate markets abroad. This is a familiar plan used by powerful countries since the nineteenth century.

The FIPA is economically unequal. Strikingly, it gives a right of market access to Chinese investors, but not to Canadian investors.

For Canada, the purpose is less clear and more of a gamble. Canada may benefit from inward Chinese investment, but takes an economically dependent position as mostly a supplier of raw materials to China. The FIPA's terms make it more difficult for Canadians to benefit from value-added activity that comes from the relationship with China. The FIPA also makes it potentially very costly for governments in Canada to change course if things go badly.

Most importantly, the FIPA concedes Canadian priorities for its economy, democracy, and sovereignty. How is this so?

First, the FIPA is economically unequal. Strikingly, it gives a right of market access to Chinese investors, but not to Canadian investors. That is, it requires Canada to open its economy and resources to Chinese companies in general, but lets China keep a closed economy if it chooses to do so. China can also keep favouring its companies at home in areas like intellectual property, approvals, or tax levels, even if doing so hurts a Canadian company in China. Thus, the FIPA is more about giving Chinese investors the freedom to buy what they want in Canada — such as natural resources and infrastructure — than it

Prime Minister Harper with Wen Jiabao, then premier of China, when the FIPA was signed in 2012.

AP-Alexander F. Yuan/The Canadian Press

is about protecting Canadian investors in China.

Second, the FIPA puts a potentially huge price tag on Canadian democracy. It lets Chinese investors decide if any Canadian law will be reviewed outside of Canada's courts, in an exceptionally powerful system of international arbitration that is skewed in favour of foreign investors and very risky for taxpayers. For large multinationals, this new power can be a useful tool to pressure decision-makers behind the scenes, especially when there are hundreds of millions or billions of dollars at stake. Because the FIPA applies to all Chinese investors, whether they are state-owned or not, China itself now has a special status to bring supersized lawsuits against Canada.

Third, the FIPA transforms Canadian sovereignty. It shifts powers from Canadian legislatures, governments, and courts — whenever a Chinese investor wants the shift to happen — to a tribunal of three powerful "arbitrators," who have the supreme authority to order Canada to pay compensation. Ominously, a handful of arbitrators have ordered billions of dollars in compensation against countries in the last few years alone, and the arbitrators themselves earn more fees as more foreign investor lawsuits are brought. Worse, the FIPA makes special allowances for secrecy in these arbitrations. As a result, the federal government can keep a Chinese lawsuit against Canada entirely secret, so long as the government settles the lawsuit before the arbitrators issue their award.

For Canada, many of these aspects of the FIPA were entirely new. Yet, no one outside of the Harper Government could know how much Canada had given away when the FIPA was announced in early 2012. It took seven months for federal officials to release the treaty text, which they finally did in September 2012.

After the FIPA's text was released, some commentators, including me, criticized the FIPA's lopsidedness. We called for a thorough, independent, and public review in Canada before the deal was finalized. As the clock ticked toward expected ratification of the FIPA, a public controversy ensued. Ratification was delayed, but the government never organized a proper review.

Instead, a media blitz to sell the FIPA began in late October 2012, involving the federal government and prominent voices in the media. As usual, some Canadian lawyers who work in investor–state arbitration also pushed for the deal. The media blitz was built on two simple tactics. The first was to smear critics of the FIPA as alarmist, fear-mongering, or xenophobic. The second was to avoid a serious discussion of the treaty's concessions to China and of the Harp-

er Government's reasons, whatever they might be, for the concessions.

As an academic specialist in investment treaties, I watched this debate with a mixture of disappointment and alarm. From what I saw, many Canadians were trying to make sense of a complex deal. Meanwhile, the government, investor–state lawyers, and other promoters ran interference by saying misleading things about what the treaty meant.

Eventually, the Harper Government finalized the FIPA in September 2014. Legally, this step required the government to send a ratification letter to China announcing Canada's consent. Apparently China had given a similar letter to Canada in early 2013 and later pushed Canada to follow suit. When it came, Canada's ratification was done quietly. The Harper Government announced it in a short press release on a Friday afternoon. With that, Canada was locked in until 2045.

It is impossible to predict the FIPA's impacts precisely. However, the deal clearly undermines the ability of Canadian voters to change laws and policies in Canada if the change would interfere with the business priorities of a Chinese investor. One can also expect that Canadian taxpayers will have to pay compensation to China, possibly in huge amounts, if Canada loses or settles a dispute with a Chinese company.

Like other investment treaties, the FIPA expands a costly and controversial system to resolve conflicts between foreign investors and countries. For-profit arbitrators are given immense powers to protect foreign investors from virtually any decision by a country. No court has so much power to discipline a sovereign. No one except foreign investors is protected in an international forum that is nearly as powerful.

Since the late 1990s, there has been an explosion of investor lawsuits against countries under investment treaties like the FIPA. The general public is not aware of it, but global law firms certainly are. The biggest beneficiaries of the lawsuits have been very large companies and very wealthy individuals, by which I mean companies that have over US$1 billion in annual revenue and individuals who have over US$100 million in net wealth. More than 90% of the money awarded to foreign investors under these treaties appears to have gone to these corporate giants and tycoons.

It can be depressing to think about Canada being locked into a lopsided deal. However, there are ways to limit the damage and draw out more of the truth about the FIPA.

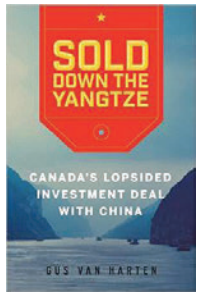
Of course, the explosion of investor lawsuits has also benefited the lawyers and arbitrators. They have earned billions of dollars in fees over the last decade. Not surprisingly, members of the investor–state legal industry have also promoted the treaties actively, and some of them even stepped up to defend the China FIPA after it became controversial.

Personally, I think the FIPA comes pretty close to a capitulation by Canada, as I explain in detail in the first part of my book. Assuming for the moment that I am right about this, why would the prime minister choose to bend the knee so far?

My best guess is that the Harper Government's overriding commitment to oil sands expansion made the government dependent on China to open its markets to Canadian oil and to loosen Chinese purse strings for investment (meaning ownership) in Canada's natural resources. I think China saw the government's vulnerability and played its hand well. With the FIPA, China avoided any enforceable commitments to open its markets or invest in Canada, in the oil sands or anywhere else. On the other hand, China obtained a long-term treaty with highly enforceable obligations that clearly favour China.

It can be depressing to think about Canada being locked into a lopsided deal. However, there are ways to limit the damage and draw out more of the truth about the FIPA. It starts with Canadians informing themselves and each other about the deal and taking what steps they can to respond. I try to do my part in this book by explaining the FIPA's terms and highlighting its implications. I also explain the significance of investor–state arbitration, and why the deal should have been reviewed more closely before it was locked in. I offer an explanation for why the Harper Government agreed to the FIPA and ideas about what to do next.

Among these ideas, I suggest that governments should establish an independent process to track the FIPA closely. Laws should be enacted to require officials to tell the public about how the FIPA is being used. The federal government must commit to rigorous use of the Investment Canada Act to screen Chinese takeovers of companies in Canada. To safeguard Canadian democracy, no more investment treaties should be allowed with such long lock-in periods. Canada should contribute to reform of investor–state arbitration instead of pushing to expand a system that lacks independence, fairness, openness, and balance. Lastly, I suggest that Canadians have good reason to vote for and support, at all levels of government, whoever they think will take the FIPA's problems seriously.



Contact your local bookseller or find Van Harten's book, *Sold Down the Yangtze,* on amazon.ca. M

Pia Eberhardt

Profiting from injustice

How law firms and arbitrators fuel the investment arbitration boom

THE 2011 DEBT crisis in Greece grabbed the attention of the world. With its enormous budget deficit, violent protests and public spending cuts that devastated the lives of ordinary people, the country appeared to be on the brink of collapse. Without massive restructuring to reduce the debt, Greece's survival was and still is under threat.

Several international law firms were also watching Greece, but their concern was not to save its people from social disaster or prevent economic collapse in Europe. On the contrary, in the midst of the debt crisis, lawyers saw an opportunity to make a buck by urging multinational corporations to pursue investment arbitration to defend their profits in Greece. The German law firm Luther, for example, told its clients that where states were unwilling to pay up, it was possible to sue on the basis of international investment treaties. Luther suggested that "Greece's grubby financial behaviour" provided a solid basis for seeking compensation for disgruntled investors — compensation that would ultimately be paid by Greek taxpayers.

U.S.-based law firm K&L Gates agreed with that assessment in a briefing note it prepared for clients in October 2011 ahead of a pending investor–state dispute against Argentina. The firm claimed that investment treaty arbitration could "recover damages for investment losses from nations defaulting on their sovereign debts." The note continued, "Given the current financial crises worldwide, this should provide hope for investors who have suffered losses at the hands of sovereign restructuring of their debt instruments." K&L Gates identified Greece as a country where investors should check which investment treaties "may protect their investment."

Three years later, as a result of this promotional campaign, corporate investors had filed investment lawsuits claiming more than 700 million euros ($945 million) from Spain, more than one billion euros ($1.35 billion) from Cyprus and undisclosed amounts from Greece. The bill for these cases, plus exorbitant lawyers' fees, will be paid for out of the public purse at a time when austerity measures have led to severe cuts in social spending and increasing deprivation for vulnerable communities.

The arbitration gold rush

The European debt crisis offers just one example of how the highly lucrative investment arbitration business works. As the number of international investment treaties continually expands — there are more than 3,000 today, of which Canada is party to 30 including NAFTA — and investor lawsuits against governments proliferate, legal arbitration has become a moneymaking machine in its own right.

"Arbitration institutions vie for their market share of disputes, legislatures pass arbitration-friendly measures to attract this business, various conferences and workshops are held year round, a class of essentially full-time arbitrators has developed and a highly specialized 'international arbitration bar' pursues large cases avidly," explained arbitration lawyer Nicolas Ulmer from Swiss law firm Budin & Partners. "A veritable 'arbitration industry' has arisen."

In this "new Eldorado," lawyers take on multiple roles and wield enormous power. As counsel, they represent the parties in multimillion-dollar disputes. But they also sit as arbitrators deciding the cases. They advise governments on the drafting of investment treaties: the legal base of the disputes. They advise companies on how to structure investments to get access to the most investor-friendly arbitration routes, such as by channelling an investment through a subsidiary in a country with many international investment treaties. And they have mounted fierce lobbying campaigns to counter attempts by governments to reduce their legal exposure to predatory corporate legal action by reforming investment treaties.

Often, these lawyers can count on first-rate access to legislators and policy officials because many in the arbitration circuit have a background in government and international institutions. These are people like Matthew Kronby, who used to be Canada's chief trade lawyer in negotiating the Canada–EU Comprehensive Economic and Trade Agreement (CETA) and other deals with Peru, Colombia and Singapore, but who is now with private law firm Bennett Jones helping companies to sue governments. (Bennett Jones is representing Lone Pine Resources in its $250 million NAFTA lawsuit challenging Quebec's moratorium on fracking.)

Turning international investment arbitration into a lucrative business has provided a great incentive for smart lawyers to sustain and expand the system in order to maximize profits. Keeping corporate clients constantly informed about the opportunities for litigation is the bread and

Investment arbitration is **Big Business for Big Law**

- Legal costs for investor–state disputes average over US$8 million, exceeding US$30 million in some cases.
- Insiders estimate that more than 80% of the legal costs end up in the pockets of the parties' lawyers and counsel.
- Lawyers who sit on tribunals that ultimately decide the cases (the arbitrators) also earn handsome fees. At the most frequently used tribunal for investor–state claims, the International Centre for Settlement of Investment Disputes (ICSID), arbitrators make US$3,000 a day.
- Tabs racked up by elite law firms can reach US$1,000 per hour, per lawyer—with whole teams handling cases.

ILLUSTRATION BY RICARDO SANTOS

butter of an investment arbitration lawyer. So are occasional warnings to governments that they are flirting with investor–state claims if they go forward with certain actions—a regular tactic of Toronto-based lawyer Barry Appleton since he won his first NAFTA cases against Canada. Not every company follows the advice of these lawyers, but the marketing of some law firms is nevertheless a driving force in the recent boom in international investment arbitration.

"Lawyers live on disputes. They create monsters like the current investment arbitration regime and hype it to produce work for themselves—as lawyers and arbitrators," said Nathalie Bernasconi-Osterwalder from the International Institute on Sustainable Development (IISD) in a 2012 interview. "I truly believe that the investment arbitration system wouldn't exist the way it does today if it wasn't for the lawyers."

The many conflicting interests of investment arbitrators

Arbitrators in investor–state disputes have a particularly powerful role that was summarized nicely by one of their fold.

"When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all," said Juan Fernández-Armesto of Spain in a 2012 article. "Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament."

Yet investment arbitrators are hardly neutral guardians who stand above the law. In fact, they are crucial actors in the arbitration industry with a financial interest in the existence of investment arbitration. Arbitrators, to a far greater degree than judges, have a financial and professional stake in the system; they earn handsome rewards for their services. Unlike judges, there is no flat salary, no cap on financial remuneration.

Arbitrators' fees can range from US$375 to US$700 per hour depending on where the arbitration takes place. How much an arbitrator earns per case will depend on its length and complexity. The presiding arbitrator in the dispute brought by oil

giants Chevron and Texaco against the government of Ecuador received US$939,000. In another case against Slovakia the presiding arbitrator billed for 719 hours at an hourly rate of US$660 plus value-added tax.

Out of the hundreds of lawyers who serve as investment arbitrators, only 15 decided 55% of known cases (247) by the end of 2011. Three of them are Canadians: Yves Fortier, Marc Lalonde and Henri Alvarez. These people have handled most of the biggest cases in terms of amounts demanded of government by corporations and have been repeatedly ranked as top arbitrators by well-known surveys. One arbitrator has described this group of elite arbitrators as "not just the mafia but a smaller, inner mafia."

The concentration of cases in so few hands suggests this small group of frequently appointed arbitrators has a significant career interest in the system. This is problematic because it poses the danger of making arbitrators even more receptive to investor interests, since only the investor or corporation can initiate arbitration: governments cannot use investment treaties to hold companies accountable for human rights, labour or environmental standard violations. In a statistical study based on 140 investment treaty cases, Osgoode Hall Law School professor Gus Van Harten found evidence that arbitrators tend to adopt an expansive (claimant-friendly) interpretation of various clauses in investment treaties.

There are other concerns beyond the financial benefits arbitrators gain through this system. Arbitrators frequently work on the side as lawyers for corporate parties in other investment disputes; they are policy advisors to government, teach about investment arbitration in schools and speak to the media on specific cases or in defence of the system that pays their bills. Though investment lawyers are small in number, these interrelated activities significantly influence the direction of the investment arbitration system and limit the opportunities for reform.

The international investment arbitration system was justified in the post-colonial era by western governments who argued it would provide a fair and neutral dispute settlement system to protect corporate investments from perceived bias and corruption within national courts. Investment arbitrators were to be the guardians and guarantors of this regime.

But rather than acting as fair and neutral intermediaries it has become clear the arbitration industry has a vested interest in perpetuating a regime that prioritizes the rights of investors at the expense of democratically elected national governments and sovereign states. They have built a multimillion-dollar, self-serving industry dominated by a narrow elite of law firms and lawyers whose interconnectedness and multiple financial interests raise serious concerns about their commitment to deliver fair and independent judgments.

Unsurprisingly, the arbitration industry stands to profit most from an expansion of the investment arbitration regime. This is particularly relevant in the context of a number of mega-agreements currently under negotiation by the European Union, the U.S. and Canada, including free trade and/or investment treaties between these countries and China, the Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership, and CETA. These treaties alone would expand the amount of global investment covered by investment treaties with investor–state dispute settlement from around 15–20% to over 80%. But all of them face resistance from populations that are growing more knowledgeable and more opposed to the investment arbitration regime.

The pressure to reform this biased investor "rights" regime is strong. But meaningful change to address even its most egregious injustices will not come from the arbitration industry. On the contrary, those fighting for such change will have to continue to confront the anti-reform counter-offensive by law firms and arbitrators, including by outing their vested interests in the system. M

The arbitrator's sales pitch

1. Challenging access-to-medicines policies

When India allowed a generic drug producer to sell a cheaper version of a patented cancer drug in 2012, U.S. law firm White & Case pointed out to the corporate world that patent-holding drug multinationals "may be able to seek relief under applicable bilateral investment treaties." On September 12, 2013, U.S. drug maker Eli Lilly filed a NAFTA lawsuit against the Canadian government demanding $500 million in compensation for legal decisions revoking patents on two of the firm's drugs.

2. Making money from humanitarian crises

In the midst of the 2011 civil war in Libya, U.K.-based law firm Freshfields suggested corporations could use investment treaties to sue the Libyan state, with investors claiming financial compensation for the country's failure to comply with promises "regarding physical security and safety of installations, personnel etc."

3. Securing profits in the mining sector

In 2013, when Kenya considered new charges in the mining sector to ensure its people benefit from mineral extraction, law firms such as U.S.-based King & Spalding advised mining companies to "bring compensation claims against Kenya before international investment arbitration tribunals," and that they should structure their investment accordingly "to ensure that they can rely on bilateral investment treaties entered into by Kenya."

4. Threatening lawsuits as a bargaining chip

Arbitration lawyers also encourage their clients to use the threat of investment disputes as a way to scare governments into submission. According to German law firm Luther, "A settlement, which you should always aim for, is easier to reach under the shadow of a looming investment treaty claim." (In December 2010, Canada settled with AbitibitBowater [now Resolute Forest Products] for $130 million rather than challenging the firm's contention it was owed $500 million for the revocation of its timber and water rights — loaned to the firm by the Crown on condition it produce pulp and paper, which it had stopped doing when it closed its last mill — by the government of Newfoundland and Labrador.)

Rick Arnold

Canadian zombie resource company stalks Costa Rica

ILLUSTRATION BY REMIE GEOFFROI

MOST OF US are familiar with zombies, otherwise known as the living or walking dead. But unless you are a frequent visitor to the business section or closely follow the fortunes of junior mining stocks this may be your first encounter with the term "zombie company."

A recent study by Tony Simon, co-founder of the Venture Capital Markets Association, found some 588 junior resource firms with negative working capital (more dead than alive) listed on the Toronto Stock Exchange's Venture Exchange (TSXV). This appears to be contrary to TSXV listing requirements where firms have to be able to show at least $50,000 in working capital (more alive than dead), which is why Simon proposes that any zombie company found bleeding red ink should be de-listed immediately.

Calgary-based mining company Infinito Gold sits in 587th place on Simon's zombie list, sporting the second greatest negative working capital of the bunch: minus $154,003,000. With no functioning mines from which to draw capital, and its own chief financial officer forecasting trouble if any of its long-overdue loans are called in, Infinito Gold should be six feet under. And it would be but for the help of Calgary billionaire Ronald Mannix, a major shareholder whose behind-the-scenes loans (almost $70 million worth) keep the firm on life support. What is going on?

Fifteen years ago, Infinito Gold bought land in Costa Rica's Alajuela province on the border with Nicaragua hoping to establish an open-pit gold mine the company calls Crucitas. From the get-go Infinito chose to ignore the many signs that this Central American nation sees itself as an eco-friendly destination. The people and the government want to avoid the damage that mining can unleash on pristine rivers and forests. In June 2002, on the occasion of World Environment Day, the Costa Rican president of the time, Abel Pacheco, banned open-pit mining completely.

Alas, when Costa Rica says "no" Infinito Gold hears "yes." Despite polls showing 80% of the country opposed to the Crucitas project, a mood reflected in large street demonstrations, the single-minded Canadian

firm lumbers on. Over the years, Infinito has employed a battery of local lawyers to challenge superior court decisions ordering the mine closed, while simultaneously trying to intimidate Costa Rican academics and environmentalists by suing those who dare to speak out. The company has lost at each step.

When the law wins, fight the law

Time to call it quits? Nope. Infinito Gold's main backer, the unremitting Mannix, decided to up the ante by gambling on an investor–state lawsuit against Costa Rica, to be heard outside the courts by a private, investor-friendly World Bank tribunal. The legal costs would be expensive, but a win could earn the empty shell of a company megabucks in compensation for not building its mine. At the rate they're spending, Infinito might be lucky to break even, but the consequences for Costa Rica would be severe.

The concept of international investor rights was first embedded in a major way in chapter 11 of the North American Free Trade Agreement (NAFTA). Public policy initiatives in Canada have since come under the gun from foreign investors using NAFTA's investor–state dispute settlement process to argue their investments (or profits) would be negatively affected by government decisions. Canada is the most-sued country in NAFTA (the U.S. has not lost a case), but its corporations have learned to inflict similar pain on smaller trading partners through Foreign Investment Protection Agreements (FIPAs). Canada signed a FIPA with Costa Rica in 1998. It's one of 29 FIPAs currently in place, with another 20 in the works.

Canadian mining companies operating abroad regularly resort to FIPA arbitration, with cases typically heard at the World Bank's International Centre for Settlement of Investment Disputes (ICSID). It's like holding a club over a country's head. Infinito Gold had been threatening an investor–state lawsuit against Costa Rica for some time before it launched a US$94 million ICSID case in 2014. For a sense of the impact a loss would have on the small country, as a share of GDP it would be like Canada having to pay 30 times that much (about $2.8 billion) in damages.

In addition to keeping a shell corporation on life support to try and bend a small democratic nation to Infinito's wishes, Mannix flew to Costa Rica in 2008 to offer a $200,000 donation to the Arias Foundation for Peace and Development, founded by former president Óscar Arias Sánchez. Later that same year, Oscar Arias stunned the nation when he issued an executive decree bypassing the country's open-pit mining ban to allow Infinito to start operations.

Local citizen court action quickly secured a moratorium on Infinito's activities, but not before much of the Crucitas site had been clear-cut, causing an estimated $10 million in damage. As part of a subsequent superior court decision that went against Infinito Gold, justices instructed Costa Rica's attorney general to investigate what lay behind the 2008 presidential decree. The matter of the promised $200,000 was central and the Canadian government was asked to provide evidence of a possible wire transfer.

Oscar Arias and his former environment minister Roberto Dobles had both signed the decree, and the latter was eventually found guilty of circumventing the laws of the nation. However, the case against the former president rested on whether or not the $200,000 was transferred from Canada and had gone into an Arias Foundation account. Costa Rica's attorney general tried on two occasions to have Canada's Department of Justice provide a definitive answer. The department at first avoided answering the questions then demanded additional information from Costa Rica, disclosure of which would have breached the country's privacy laws. Costa Rica's attorney general recently stated the case against Arias would have to be closed for lack of corroborating evidence.

> Mining companies operating abroad increasingly resort to FIPA arbitration... It's like holding a club over a country's head.

Using ICSID for punishment and profit

ICSID officials should have taken one look at Infinito Gold's history of stalking Costa Rica and dropped the US$94 million investor–state case. In fact, the 1998 FIPA with Canada states clearly that recourse to investment arbitration is only available where "no judgement [sic] has been rendered by a Costa Rican court regarding the measure that is alleged to be in breach of this Agreement." How about half a dozen judgments, all against the company? It doesn't seem to matter to ICSID. More than a whiff of impropriety hangs over this case.

With loan repayment debt piling up and no other producing properties in its portfolio, Infinito Gold puts a sad face on the idea of a "zombie company," in this case with no other purpose than to inflict maximum financial pain on a small country's economy. Any eventual Infinito victory at ICSID would bring millions to company coffers. But it is highly doubtful the small investor, encouraged to support Infinito by the TSXV's unwillingness to enforce its own rules, would see a penny of that. Mannix's loans are already worth more than half the potential ICSID payout.

Hats off to all those Costa Ricans who have kept up the long running fight to preserve their country's ecology, with a special mention of the many brave judges who ensured environmental legislation was adhered to. The decision to ban open-pit mining makes democratic and economic sense. In the long term, the "green gold" of eco-tourism is of far greater benefit than the rip-and-run of metallic mining. **M**

Larry Brown

Is CETA good for what ails us?

HOW WE HAVE a trade deal with Europe, CETA, our future looks so much brighter. We will all be wealthier, jobs will spring up everywhere, life will be better for all Canadians. Who could be churlish enough to throw cold water on this vision?

Of course there are a few little details to consider.

The first is that CETA isn't actually a done deal. There is a tentative agreement that has to be approved by the European Parliament and then by each member country of the European Union. As things stand, that tentative agreement is running into very heavy opposition from within and outside Europe's political institutions, including national governments. It is doubtful CETA would survive a vote in the European Parliament without undergoing some fairly substantial revisions, removing its investor–state dispute settlement process being the most important.

The second little fly in the ointment is how bogus the claims are about how wonderful CETA will be for the economy. These assertions by the government and business lobbies so lack any solid foundation it would be fair to call them lies. To the contrary, credible studies have shown how the likely rebalancing of imports and exports will produce job losses into the hundreds of thousands. Haven't we been here before?

The winners in NAFTA were large corporations. Their profits went up as wages in Canada and the U.S. stagnated, and dropped in Mexico — to levels below what they are in much of Asia. We lost much of our manufacturing sector: some 550,000 manufacturing jobs were outsourced due to free trade. Why should we expect a different result from signing a very similar deal to NAFTA with the EU?

The truth is, we shouldn't. It is almost certain that because of CETA, a concluded deal with South Korea and a pending agreement with Japan, Canada will kiss the remains of its automobile manufacturing industry goodbye.

But, say proponents, CETA will give a huge boost to Canada's exports! While there's some truth to that for a few sectors such as Atlantic fisheries, let's be real here. Like most free trade deals, CETA is only marginally about trade. The bulk of the text is a long list of actions that governments will no longer be able to take because of how they interfere, even modestly and for good reason (e.g., public interest regulations), with the corporate sector's *right* to make a profit.

Yes, tariffs will be eliminated on most Canada–EU trade. But the average tariff is already only about 2%, and as any economist will tell you, small reductions in tariffs have tiny effects on trade flows. To compensate, proponents of CETA will mention "dynamic" or spinoff benefits like increased productivity. Again we can look to the NAFTA experience to disprove this, as Canadian productivity decreased relative to the U.S. in the period after the deal.

The government also proposes small business will be the big winners. But most small- to medium-sized businesses in Canada are in no position to take advantage of CETA, and again, the barriers to them accessing EU markets are already low. This deal, like other free trade pacts before it, is a corporate bill of rights for those with the biggest boardrooms.

CETA includes an investment chapter that gives individual investors or companies in the EU the right to chal-

German activists shred the CETA and TTIP deals at a protest in October 2014.
Photo by Die Auslöser

lenge decisions made by the federal government, provincial governments, city councils and other elected bodies. We've already seen the effect of this provision under NAFTA.

With help from Bay Street lawyers, U.S. investors have successfully sued Canada for a ban on toxic waste exports, a ban on trade in gasoline containing a suspected carcinogen, and for taking back the water and timber rights of a company that walked away from its obligations in Newfoundland and Labrador. These legitimate public policy choices cost us millions because a panel of paid arbitrators decided they interfered with a company's *right* to make a profit.

Because CETA, to a far greater extent than NAFTA, applies to provincial and municipal governments, and to many more service sectors, it could open up huge new opportunities for European corporations to use investor–state arbitration to challenge legitimate public policy decisions. This has European and Canadian public sector workers especially worried.

All new free trade deals seek to "open" public services to more private competition. They also lock in that level of openness (read privatization) for future generations.

Under CETA, for example, Canadian and European provinces and municipalities would find it very hard to reverse a major privatization (of water services, as in Moncton, or of a hydro utility in Ontario), even if it was clearly a mistake and even if a new government ran for office promising to reverse it. Democratic decisions would count for nothing but cost us possibly hundreds of millions of dollars in arbitration awards to multinational private service providers.

The same threat of investor–state lawsuits would apply when a province or city wanted to develop a new program or public service (e.g., transit, pharmacare or home care) where there was already some private-sector involvement from European investors. An investor or service company could try to argue the public service was a type of "indirect expropriation" of profits under the terms of CETA's investment chapter, or that limiting investment opportunities violated the company's "minimum standards of treatment."

It's fairly obvious that CETA poses more dangers to democratic governance in Canada than it offers in benefits. Thankfully, it is not yet an actual agreement. CETA is being fought throughout Europe by workers, environmental and social justice activists, several European political parties and even member states including Romania, Hungary, France and Germany. M

René Guerra Salazar and Jen Moore

Stop the suits, say Salvadoran activists in Canada

ANY DAY NOW, a little-known World Bank investment dispute tribunal will decide whether El Salvador must pay as much as three years' worth of public health, education and security funding to Pac Rim Cayman LLC, a subsidiary of the Canadian-Australian mining firm OceanaGold. The company claims that by not granting a permit to open a gold mine, the Salvadoran government deprived investors of their "right to develop the valuable minerals discovered" and "reasonable lost profits." Penalties sought: US$301 million.

In May, El Salvador's human rights ombudsperson for the environment, Yanira Córtez, and the president of the Association for the Development of El Salvador (a founding member of the Salvadoran National Roundtable on Metallic Mining), Marcos Gálvez, visited Montreal, Ottawa-Gatineau and Toronto to talk about El Salvador's recent experience and how it illustrates the threats posed by investor–state dispute settlement (ISDS) to democratic decision-making, and environmental and human rights protection.

"Contrary to the company's claims, OceanaGold's subsidiary never had a 'right' to extract El Salvador's gold," noted Córtez, since it never met the regulatory requirements to obtain a permit to mine. Instead, Pac Rim opted for high-level lobbying in an ultimately unsuccessful effort to get its way.

This is the Salvadoran government's main defence before the World Bank's International Centre for Settlement of Investment Disputes (ICSID), because of the narrow commercial mandate of these ISDS tribunals. This is unfortunate, since there are other good reasons why no mining company should be allowed to operate in the small, densely populated country, none of which are relevant to investor–state cases.

As Córtez and Gálvez explained, Salvadorans are largely dependent on a single, already overtaxed watershed, and their country is one of the most environmentally stressed in the hemisphere. A large-scale gold mine would inevitably sacrifice land and water that many Salvadorans depend on. Furthermore, even though OceanaGold's project stalled at the exploration phase, its subsidiary's presence contributed to serious social divisions that are believed to have led to the murders of four anti-mining activists, cases that have never been fully investigated.

An estimated 80% of Salvadorans are opposed to large-scale mining, including the country's politically conservative Catholic Church. This social consensus has pressured successive governments to maintain a moratorium on metallic mining since at least 2008.

Gálvez offered a friendly reminder to his Canadian hosts: "While we are here looking for your solidarity, we are also here to offer ours. We face a common threat from the protections enjoyed by these companies through free trade agreements."

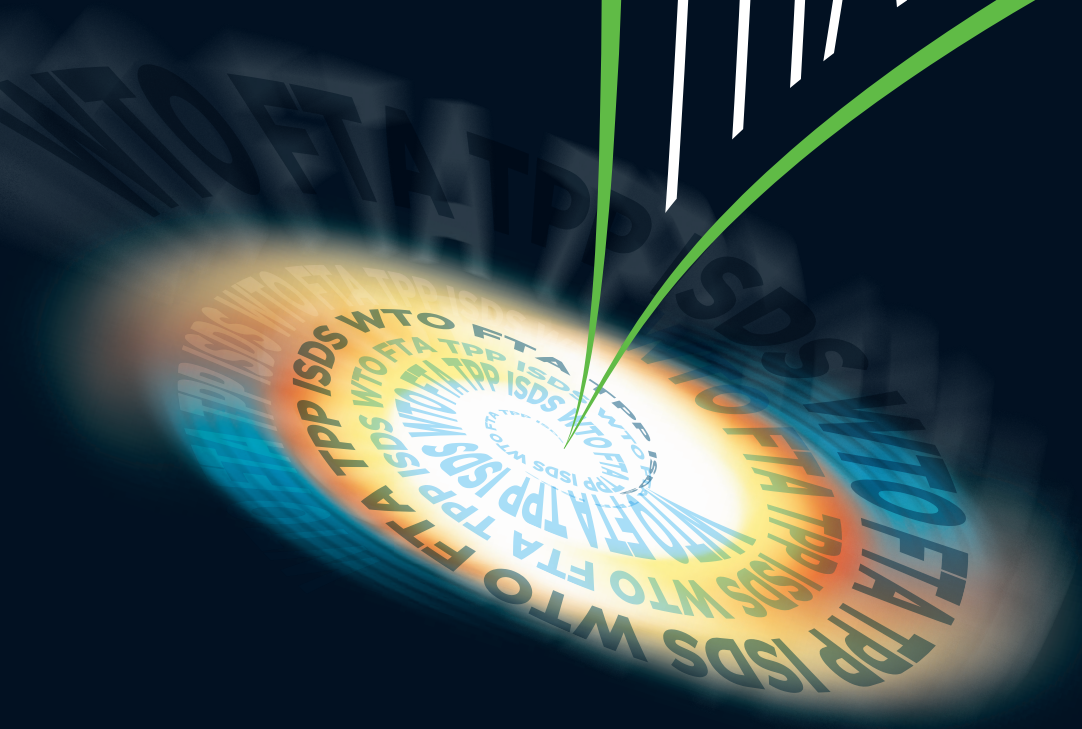
While successive Canadian governments continue to promote ISDS in trade and investment agreements, elsewhere countries are rethinking this model. The Salvadoran government has reformed the national investment law under which the Pac Rim Cayman suit is proceeding so that corporations cannot use it to sue the state again.

But even then, El Salvador will remain vulnerable under the terms of a Dominican Republic–Central America Free Trade Agreement (DR-CAFTA) that Salvadoran civil society would like declared unconstitutional. Taking courage from El Salvador, it is time for more Canadians to push back against this dangerous trade and investment model too. M

ESCAPING FREE TRADE

BY CLAUDE VAILLANCOURT

Translated from the French by Frank Bayerl



The following is excerpted and adapted from Vaillancourt's book, ***L'Empire du libre-échange*** (The Stranglehold of Free Trade), released by M éditeur in 2014. It has been lightly edited to fill in context provided elsewhere in the book.

BECAUSE WE REGARD free trade as necessary and inevitable we rarely think about what could replace it, about other ways of organizing international trade so that it might not be so damaging to people. Conventional wisdom tells us that free trade agreements establish a legal framework that some admit may not be ideal, but that makes it possible to avoid chaos and economic instability. The failure of the Free Trade Area of the Americas (FTAA) and the paralysis of the World Trade Organization (WTO) suggest that wisdom is lacking, to say the least. So does the reality that the agreements already in place do not prevent trade wars. But free trade continues to move in a single direction, through the negotiation of new agreements based on a single model replicated again and again. Some of these deals are signed, others are held up. And while the battle for and against them plays out each time, with an all-or-nothing decision forced upon us, the power elite never even considers alternative trade rules that would be more beneficial for more people. And there *are* alternatives.

Free trade is one of the chief weapons of neoliberal ideology, one of the surest ways of achieving irreversible globalization in the interest of big business. It is one of a large number of economic practices deemed to be inescapable, taught as such in all universities, promoted relentlessly by business circles, applied zealously by governments, and by now familiar to us all. The others include "dismantling" the state (which in fact means putting the state at the service of business), adopting a method of public administration inspired by the private sector, deregulating, privatizing, ensuring the free movement of capital, prioritizing the interests of shareholders, lowering taxes, ending employment security and maintaining strong competition among workers. It will be difficult to reform free trade without questioning all these practices. In other words, proposing concrete, feasible and effective solutions for escaping from free trade requires the political courage to go against the dominant ideology. For the powerful, the failures of free trade are no reason to question it; they deny its negative impacts and see what it pleases them to see. That is why it will take special patience and perseverance simply to put forward an alternative vision and the corresponding policies to see it through.

Opponents of free trade do not question the need for trade among nations, but such trade should obey rules very different from those that are in place. The Havana Charter, which would have established an International Trade Organization founded on co-operation more than competition and concerned with full employment as much as expanded trade, showed that states can design trade rules that are more equitable, less weighted in favour of the powerful. (The U.S. withdrew its support for the charter in 1950.) In many respects the charter can serve as a model today; its principles are still relevant and should be championed. It also goes without saying that the world has changed a great deal since the 1950s. The environment has been profoundly degraded, wealth has been monopolized by a shrinking minority, and international trade has grown significantly. Many new facts must therefore be taken into account. But one thing remains as true today as it was in the early days of multilateral trade negotiations: to escape from free trade, we must stop thinking of international trade as an absolute priority.

While economist Paul Krugman expresses skepticism about the miraculous effects of free trade on the world economy in *La mondialisation n'est pas coupable : vertues et limites du libre-échange* (Globalization is not guilty: The virtues and limits of free trade), it has been demonstrated that large-scale exports can improve people's living conditions. This is not a recent miracle, and the benefits are not always distributed as they should be. The prosperity of an exporting country may be achieved at the expense of less fortunate competitors, as in the case of Germany, which holds a dominant position in European markets and whose economic success comes at the expense of Greece, Spain, Italy and other partner countries. Some insist this is just how competition works and that better economic management by the

losers would have avoided the disastrous outcomes. The truth is the economic war waged in the context of free trade is particularly brutal: it punishes whole populations who had no voice in the decisions made by their governments, who are victims of the ruthless games of international competition.

As explored earlier in this book, the WTO raised itself to the rank of most powerful international organization by means of its arbitration tribunals (for resolving country-to-country trade disputes) and the power to impose economic sanctions. Although the WTO has been weakened somewhat by the failure to conclude the latest Doha "development" round of international negotiations, the fact remains that the organization, and the thousands of other bilateral free trade agreements in place globally, prioritize trade above all else. All else is secondary. The hyper-commodification of everything that is the product of this attitude is regularly denounced by the opponents of free trade. They have repeatedly said that human rights and environmental protection must be the real priorities. Forceful steps must be taken to achieve this objective.

Out with the old

Trade agreements must be negotiated transparently, not in ivory towers where professional negotiators representing no one take decisions with enormous consequences for public policy and economic development. Before starting trade negotiations, governments should consult widely with civil society groups, especially unions and environmentalists, and stop listening only to major employers and their lobbyists. The most far-reaching agreements, those such as the Canada–European Union Comprehensive Economic and Trade Agreement (CETA) that will profoundly transform the economic landscape, should be approved (or defeated) in public referenda.

Canada's Foreign Investment Promotion and Protection Agreements (FIPAs — a type of bilateral investment treaty), as well as provisions in free trade deals on the protection of foreign investments, must be eliminated. There is no justification for these arrangements except to give more power to businesses. National legal systems have the necessary tools to settle corporate disputes with governments related to policy decisions. They do so more transparently and with somewhat less bias towards business than private investor–state tribunals. The use of diplomacy to resolve international trade disputes can mitigate differences of opinion and obliges firms to have a solid case before resorting to action.

The world once managed without bilateral investment treaties; their absence would create no economic slump nor would investment flows be dangerously constrained or limited.

Environmental stewardship is now of the utmost importance as global warming increases and the problems associated with pollution multiply. But governments and businesses have taken various measures to prevent effective environmental and climate policy. Public funds provided to environmental groups are being reduced or eliminated. Despite being staffed by experts, these groups are rarely consulted in a meaningful way when major projects with a significant environmental impact are pursued. Some groups have been hit with strategic lawsuits against public participation (SLAPP suits) that paralyze them for extended periods. In some countries environmental activists are threatened, intimidated or attacked. In addition to these depressing tactics, foreign investment protection agreements are being used as powerful tools for thwarting environmental laws. They are now so numerous that companies can easily find ways to sue the country of their choice (including their own) through subsidiary firms based in tax havens with which that country has signed a FIPA or free trade deal. As long as investor–state dispute settlement is a factor, governments will hesitate before adopting environmental protection measures that inevitably conflict with someone's economic interests, and as such provide grounds for a corporate lawsuit. The survival of our planet is infinitely more important than the profits of a few individuals and, it must be said, than a few extra jobs.

Individual investors and companies, not governments, should assume the risk when they seek to invest or do business abroad. Governments must retain the ability to nationalize industries, to expropriate a company in the public interest and to adopt laws that protect the public — all without running the risk of extralegal (investor–state) lawsuits. Democratic decisions must take precedence over the profits of investors. Eliminating foreign investment protection provisions will put an end to the dilemma of choosing between investors' rights and human rights. It will no longer be possible to give priority to trade agreements over international treaties on civil, political, economic, social and cultural rights. The world once managed without bilateral investment treaties; their absence would create no economic slump nor would investment flows be dangerously constrained or limited. As an additional benefit, as investors assume more risk, they will be required to act with prudence — to take more responsibility for their choices.

It is essential for public services to be excluded from free trade agreements, that there is no possibility of their inclusion in new negotiations. That will require that we reject the standard approach in trade talks that "everything is on the table," and decide from the outset what services should or should not be subject to the conditions of any eventual agreement. We can find inspiration for a bet-

ter model in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, although its scope is insufficient for our task. For example, health and education should remain public and under government supervision, off limits to private firms, whether they are local or foreign. Governments must be able to keep other sectors (e.g., water delivery and sanitation, highways, public transportation, prisons, postal services and electricity) in the public realm, free from any pressure to "liberalize," which is to open to private competition. Proposals in trade agreements (like CETA and the Trans-Pacific Partnership) that have a direct impact on the cost of public services, such as extending the life of drug patents, must be rejected out of hand.

All levels of government must retain substantial control over procurement contracts. Public spending can and should be used more frequently to develop the local economy; for example, by imposing conditions on bidders that promote job creation, environmental protection and good working conditions. But for this to happen public procurement would no longer be included in trade agreements. In fact, calls for private tenders could be reduced considerably in most government departments, since the best protection against corruption and cost overruns is to allow public employees to do the work themselves.

In with the new

Instead of lifting restrictions on agriculture and promoting food exports at all costs, an alternative trade policy will give priority to food sovereignty. Agricultural products will cease to be transported over vast distances — with the high energy costs and harmful environmental consequences this entails — before turning up on dinner tables. Short shipping routes will be the norm. Countries that wish to will be able to keep or create a supply management system, though these must be more open to small producers, and impose tariff barriers on agricultural imports that benefited from subsidization by wealthy exporting countries. Better trade agreements will protect small farmers, encourage organic farming and cease to give pride of place to a polluting, energy-intensive agro-industry designed for export at the expense of the needs of local populations.

Free trade agreements today pretend to promote the "development" of the poorest countries. In reality, they achieve the opposite. It is startling we ever believed that by treating great economic powerhouses and smaller, poorer countries as equals, apparently to eliminate "discrimination," it would naturally benefit the latter. Bringing countries out of poverty and truly promoting development requires a very different strategy. The interests of richer economies prevent them from seeing a more helpful development model. They choose instead to support exclusively their largest exporters and big employers so that they might conquer foreign markets and give back as little as possible in return.

To really change the situation it will be necessary to go against the basic principles of free trade. Why not institute positive discrimination in favour of the poorest countries? Their goods could be exported free of trade barriers, provided that such trade does not deprive their people of essential goods. At the same time, these countries could be allowed to impose trade barriers to prevent the dumping of goods and services that prevent their local enterprises from developing. Customs duties would be useful for these countries to fund public services. The fight against poverty, not increased exports, would become the top priority.

Public spending can and should be used more frequently to develop the local economy; for example, by imposing conditions on bidders that promote job creation, environmental protection and good working conditions.

Achieving this goal will mean relying less on foreign aid, which is often ineffective or mainly benefits the companies or NGOs of the donor countries. A responsible and democratic audit of poor country debt would allow them to challenge odious and illegitimate payments on debt accrued by dictatorial regimes. Loans to these countries would no longer be conditional on the dismantling of public services, as they still too often are in structural adjustment plans imposed by the International Monetary Fund and the World Bank. Free of debt, these countries could start combatting the diseases that destroy their lifeblood, such as dengue fever, malaria and AIDS, and offer quality education to far greater numbers of people. Better living conditions would allow them to retain an educated workforce less tempted to emigrate. The contribution of these workers to the local economy would be more equitable and more stimulative than the remittances returned by expatriates working abroad, which are sizable but poorly distributed. A tax on financial transactions, a large portion of which would go to development assistance and combatting climate change, is far more conducive to real development, and more valuable than uncertain foreign investments focused on interests that differ from those of the population.

Some of these ideas go beyond international trade. Those who advance them are often criticized as naïve or impractical optimists who misunderstand how the economy works. Yet some of these solutions have already been applied successfully. As concrete and pragmatic — or easy to sell — as free trade policies appear to governments, it's time to recognize their role in perpetuating many of the world's current economic misfortunes. Isn't it about time we tried something new? It is not as if we are lacking alternatives. M

The Good News Page

Compiled by Elaine Hughes

Earth

This August, the organization Ocean Cleanup will carry out a "mega expedition" of some 50 vessels to collect and measure the amount of trash carried out to sea on ocean currents and concentrated in the Great Pacific Garbage Patch between California and Hawaii. The expedition will help determine the best place for a mile-long floating barrier to be moored to the seabed for two years starting in 2016. If successful, Ocean Cleanup will deploy arrays of increasing scale, including a 62-mile-long (100 km) barrier capable of capturing about half of the trash in the Great Pacific Garbage Patch. / **Al Jazeera America**

Electronics expert Kevin Hart and nurse Laura Moe, both of Vancouver, along with social entrepreneur Alim Jaffer have developed a US$99 ($123) wearable air quality monitor or "enviro-tracker." A fan moves air passed a laser beam that scatters particles onto a detector in the wearable device, and by this method an air quality score is determined. The data can be used to hold public officials accountable for poor air quality, says the team, but the device also has indoor uses like to check mould or asbestos levels in a basement. / **Globe and Mail**

A new study out of the University of Leeds, U.K. suggests that without the 1987 Montreal Protocol, the hole in the ozone layer above Antarctica would be 40% larger today, producing ultra-violate levels in Australia and New Zealand 8–12% higher than what they are now. Not only can we credit the UN treaty with lowering the instances of skin cancer, says the study, but removing chlorine- and bromine-based chemicals from aerosol sprays likely prevented an additional 0.1 degrees Celsius of global warming. / **Agence France-Presse**

After a three-year campaign by students, the University of Washington in Seattle will divest from coal. "If it's wrong to wreck the planet, then it's wrong to profit from that wreckage," goes the mantra from Bill McKibben of the growing fossil fuel divestment movement. / **EcoWatch**

Health

The Childhood Cancer Survivor Study tracked 34,000 young cancer survivors over several decades, finding that since milder treatment methods were adopted in the 1990s, the number of survivors has increased substantially. Treating childhood cancer is "one of the miracles of modern medicine," says Dr. Greg Armstrong of the St. Jude Children's Research Hospital in Memphis. "Fifty years ago less than 30% of kids would survive childhood cancer but now we know that over 80% will." / **Associated Press**

Scientists at the University of Edinburgh have identified a natural plant compound, similar to chemicals found in liquorice root, which lowers the presence of harmful bacteria in the mouth, inhibiting the build-up of plaque and preventing tooth decay. / **Science Daily**

Fast food companies are embracing the healthy eating craze, sort of. Taco Bell and Pizza Hut plan to remove trans fats and artificial colours, sweeteners, flavours and preservatives from their meals, possibly by year's end. (The rules won't apply to co-branded products like Pepsi and Doritos.) Panera Bread is heading in the same direction. McDonald's will stop selling chicken raised using antibiotics, Nestle SA will take artificial colours and flavours out of chocolate bars, and Chipotle Mexican Grill has gone GMO-free. / **Wall Street Journal**

A Barcelona-based company, Forward Thinking Architecture, has designed a solar-powered, rainwater-fed Smart Floating Farm (SFF). According to the concept, the structure would produce more than 8,000 tonnes of vegetables and 1,700 tonnes of fish annually. "Because it does not require natural precipitation or fertile land in order to be effective, it presents people who are living in arid regions and others with a means to grow food for themselves," say the designers. / **EcoWatch**

World

The U.S. government has removed Cuba from its list of state-sponsors of terrorism, another important step in normalizing relations between the two Cold War rivals. Embassies have reopened and ambassadors have been exchanged. / **Associated Press**

Signalling possible thaw in a decades-old ethnic conflict, Greek Cypriot and Turkish Cypriot leaders recently agreed to merge their electricity networks, with plans to link mobile phone networks in the future. "The resumption of talks is a hugely positive step," said Ozdil Nami, a Turkish Cypriot peace negotiator. / **Reuters**

Although the U.S. and Russia still own the largest stockpiles of chemical weapons on the planet, Ahmet Uzumcu, director-general of the Organization for the Prohibition of Chemical Weapons, says 90% of the stocks declared by member countries have been destroyed. Russia is to complete destruction of its stockpile by 2020 and the U.S. by 2023. / **Associated Press**

Supporter Profile

Andrew Ward

Tell us about someone who had a big influence on you early in life: My mom and dad. My dad was a teacher and my mom was a homemaker and worked in a library after we finished elementary school. They always encouraged my brother and me in everything we participated in—from recreation and sports to music performance and outdoor activities—and they instilled a love of volunteering and helping others.

Why did you start supporting the CCPA? Today, media headlines about income inequality are ubiquitous. But in 2009, only a few writers and economists were speaking out about inequality and promoting alternative solutions that would benefit all. Trish Hennessy and Armine Yalnizyan were among them.

In 2009, I remember being floored by an article they wrote that not only identified the causes and consequences of the Great Recession, it also identified the crisis as an opportunity for a new social policy for the betterment of all Canadians.

After the article was published, Hennessy and Yalnizyan spoke on the airwaves and in community halls. When they went on to demonstrate that Canada may have weathered the economic storm better than our neighbours to the south, due to our strong female-dominated public sector, I came away with the terms "he-cession" and "she-covery," and I had an epiphany.

I picked up the telephone, and I've been a supporter ever since.

Why did you choose to be a monthly supporter? Charities, unfortunately, receive a lot of their funding at the end of the calendar year. This places them in an uncomfortable position when it comes to action planning. Donating monthly—even in smaller increments—ensures that the CCPA will have consistent revenue on hand rather than unsteadily anticipating revenue at the end of the year.

Also, by supporting the CCPA monthly, the steady cash flow will allow for special projects or opportunities that may be of a long-term nature that otherwise would be improbable.

In your opinion, what makes the CCPA special? I always get a kick out of the CCPA when they take on "expert opinion" or bust public policy myths espoused by regressive interests. Not only does the CCPA take them on and strip them down, they also identify and promote practical and cost-effective solutions to the benefit of all Canadians. Now, more than ever, there exists a need to speak to issues of social welfare and human dignity and the CCPA does this, which enriches us all.

What is your hope for the future? My hope for the future is that for all we are thankful for today, our children will be thankful for tomorrow (my wife and I are expecting our first child). This hope springs from a grace written by James Shaver Woodsworth many years ago that goes like this: "We are thankful for these and all the good things of life. We recognize that they are a part of our common heritage and come to us through the efforts of our brothers and sisters the world over. What we desire for ourselves, we wish for all. To this end, may we take our share in the world's work and the world's struggles."

CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
CENTRE CANADIEN
de POLITIQUES ALTERNATIVES

The CCPA is grateful to those who have switched to monthly giving or are considering it in the future. We would appreciate the chance to provide information about the benefits of monthly giving — please contact Jennie Royer, development and administrative services, at 1-613-563-1341 ext. 305 or jennie@policyalternatives.ca.

Ricardo Acuña

Notley walks the line

IN THE NOVEL *A Very British Coup*, the fictional prime minister, a leftist from the Labour Party, says "the trouble with the middle of the road is you get hit by cars going both directions." That almost perfectly encapsulates what may well be the largest challenge for Rachel Notley and her newly elected Alberta NDP majority government.

The attacks from the right, which began long before the May 5 election, ramped up immediately following Notley's victory, as financial advisors started recommending a sell-off of energy stocks. Two days after election day, the *Edmonton Journal* (which endorsed Prentice and the Progressive Conservatives) shamelessly highlighted a letter to the editor from a Stony Plain businessman who suggested that, because of the election results, he will not be expanding his business, he will not be hiring new staff, and that he is not the only one.

"Soon Albertans will see their neighbours put their house up for sale and move back to the province they came from," went the letter. "Soon, more and more people will be competing for fewer and fewer jobs in the cities as the oil field dries up."

No one in Alberta genuinely fears the economy will collapse under NDP rule. Sadly, there are people here who would be quite prepared to *cause* economic pain for the sake of making a political point.

It's not a new tactic. It happened to Bob Rae when he won in Ontario, and years before that to Dave Barrett in British Columbia. Unfortunately, we can reasonably expect the well-worn tactic to be more pronounced in Alberta. Imagine waking up to news that your 44 years of unfettered and uncontrolled privilege, power and access to government is suddenly compromised (if not coming to an end). It's not the money these people are worried about losing, it's their political power—something they're willing to pay handsomely to keep.

At the same time, the New Democrats have a base on the centre-left of the political spectrum whose expectations have never been higher. They want to see great things for the health care system, the education system, social services and post-secondary education. They want democratic reform. They want tax reform. They want stronger environmental regulations and reduced reliance on oil and gas. They have worked for decades to make this happen, and many thought they would never see the day that it all came within reach. Now that day is here, and they want all those things *now*.

A particularly difficult issue for the new government will be balancing the desire of environmentalists and First Nations to slow down tar sands development with labour's wish for increased value-added and refining in province, and oil patch demands for continued support for new capacity and export pipelines.

This is the middle of the road Notley must now walk without getting hit by the Mercedes in one lane and the bicycles and Priuses going the other way. She will need to find creative ways to fight off the attacks from the right while at the same time managing the expectations of her base.

She was able to do this successfully during the election, in part by presenting a very pragmatic and moderate set of policies in her platform, but also because Alberta's entitled and empowered corporate sector proved to be entirely tone deaf. The more often and more loudly they cried wolf, the more Albertans responded with anger and flocked to the New Democrats. That anger has served Notley well in the early days of her government, but the honeymoon will eventually fade.

There are some potential policy wins for Notley that would likely keep her base happy while minimizing the impact of the newly disconnected corporate sector. One of them is campaign and party finance reform—taking corporate and union money out of politics in Alberta. It's a core plank of the left and a policy long supported by the official opposition Wildrose Party. The reforms would have the added benefit of limiting the degree to which Alberta's wealthy could patch and pump up Notley's deflated political opponents.

In some areas, like moving to a progressive income tax system, and providing sustainable and predictable funding to education, health, and social services, the NDP has already secured strong public support and will be able to move forward with minimal resistance. This bodes well for the party's ongoing support from the public at large, not to mention the long-term well-being it would produce for Alberta's government finances and public services.

Other significant policies, like the promised review of oil and gas royalties (to begin in the next six months) and an increase in the corporate tax rate of 2%, garnered enough popular support over the course of the campaign to potentially minimize resistance. Though Notley and her energy minister have so far done an excellent job of making industry feel included and at ease, we should expect significant pushback from the

corporate right in Alberta. Remember, it was industry's ability to effectively shift public opinion on Ed Stelmach's 2007 royalty review, and their aggressive funding and promotion of a viable political alternative to the Progressive Conservatives—Wildrose—that ultimately ended the former premier's political career.

The government has already indicated it will move quickly on a new climate change policy and increase the minimum wage to $15 by 2018. Both are potential wins for the NDP; they are also areas that will require a nuanced sales job (and a fair bit of education).

The low-wage, anti-climate rhetoric of the right is well entrenched in Alberta. Albertans have reached a point where they are willing to hear alternate views on both topics, but they are wary of the potential impact on their livelihoods and the overall economy. To overcome those fears, the government will have to ensure that whatever consultation strategy it uses in both instances is meaningful enough to overcome the naysaying and fear-mongering of well-funded high-profile groups like the Canadian Federation of Independent Business and the Canadian Association of Petroleum Producers, both of which enjoy privileged access to Alberta's mainstream print and broadcast media.

There is one plank in the NDP platform that might actually meet with some resistance from its base on the centre-left and enjoy some support from the right and the business sector: the promise of a job creation grant. The evidence from other jurisdictions shows that paying businesses to create jobs has no impact. Seven out of eight jobs funded by government would have been created anyway, without the funding, and there is some proof that many businesses end up firing staff and then hiring them back in order to qualify for the handout.

Though it is bad policy, and probably shouldn't be implemented at all, a jobs grant is good politics; it buys some political will from small business owners and even the corporate sector. As such, it is likely a policy that Notley will keep in her back pocket for when it would generate the greatest political benefit.

Notley on election night: A new government with a mandate for change in Alberta.
Canadian Union of Public Employees

As mentioned, probably the most difficult policy road Notley and the NDP will have to navigate is the one passing through the tar sands, value-added (refining) and pipelines. There are actually three distinct sets of interests here, all pulling the government in different directions.

Two of those interests, with distinct positions on the issue, could be said to make up the NDP core: the environmental movement and First Nations communities, and the Alberta Federation of Labour. The former two groups have been campaigning hard for a concerted plan to slow down (and eventually end) bitumen production in the province. They see support for new value-added production, refining and pipeline capacity (e.g., Energy East), which are supported by the AFL as producing better long-term jobs, as a move in the wrong direction entirely.

The third interest group in the mix is, of course, the energy industry. Although the oil and gas sector strongly supports Energy East and other pipelines, it resists any government regulation or intervention to either slow down expansion or mandate value-added processing. Though this three-way split looks intractable on the surface, Notley will probably need to deal with it in short order. Putting it off, or doing nothing, only benefits industry.

Throughout the spring election campaign, Notley showed a keen understanding of the political landscape in the province and how to walk the line to maximum effect. Those skills have been on display as the new government gets off the ground and into policy reforms on education, minimum wages and party financing. They will be more fully tested over the next four years, but Albertans in general remain hopeful that positive change is now, finally, possible. M


BERMUDA
BAHAMAS
I ♥ BARBADOS
NAS
CANADA
20
100

Story by Paul Weinberg, Illustration by Emily Turk

Canada continues to let billions leave the country tax free

ON APRIL 12, 2013, the late Jim Flaherty, then Canada's finance minister, made an unpublicized trip to Bermuda, one of corporate Canada's tax havens of choice, to offer his government's support and reassurance in a time of uncertainty. G8 countries, led by the United Kingdom, France and Germany, were discussing how to co-ordinate national efforts to close tax loopholes and discourage capital flight into offshore tax shelters of the kind offered by the tiny Caribbean nation. Though Flaherty had included a tax cheat snitch line in that year's budget, many observers questioned Canada's commitment to the G8 project.

Then, as now, they have good reason to doubt. Reports out this spring show the tax evasion problem is not going away, with up to $199 billion in corporate assets sitting in offshore accounts, out of reach of Canadian tax collectors. Meanwhile the government is cutting resources from the only department with the power to claw some of that money back, depriving itself of a stable revenue source for new infrastructure, public services and reducing income inequality. There is nothing illegal about this situation, but it is clearly not desirable, and with the right political will it is almost certainly fixable.

Canada's Caribbean connections

Alain Deneault mentions Flaherty's Bermuda trip in his book *Canada, A New Tax Haven: How the Country that Shaped Caribbean Tax Havens is Becoming One Itself*, out in English this May. The University of Quebec in Montreal (UQAM) professor emphasizes how, by 2012, the banks of the British overseas territory had become a repository for Canadian financial assets totalling about $12 billion. This was more than a case of Canadian banks, which established themselves in the Caribbean in the early 20th century, exploiting a half-century-old loophole. (The tax haven phenomenon exploded after the Second World War with the flow of excess Marshall Plan–era Eurodollars from the U.K. into the banks of the British Caribbean.) As Deneault describes in his book, Canadian lawyers and policy makers figured prominently here in the establishment of the institutional frameworks for low-tax or tax-free environments.

So when Bermuda signed a tax information exchange agreement with Canada in 2011 it continued a long and profitable (for some) pattern of bilateral co-operation. The treaty allows Canadians to register their money in the island's local banks and then have it transferred back to Canada as tax-free dividends. Of course, we can't be too hard on just one country or even one region. Deneault estimates there are close to 80 tax havens in the world including Switzerland, Ireland, Luxembourg and beyond. Typically, these countries impose little or no tax on corporate and sometimes personal deposits. Their financial institutions offer security, privacy and secrecy for those seeking to stash their money where prying eyes and government tax collectors cannot reach. The United States, European Union and several other Organization for Economic Co-operation and Development nations are grappling with the contagion of tax avoidance by global companies because of its potential to hurt government finances. But, as Deneault discovered in researching his book, Canada is marching to a different beat.

"Officially, Canada shows solidarity with other western countries about tackling tax avoidance. I have informants in other countries, people whom I talk to when I travel, and they say that Canada, in the meeting rooms, is also always fighting against any kind of proposal that would make it difficult for corporations to use tax havens," he says in a recent interview. Deneault highlights how Canada, as a major player at the World Bank and International Monetary Fund, provides representation for smaller nations in the English-speaking Caribbean (The Bahamas and Barbados) and Ireland that do not have seats at either of these bodies, and which, incidentally, happen to be major havens.

"Canada is trying to look like its creatures (tax havens), to have the same strategies to attract capital," says Deneault. "You will find that in Alberta with respect to oil, you will find that in Ontario with respect to the mining industry." (See the Index on page 12.) Real tax reform, he maintains, begins with examining how Canada has morphed into a tax haven itself, with exceptionally low corporate tax policies at the federal and provincial levels, and a number of legal loopholes that allow corporations and wealthy investors to avoid paying their fair contribution to Canada's social wealth.

Learning to love the tax haven

What looks like a historical trend of Canadian government support for tax havens under successive Liberal and Conservative governments has actually taken on a sharper ideological focus in the Harper years, according to Dennis Howlett, executive director of Canadians for Tax Fair-

TOP TEN TAX HAVENS

(Billions of $)	2012	2013	2014
BARBADOS	64.4	64.5	71.2
CAYMAN ISLANDS	28.7	32.3	36.6
LUXEMBOURG	26.6	36.6	31.1
BERMUDA	13.7	16.9	17.8
IRELAND	12.0	15.5	15.3
SWITZERLAND	3.6	8.7	11.3
HONG KONG	3.5	4.4	6.1
CYPRUS	4.8	4.1	4.4
SINGAPORE	2.0	2.8	3.0
BRITISH VIRGIN ISLANDS	1.5	1.7	1.9
TOTAL*	160.8	187.5	198.7

SOURCE CANSIM Table 376-0051. Compiled by Canadians for Tax Fairness. *These figures do not include money sent offshore by individuals. It reflects the amount sent by registered corporations using the tax loophole options created for them by the Canadian government

ness. "This government is not that interested in increasing government's capacity to do anything about anything. They are not interested in raising more revenue," he says.

More pertinent to the tax haven discussion, the government also doesn't appear too worried about where the money is leaking out of public revenues. Howlett points to the 2013 complaints of Kevin Page, then parliamentary budget officer, about difficulties getting data from the Canada Revenue Agency for his analysis on tax avoidance. Not to be deterred, the tough nuts at Canadians for Tax Fairness pursued their own investigation based on data from Statistics Canada and investment information from Canadian corporations. What they found created a stir this spring.

According to the group's research, as much as $199 billion in Canadian corporate assets is sitting in offshore jurisdictions, most of them countries with little discernable economic activity beyond a fully functional banking sector. That includes $71 billion in Barbados and $36 billion in the Cayman Islands. As Denault explains, Barbados has a population of fewer than 300,000, but the former British colony is the third largest holder of offshore Canadian money after the U.S. and the U.K. Keep in mind these figures represent Canadian corporate money abroad and do not include funds of individual Canadians that may also be sitting in tax havens, which is more difficult to determine.

CRA spokesperson Jelica Zdero says the agency is "committed to protecting Canada's revenue base and takes offshore non-compliance very seriously," adding "[t]ax evasion and aggressive tax avoidance can lead to significant taxes, interest and penalties." She says the CRA has implemented new anti–tax avoidance measures and is working with Canada's treaty partners "to gather data, intelligence and knowledge from these sources to address offshore non-compliance."

Howlett counters that the federal government has cut about 3,000 positions from the CRA, many of them tax auditors from the very sections meant to investigate complex tax avoidance accounting schemes. He applauds the promise in the 2015 federal budget to invest $83.5 million over the next five years in the CRA's campaign to root out international tax evasion and aggressive tax avoidance. But Howlett also notes the CRA's budget was reduced by more than half a billion dollars in 2012–13. "It is good that [Finance Minister Joe] Oliver has put money back into the CRA. But this doesn't replace damage done over the past several years."

Catch me if you can

One of the biggest challenges facing tax reformers is the secrecy surrounding tax havens and the difficulty in tracing capital flight from so-called high-tax jurisdictions. An international network of tax lawyers, chartered accountants, bankers and tax haven governments works diligently to think of complex financial mechanisms for tax avoidance and how to keep them legal. Margaret Hodge, a sitting U.K. Labour MP, described it once as a system of "industrial avoidance."

Meanwhile, thanks to leaks by whistleblowers in Europe, some of whom face charges for their efforts, the public is learning interesting details about tax evaders and avoiders. One of the biggest stories broke late last year and continued to create headlines into the spring. It involves the Swiss branch of the U.K.'s largest bank, HBSC, which was apparently supplying celebrities, politicians, rock stars, drug dealers and a few Canadian billionaires with secret bank accounts. Tax authorities in France, the U.S., Belgium, India and several other countries are pursuing the prosecution of citizens identified as benefitting from HBSC's services. Here in Canada, according to CBC reports, a CRA voluntary disclosure program resulted in 264 Canadians caught up in the scandal simply confessing their

failure to report earned income with little consequence. The policy recovered about $63 million in unpaid taxes for the Canadian and Quebec governments.

"Second chances don't often happen in life," states the CRA website. "But if you have ever made a tax mistake or left out details about income on your tax return, the [CRA] is offering you a second chance. The Voluntary Disclosures Program (VDP) gives you the opportunity to come forward, make things right, and have peace of mind."

The other highly publicized leak came out of Luxemburg around the same time, implicating the grand duchy as a conduit tax haven for about 500 firms including Amazon, Fed-Ex, Ikea, H.J. Heinz, the Walt Disney Company, Koch Industries and one lesser-known Canadian crown agency, the Public Sector Pension Investment Board. PSP Investments, as it is also called, reportedly avoided paying significant foreign taxes on hundreds of millions of federal civil servant pension dollars invested in German real estate through a complex system of shell companies in Europe. The Canadian federal agency was unapologetic, telling reporters it "fully complies with all laws, rules and regulations," and acts "in the best interests of the pension plans for which we manage assets."

Opposition parties were skeptical, with Murray Rankin, the NDP critic on tax issues, calling the revelations deeply troubling. "Here we are talking at the OECD really tough about how we're going after multinationals for tax avoidance... Even if the government didn't know, it is consistent with a pattern where we appear to be backing off," he told reporters.

Statistics Canada figures showed that Canadian citizens and corporations had parked $30.2 billion in Luxemburg by 2013. There was a strong incentive to do so: the leaks suggested that despite a statutory tax rate of 29% the government routinely approved tax rulings as low as 1.1% on overseas profits. As Howlett points out, more recent StatsCan data shows the publicity surrounding the "Lux Leaks," as they were dubbed, has resulted in more than $5 billion of that money being withdrawn by Canadians last year.

We can thank large chartered accounting firms like Pricewaterhouse-Coopers (PwC) for setting up the elaborate tax avoiding schemes revealed in Luxemburg, says Francine McKenna, a Chicago-based journalist, blogger and a certified public accountant with an extensive background in the industry. She explains how typically these firms will devise a tax avoidance scheme that takes into account their client company's business model (e.g., where it has customers, earns revenue, buys raw materials and employs people). Internal accounting is then structured so the firm's divisions in high-tax countries are set up to lose money. At the same time "a shell" division is established in a low-tax jurisdiction like Luxemburg or Ireland where more of the corporate revenue resides and is subject to a lower tax.

"The companies do not think this stuff up. They go to their [tax] advisors and say, 'I have a business problem, what do you think?'" explains McKenna. The chartered accountant develops a financial template, including a determination of the ideal tax haven in which to park a client's money. The situation is different whether it is a corporation or individual seeking the advice.

"An individual has much more freedom to live here or there, to avoid taxes," says McKenna. "They might be burdened by where their income comes from, but they want to pay less tax. Corporations have rigid set of reporting requirements and are working with complicated reporting requirements in the countries they are doing business."

The world moves on, Canada stands still

The OECD is attempting to get around this problem of hidden offshore money. The organization envisions a set-up where tax authorities in one member country can easily access corporate financial information from any other, including tax payments and deferred income.

"It would make it more difficult for corporations to hide a true picture of what their profits are," says Howlett. He explains that under the current OECD proposal only tax authorities and perhaps law enforcement (those fighting things like money laundering and terrorist financing) would be able to access this information, but it's an important precedent. "We are hoping we could get it to be made public, down the road," he says.

Deneault applauds the OECD efforts, but he's concerned the plan is primarily aimed at illegal tax evasion where the individual or company fails to disclose earned revenue. There is nothing to tackle the problem of offshore tax havens and the legal frameworks supporting them in countries like Canada. "If it is legal, it can be a problem," he says. "It is not enough to exchange [tax] information." Incidentally, that point is also made by a defender of tax havens, Toronto tax lawyer Richard Tremblay.

"I can tell you that I have been in practice for almost 40 years and I have never dealt with a public Canadian company or even a private one that hid their money," he tells me. "Everyone that I have dealt with has used the rules in the way they were intended... Basically, if you conduct active business offshore, under the Canadian system, you can bring those profits home as exempt surplus dividends."

The problem is partly one of questionable court decisions and partly about overcoming this challenge by finding the political will to act.

The federal government passed tax legislation in 1988 that, among other things, restricted Canadian companies and individuals from claiming tax benefits in artificial transactions that have no economic substance. However, the Supreme Court of Canada threw out this provision in 2005 in the highly publicized Canada Trustco Mortgage case. Ottawa tax litigator Robert McMechan explains it in a nutshell: "It involved the complex acquisition on paper by Canada Trustco of a set of tractor trailers. While not having the title to the trailers anymore, the original owner still kept them on its property. In re-

turn, Canada Trustco benefited from a $33 million capital cost allowance deduction."

What made this case unusual, explained *Globe and Mail* business journalist Beppi Crosariol in a 2005 article, is that payments were not made by one party to another on an instalment basis. Instead, the tractor trailer company, U.S.-based Transamerica Leasing Inc., prepaid the lease "in a lump sum through a circuitous route that included an intermediary company registered in the United Kingdom." Federal lawyers then "pounced," wrote Crosariol, by arguing in court that "Canada Trustco, by getting its money back right away, had not acquired title to the trailers and was avoiding the risk associated with leaseback arrangements."

Nonetheless, the Supreme Court ruled that Canada Trustco's tax deduction did not contravene any federal tax law. A spokesperson for Toronto-Dominion Bank, Canada Trustco's parent company, was fulsome in his praise for the judges' actions, telling the *Globe*, "I think it's reassuring to both regular taxpayers and the government, because I think it indicates that the government can't do whatever it wants [even though] there are definite limits on taxpayers."

To mitigate what he describes as "the wrong turn" by the courts, Victoria, B.C. MP Rankin introduced a private members' bill in Parliament that would have eliminated a loophole in the federal tax regulations that facilitates what he calls "sham" business transactions—those designed purely for tax avoidance purposes and which result in the loss of billions of dollars in unpaid tax revenue. This was about a year ago, and though the bill would have simply brought Canada up to par with the tougher approach to tax cheats taken by the U.S., it failed to receive government support.

"Murray Rankin's bill is right on," says McMechan, a former general counsel in the tax litigation section of the Department of Justice who also spent two years at the CRA as a senior rulings officer, because it places the emphasis on "complicated corporate transactions where money goes around a circle and nothing of real economic substance occurs."

According to the MP, there is a social and moral imperative in going after tax havens rather than turning Canada into one.

"This lost money could be used to build a better medical system, to tackle environmental degradation and to make Canada a fairer country by reducing the growing inequality among Canadians," he says. "It also is unfair for small businesses that must compete against large enterprises that are able to take advantage of aggressive tax planning and tax havens to arrange their affairs to pay very little tax in Canada as compared to struggling Canadian enterprises." M

Asad Ismi

The spoils of development

Canadian neocolonialism in Colombia

IN MAY, THE board of Pacific Rubiales, a Canadian firm and the biggest private oil producer in Colombia, announced its support for a takeover bid by the Mexican conglomerate Alfa and U.S.-based Harbour Energy. Pacific Rubiales operates Colombia's biggest oil field, in the province of Meta, and during the past seven years the company has become synonymous with a doubling of oil exports, from half a million to a million barrels a day. Oil came to account for half of Colombia's exports and 20% of official revenue, making Pacific Rubiales the most valuable company on the Colombian stock market.

However, by January, the sharp drop in oil prices, and the firm's trouble developing new oil fields, had cut share prices by 90% from their 2011 high. It was unclear whether Pacific Rubiales shareholders would accept the takeover offer when the *Monitor* when to print, but Alfa chairman Armando Garza Sada was optimistic: "We maintain our positive view regarding Pacific Rubiales' *excellent track record* and on the *strength of their people*. Thus, by incorporating ALFA and Harbour Energy as new equity holders, we foresee Pacific Rubiales successfully developing investment projects in Colombia."

The emphasis in the above statement is added because outside the business pages of daily newspapers there is nothing excellent about the company's track record. Pacific Rubiales is just as synonymous with human rights and labour rights violations as with oil export success, and if new production is to occur, there's slim evidence it will benefit anyone outside the corporate boardroom. The problem in Colombia is much bigger than one company. But the case of Pacific Rubiales, regardless of whether it remains a Canadian firm, holds important lessons on the evolution of Canadian neocolonialism going back 20 years.

Oil, mining and the military

"Pacific Rubiales is the poster boy of a bad corporation," says Jorge Garcia-Orgales, staff representative on global affairs for the United Steelworkers union and member of the Colombia Working Group, which gathers several Canadian NGOs and six national unions. "From attacking trade unionists and communities in their camps to creating fake company unions to treating workers like animals, everything can be said about them."

A lot *has* been said about the company. A 2013 report of the People's Tribunal on the Natural Resource Extraction Industry in Colombia, for example, found Pacific Rubiales guilty of a series of violations of labour, environmental and Indigenous people's rights. Brittany Lambert, co-ordinator of the Americas Policy Group at the Ottawa-based Canadian Council for International Cooperation (CCIC), points out that Canada's extractive sector is "very dominant in Colombia," encouraged to invest there by extremely low royalty rates. Efforts to organize extractives sector workers or improve working conditions are all too frequently suppressed with little protest from the Canadian state.

According to Lambert, workers at Pacific Rubiales began mobilizing and striking in 2011 under the leadership of the Petroleum Workers Union (USO). It was in response to substandard working conditions including the use of 28-day contracts (instead of hiring full-time staff), low pay, and poor sanitary and health conditions. In an attempt to crush the strikes and the union, Pacific Rubiales ended the contracts of thousands of workers affiliated to USO, threatened union leaders, and created a new company union that continues to run a slander campaign against USO. Lambert says USO members in the town of Puerto Gaitán, where Pacific Rubiales operates, experienced 24 labour and human rights violations, including death threats, harassment, arbitrary detention and homicide, between 2011 and 2014.

USO President Rodolfo Vecino described to me in 2013 how Pacific Rubiales had fired more than 4,000 workers and used the Colombian army and police to repress thousands of protesting employees. He said three strikes by USO against the company had been ended at gunpoint by the Colombian military and that conditions at company operations "are akin to living in a labour concentration camp." Workers are paid about the minimum wage for an 18-hour day, "but when our union tried to exercise its labour rights, we were attacked by police and military forces," Vecino told me.

Raul Burbano, program director at Common Frontiers, says Colombia's extractive sector was militarized in a conscious effort by the government to attract foreign investment to a country that has been in civil war for half a century. Recently, the army created Energy, Mining and Transport Battalions to help secure oil, gas and mining projects in conflict zones. "In some cases these corporations provide financing or logistical support like trucks, and fuel to the military forces," says Burbano.

Canadian-Colombian activist Armando Sanchez, who visited Puerto Gaitán in 2012 as part of a Canadian delegation to show solidarity with the USO workers, says they raised these and other issues with the Canadian embassy in Colombia, "but the officials denied any wrongdoing by Pacific Rubiales, even though this was public knowledge." It left Sanchez with the impression that Canada "was working with the company and trying to cover up its violations of workers' rights."

Clearing the path for Canadian extraction

Whether or not there is direct collusion between the embassy and Pacific Rubiales, Canada has played an active role in changing regulations governing Colombia's energy sector in ways that favour Canadian companies.

In a project that began in 1997, the Canadian International Development Agency (CIDA, now absorbed into the Department of Foreign Affairs, Trade and Development) spent $11.3 million on determining how to "improve the institutional capacity" of Colombia's energy and environment ministries to regulate the hydrocarbon and mining sector. Over 2001 and 2002, CIDA partnered with the Canadian Energy Research Institute, an industry-funded government and academic think tank, to help write a new extractives policy for Colombia.

According to CIDA officials, in a 2006 email, "the project constituted an appropriate blend of Canadian technical assistance, consulting services and training in Colombia and Canada to implement changes to institutional and regulatory frameworks for the hydrocarbon and mining sectors." Specific to oil, the plan was to "work on new approaches to incremental production of marginal fields, hydrocarbon reserves estimation and royalties," since this would "improve Colombia's prospects for attracting foreign investment."

The Colombian government, led at the time by former president Alvaro Uribe, took the advice. Royalty rates for foreign oil companies dropped from 20% to 8%. The companies could also retain 100% of the oil they produced where they would have previously been required to give half to Ecopetrol, the state oil company.

In the mining sector, royalty rates were reduced from 15% to a mere 0.4% in 2001, which "consolidates looting," according to Francisco Ramirez, former president of Sintraminercol, the now-defunct state mining union. Partly as a result of this drastic reduction, 50 Canadian mining companies now dominate the Colombian mining sector and several of them, including Gran Colombia, Greystar (now Eco Oro Minerals) and Cosigo Resources, have been linked to human rights violations, significant displacement and environmental degradation, as I describe in my 2012 book, *Profiting from Repression: Canadian Investment in and Trade with Colombia*.

The Uribe government hoped new foreign investment would boost declining production and maintain Colombia's position as an oil exporter. But as journalist-academic Garry Leech observes, the government simply used — with Canadian government support — "the misleading concept of maintaining oil self-sufficiency" to justify a handover of state resources to multinationals.

Free trade: locking in the loot

Having successfully created the conditions for increased Canadian ownership of Colombian extraction, the Canadian government further entrenched its neocolonial position in 2011 with the passage of a free trade agreement with the Andean nation. Burbano says the Canada–Colombia Free Trade Agreement "forms part of what many call the 'architecture of impunity' on a global scale." He points out that these neoliberal trade deals "provide super rights to multinational corporations, protecting investor interests with no corresponding obligations for corporations."

The majority of these deals, including the FTA with Colombia, include an investor-to-state dispute settlement mechanism (ISDS), which allows Canadian extractives companies to dispute Colombian government decisions (e.g., tougher environmental standards, or the revocation of a mining or hycrocarbon permit) before an arbitration panel made up of investment lawyers. These undermine "basic democratic rights of all people by giving corporations a backdoor means of watering down democratically enacted legislation or creating a chill effect on progressive environmental, labour, and health regulations," says Burbano. "This is a form of neocolonialism that allows countries in the North to benefit or maintain hegemonic control over the strategic natural resources of the Global South."

Lambert explains that when the Canada–Colombia FTA was signed, the Uribe government "was mired in a growing political scandal for its close links to paramilitary death squads." The agreement was therefore, for Uribe, a means to secure the semblance of international support. "The Canadian government responded, closely tying Colombia's political objectives and Canada's economic objectives together in the agreement," says Lambert.

"Human rights activists have accused the FTAs [with Canada and the United States] of directly or indirectly fostering and protecting investments that are associated with militarization, violence and forced displacement," adds Burbano. (An estimated 5.7 million people have been internally displaced by conflict in Colombia, according to the United Nations, more than all other countries except Syria.) That's because they "promote market liberalization, privatization and deregulation" over anything else. In particular, agrarian reform or land redistribution, both demands of the FARC rebels in their peace talks with the Colombian government (see sidebar), will be difficult under free trade's restraints.

"The pressure on the rural economy created by [the Canadian and U.S. FTAs] led to agrarian strikes in Colombia's rural sector," Burbano explains. "In 2013, more than 200,000 farmers across the country went on strike demanding an end to the FTAs and protesting the government's ag-

ricultural policies that were impoverishing them and forcing them to compete against heavily subsidized U.S products."

The Canadian government ignores these realities in its annual human rights impact assessments of the Colombian free trade deal. The Department of Foreign Affairs, Trade and Development even proposes it is impossible to make a connection between the agreement and its possible socioeconomic effects. This ridiculous position is held up as proof by civil society groups like the CCIC that Ottawa does not care to seriously review the impact of its trade policy in the Americas.

"Civil society organizations believe that the current reporting mechanism has proved to be a hollow, meaningless substitute for the independent, impartial, comprehensive human rights impact assessment [APG member groups] had called for when the deal was being negotiated," says Lambert. She says she would like to see Ottawa create a better process with genuine participation by Canadian and Colombian organizations with firsthand knowledge of the impacts of Canadian trade and investment in Colombia.

Lambert also proposes "the creation of a Human Rights Ombudsman in Canada for the international extractive sector and legislated access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies." It is a reasonable request that begins to acknowledge the need to replace Canada's current neocolonial position in Colombia, which tolerates and even supports corporate abuse of workers by companies such as Pacific Rubiales, with a more just foreign policy based on the real development needs of the Colombian people. M

Asad Ismi

Peace talks in Havana continue

THE 10,000 GUERRILLAS of the peasant-based Revolutionary Armed Forces of Colombia (FARC) have been engaged in a 50-year civil war with the Colombian state. Two years ago, peace negotiations commenced in Havana, Cuba between the rebels and the government of Juan Manuel Santos. The talks, which are sponsored by Norway and Cuba, have achieved partial agreement on three of the five main points of negotiation related to land reform, political participation of former FARC fighters and the elimination of drug trafficking. The remaining two issues, on the nature of demobilization and the rights of victims, are still being discussed.

"The FARC has [also] demanded in Havana that the Colombian government review all contracts it has signed with foreign oil and gas and mining companies. This is a big issue because these companies pay no taxes," said William Castilla, a Colombian activist with the Toronto-based group Colombia Action Solidarity Alliance (CASA), in an interview.

More than 220,000 Colombians have been killed in the civil war whose roots lie in the Colombian elite's refusal to distribute land more equitably; 3% of the people own over 70% of the country's arable land. Most of the killing was done by the Colombian army and affiliated paramilitary death squads. The peace talks were jeopardized this May when the Colombian army killed 36 guerrillas in response to FARC rebels shooting 11 soldiers. FARC has cancelled a ceasefire with the government as state bombardment of rebel positions continues, but negotiations proceed in Havana.

"This situation has to change. As Colombians we don't have another choice than rectifying so many injustices and showing a collective spirit of reconciliation, because perpetual war cannot be our destiny," wrote Ivan Marquez, head of the FARC delegation in Havana, on his blog. "To build peace, this country needs a consistent basis of social justice, democracy and sovereignty. Without the human feeling of understanding and forgiveness, there won't be peace. We'll have to banish revenge and hatred, exclusion and intolerance from our hearts. We will have to dedicate our major efforts and strength to the construction of peace, and make it accompany us for many future centuries."

Victoria Sandino, also part of the FARC peace delegation in Havana and head of the FARC's gender sub-commission, told a March 6 meeting of Colombian government officials and women's organizations that the "active participation" of women in the peace process "is not only an obligation, but also a moral duty for those who were invisible for so many years.

"We feel identified particularly with feminist ideas inspired by the ideals of emancipation of women, together with the anti-capitalist, anti-imperialist, anti-patriarchal struggles, as systems of domination that not only exploit the majority socially and economically, but also exclude and violate women," she said. "We have been witnesses of the pain of the peasants; we have seen whole villages that have been dispossessed, we have seen the large-scale mining and the land hurts us, the country hurts us. We have come with our heads up, proud, rebellious, purposeful, but above all convinced that the future of our country should be free of war."

The FARC is particularly concerned about obtaining land reforms from the government, the right to political participation and preventing death squad killings of the kind that followed a peace process in 1985. In that year, a section of the FARC laid down its arms and reorganized itself as a political party called the Patriotic Union (UP), which performed impressively in 1986 elections. For their success, close to 5,000 members of the UP were massacred, mainly by paramilitaries. The party was physically wiped out, leaving the FARC with no apparent option than to continue the armed struggle.

Reviewed by Frank Bayerl

Winds of change from the North

THE RIGHT TO BE COLD: ONE WOMAN'S STORY OF PROTECTING HER CULTURE, THE ARCTIC AND THE WHOLE PLANET

SHEILA WATT-CLOUTIER

Penguin Canada (2015), 336 pages, $32.95

The evocative title of Sheila Watt-Cloutier's very personal approach to the issue of climate change in the Arctic sets the tone for a book that is at once an autobiographical journey and heartfelt plea for respect for a traditional culture in real danger of disappearing.

Watt-Cloutier was born into one world in Nunavik — the Inuk child, raised by her single mother in a tiny Arctic community, who travelled by dog sled and learned traditional Inuit hunting and fishing skills in order to survive in a harsh environment. But she has made her mark in a very different one occupied by international conferences and the give and take of climate negotiations. In 2007, the internationally respected environmental and human rights advocate was nominated, along with Al Gore, for a Nobel Peace Prize, and she is the recipient of the Aboriginal Achievement Award, the U.N Champion of the Earth Award and the Norwegian Sophie Prize.

The great strength of this book is the author's ability to show how traditional Inuit culture is all of a piece and intimately tied to the climate and geography of the Arctic. The hunting and fishing way of life gave the Inuit the skills to not only endure, but to thrive for millennia. "The hunter embodies calm, respectfulness, caring for others. *Silatuniq* is the Inuktitut word for wisdom — and much of it is taught through the experiential observation of the hunt," she writes.

Hunting teaches lessons about developing character. By carefully observing weather and ice conditions you learn to become focused and meticulous, and not to take unnecessary risks, for survival depends on these skills. On its own, the preparation of the sled for travel across the ice requires several careful steps: damp peat moss is cut and shaped around the bottom of the sled runners, warm water is dripped along the moss to form a layer of ice, and this is polished with a piece of wet caribou fur until hard so the runners glide easily over ice and snow. The attention to fine details made the Inuit superbly adapted to their environment, writes Watt-Cloutier, but this adaptation is now threatened by both cultural change and climate change.

Watt-Cloutier speaks as both a member and observer of Inuit culture. She was educated from an early age in Southern Canada, living with white families in Nova Scotia and Quebec, and then at a residential-type school in Churchill, Manitoba as part of a government program to educate Inuit children who showed leadership potential. Though she clearly benefited from this education, she is eloquent about the cultural losses entailed and the many things she missed about home — country food being not the least of them.

When she did return home, Watt-Cloutier was shocked by the changes she saw. Alcoholism and the violence it produces had never been a part of Inuit culture, but both arrived with the change from hunting and fishing to trapping and trading, from an independent and responsible way of life to one of dependency and lack of autonomy. The modern world was reaching out to encompass the Far North and destroying a traditional society as it did so.

One of the most heartbreaking incidents in this transition was the deliberate destruction of over 1,200 sled dogs by government order. The pretext was that they might be diseased or likely to attack, but many believe the real motive was to force In-

uit to live in settlements by taking away their only means of transport. The result was greater dependency on expensive and less healthy southern food, and on welfare, explains Watt-Cloutier.

Following her return to Kuujjuaq in northern Quebec (pop. 2,375), the author worked for the Kativik School Board, then as a consultant on health and education matters, and later as corporate secretary for the Makivic Corporation in Montreal. In 1995, she attended the general assembly of the Inuit Circumpolar Council (ICC), an international non-governmental organization, where she learned about the toxins being found in high concentrations in traditional Inuit foods. At the assembly, Watt-Cloutier was elected president of the Canadian branch of the ICC and began her distinguished international career as an environmentalist.

Persistent organic pollutants (POPs) are highly volatile chemicals that evaporate in warm air and condense in cold. They are resistant to breakdown and, over time, migrate to the coldest places on earth where they accumulate in animal fat and move up the food chain. POPs are found in the highest concentrations in top predators such as whales, walruses and seals—all traditional foods for Arctic peoples. Perversely, these pollutants, 80% of which come from outside of Canada, disproportionately affect people who have little if anything to do with their production and use. Thanks to the work of Watt-Cloutier and others, the Stockholm Convention on Persistent Organic Pollutants was adopted in 2001 to phase out the use of these chemicals.

Since then, Watt-Cloutier has gone on to pioneer a novel approach to fighting climate change that focuses on human rights and culture. Her book details the many ways the Inuit depend on a cold climate for their physical and cultural survival. The dangers to hunters of thinning ice, changes to hunting grounds and seasons, longer travel required for hunting, and other climate change–related outcomes have resulted in a loss of hunting skills and traditional knowledge, as well as a food crisis.

With representatives of Earthjustice and the Centre for International Environmental Law, Watt-Cloutier established a human rights petition to be presented to the UN Framework Convention on Climate Change at its conference in Milan in 2003. "Ah, you are fighting for the right to be cold," suggested a British journalist in the course of an interview, supplying these groups with a key phrase for their campaign. For Watt-Cloutier it was as important that a human-centred approach replace the overemphasis on wildlife in the Arctic—that above all the climate change discussion reflect the needs of communities living in the North.

While the human rights petition did not succeed as she had hoped, Watt-Cloutier believes it set a precedent, moving the climate change discussion away from seals and polar bears (as important as they are) and toward people. Though she has since taken a less public role, concentrating on her private life and on teaching, her interest in issues facing the Arctic has not abated.

She is most eloquent in her book when speaking about the lure of resource extraction in the North. "Mining means digging up the land we hold sacred, the land that we Inuit have been profoundly connected to for our entire history," writes Watt-Cloutier. Resource extraction takes a high toll on the earth and, for affected communities in developing countries, rarely pays off. The author suggests Inuit should be asking themselves, "'Why would it be any different for us? How will this industry, which is so counter to our own culture of stewardship of the land, be any different in the Arctic than it has been in other parts of the world?'

"If social and financial progress is a goal for our Arctic communities, we must seriously question whether we are really going to gain long term from resource extraction."

Watt-Cloutier ends her book by linking her career as an environmentalist with her broader commitment to the preservation of Inuit culture, which she insists is still alive and well. She contends that its future lies in a positive blend of modernity and tradition—provided, of course, that climate change does not result in that future melting away.

Early enough?

EARLY INTERVENTION: HOW CANADA'S SOCIAL PROGRAMS CAN WORK BETTER, SAVE LIVES, AND OFTEN SAVE MONEY

JAMES HUGHES

Lorimer (April 2015), 232 pages, $22.95

Reviewed by Maggie FitzGerald Murphy

The Canadian state is often recognized for its commitment to the provision of social programs and "safety nets" for its citizens. Despite this reputation, the welfare system in Canada faces numerous challenges related to how programs are structured and the level (or, more accurately, the lack) of investment, which leave the system unable to meet the needs of large pockets of the population. James Hughes's book, *Early Intervention: How Canada's Social Programs Can Work Better, Save Lives, and Often Save Money*, explores some of these failures and argues that too many of our social programs provide support to citizens at the last possible moment. "The social safety net has not been adequately adapted to address today's greatest health and social challenges, including chronic illness, dementia, autism, chronic poverty, and homelessness, among others," Hughes writes.

His evidence comes mostly from personal accounts of individuals and families who have been unable to access state support until their particular circumstances reached a crisis level, with chapters covering particular areas such as health care, poverty and child protection. Significantly, while each chapter can be read on its own, Hughes emphasizes the important interconnectedness of our social safety nets, like the way improved mental health programs often have a positive impact on levels of homelessness over time. Combining such stories with higher level policy analy-

sis that emphasizes the links between and across social programs, Hughes makes a convincing case for early intervention ("any measure designed to address a potential or emerging problem at the earliest opportunity before it is able to escalate into a graver challenge") in all sectors of the welfare system.

On the other hand, there is no discussion here of who benefits from the status quo. This is perhaps most felt in chapter two, which provides a brief overview of the development of the welfare state in Canada, as well as highlighting some reasons why Canada has not adopted an early intervention system. While factors such as financial constraint, deficit fighting and ideologies of "self-reliance" are mentioned briefly, Hughes largely explains away the current late intervention system as a consequence of government caution. Specifically, he blames a fear of political disadvantage and media backlash from the allocation of resources to those with less urgent needs.

Although such ideologies certainly influence government choices, this does not satisfactorily explain the structure and funding levels of national and provincial social safety nets in Canada. That is, while Hughes rightfully points out there are many people negatively impacted by the status quo, he ignores those with a material interest in maintaining the current system. Surely, for example, oil and gas executives would not stand idly by if the Canadian government decided to fund early intervention by reducing subsidies for the energy sector. If systemic reform is to happen, it will need to address this conflict of interests.

Furthermore, while a welfare system built on early intervention would indeed be an improvement on our current system, the issue of prevention is left dangling. While Hughes notes that "an ounce of prevention is worth a pound of cure," early intervention is not quite the same as preventative policy; it is still a reaction, albeit earlier in the chain of need, as a problem has to be identified before state support is provided. Preventative policy, on the other hand, would involve a critical examination of barriers and obstacles (social, environmental) that *create* the needs of the welfare system in the first place, and would require a commitment to abolishing such barriers. Low minimum wages make poverty inevitable. Thus, while early intervention measures would surely improve the lives of many, Hughes sometimes writes as if the system itself was not producing harmful marginalization. The reader is left wondering if his early intervention happens early enough.

Nonetheless, this is an accessible book that highlights some major failings in our current safety net system. The use of personal narratives is an effective way to link macro–policy decisions to micro–social relations, and to remind readers that the lives of real people are at stake when we discuss welfare programs. Lastly, Hughes makes the important point that early intervention methods must be applied across the entire network of health and social services, thereby acknowledging the complex ways in which physical and mental health, education, poverty and other conditions influence and re-enforce each other. This point, often missing in books that focus on one particular social program, will hopefully spur much needed conversation about how Canada's social programs can work together to enhance people's lives.

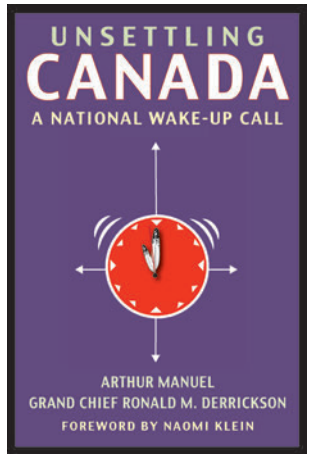
When the law is not enough

UNSETTLING CANADA: A NATIONAL WAKE-UP CALL

BY ARTHUR MANUEL, WITH GRAND CHIEF RONALD M. DERRICKSON

Between the Lines (April 2015), 320 pages, $29.95

Reviewed by Nora Loreto



In the middle of a 24-hour occupation of a downtown Ottawa office, protesters and police arrived at an agreement: the younger among the protesters could leave without being arrested or harassed by the riot police surrounding the building. They would not be leaving empty handed.

The youth had hidden in their sleeping bags as many files as they could carry away from the Department of Indian Affairs, Canada's quintessential colonial authority, whose movements and whims are felt in small communities across the country. The files offered Indigenous activists a rare insight into the workings of the normally closed-off agency.

The RCMP banged their riot shields to intimidate those who remained inside. The protesters stood firm and, as promised, the occupation ended the next day. The Indigenous activists walked out and joined a caravan to U.S.-side Akwesasne, refusing to recognize the international border as a final act of protest.

It was Jean Chrétien who had called in the RCMP that day in 1970. Fueled by the emerging civil rights movement that coalesced around the National Indian Brotherhood, the Native Youth Association had shut down Indian Affairs to protest the attack on Indian control of Indian education by the government of Pierre Trudeau. Arthur Manuel beautifully describes this occupation and dozens of other events in his new book, *Unsettling Canada: A National Wakeup Call.*

As the title suggests, the book is a call to action to dismantle Canada's colonial system, and there is more than enough inspiration for how to do so from the author's life. Manuel spent his childhood at a residential school and working the fields with his family. He went on to head a national youth movement, became chief of his community, organized within the coalition of interior British Colum-

bia nations, and eventually worked internationally to upend, challenge and ultimately eliminate Canada's colonial grip.

In 1974, under contract with the B.C. Union of Indian Chiefs, Manuel travelled British Columbia, talking to elders and youth about resisting federal encroachments on the rights of Indigenous people. Recalling the experience, he writes: "I spoke to dozens, even hundreds, of Elders and youth... They understood all too well the source of their poverty and the solution to it. It was not a philosophical question, but something that they had in their DNA. The land was theirs, it was given to them by the Creator, and they would do whatever was necessary to get it back."

Manuel reminds us over and over again that the fight for Indigenous rights isn't about whose interpretation of the Canadian Constitution or international law is right or wrong, it's that the Canadian government will do anything to ignore its responsibility as the representative of the Crown. He cites Supreme Court decisions, international law and treaties to demonstrate time and again that Canada is the party that refuses to uphold its end of the bargain.

Clearly there are limits to relying on the courts. When one party, with the power that Canada has over Indigenous people, refuses to negotiate in good faith, the other must look for options.

Each chapter in *Unsettling Canada* parses out a different era or campaign from Manuel's life: the case he made for Indigenous rights at the World Trade Organization; his work with U.S. economist Joseph Stiglitz on the Canada-U.S. softwood lumber dispute; organizing the Constitution Express, a train carrying thousands of grassroots activists to Ottawa to demand treaty rights be added to the Constitution; and simply fighting for his community when he was a chief.

These experiences are lent even more weight through glances into the author's personal and family life. Manuel talks about visiting his daughter Mandy in jail. She had been arrested for occupying land and resisting the Sun Peaks resort development, 50km northeast of Kamloops, B.C., which was never approved by the community. Mandy's four-month-old son was taken into the care of his grandparents, and once a week, during her 60-day term, Manuel would drive to Burnaby so she could see her child and to gather her milk.

Manuel warns that fighting for Indigenous rights through land claims and other colonial structures cannot ignore the reality that racist legislation will always intend to subjugate Indigenous people. The "doctrine of discovery," Manuel writes, "remains the legal justification for the colonial occupation of our lands and our nations. As long as Canada bases its existence on that doctrine, it is hard to characterize it as anything other than a racist state where one race has been given the right to subjugate and confiscate the lands of another."

In June 2014, the Tsilhqot'in First Nation won a landmark case at the Supreme Court where, by unanimous decision, they were granted title to more than 1,700 square kilometres of traditional land. Manuel argues that for this decision to carry weight, Indigenous laws and governance must take root. They cannot rely on the Canadian legal system. "This case is the first in Canada where Indigenous peoples have repossessed their lost — or more accurately, stolen — inheritance."

Just four months after the Tsilhqot'in decision, another First Nation community, the Atikamekw in Quebec, took a different path. They declared sovereignty over their traditional territory. Any development that happens within their declared 80,000-square-kilometer territory must be approved by Atikamekw leadership.

"Gone are the days of negotiating the rights of the Atikamekw, which have not been surrendered, for the benefit of a state that imposes its rules as if such rights do not exist," said Chief Constant Awashish at the time. Manuel's call for action is not a solitary one. **M**

In the news

Enough truth, more reconciliation

ON JUNE 2, the Truth and Reconciliation Commission (TRC) released its long-awaited final report on the relationship between Aboriginal and non-Aboriginal peoples in Canada. The commission was established in 2008 to investigate and reveal the history of residential schools and other policies of Aboriginal assimilation in Canada, as well as guide and inspire a process of healing, mutual understanding, inclusion and respect between Aboriginal and non-Aboriginal communities. The six-year process involved the collection of thousands of statements and documents in addition to dozens of public meetings and events across Canada.

The TRC concluded that Aboriginal policy throughout Canada's history has amounted to a "cultural genocide" against Métis, Inuit and First Nations peoples. Through the seizure of land, the persecution of spiritual leaders and practices, and the disruption of the intergenerational transfer of culture, values and knowledge, among other actions, Canada devised and implemented a "coherent policy to eliminate Aboriginal people as distinct peoples and to assimilate them into the Canadian mainstream against their will."

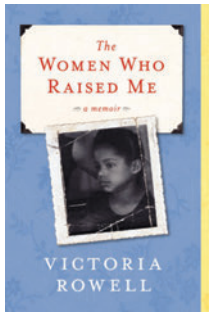
More than 150,000 Aboriginal children attended 139 residential schools in Canada between 1883 and 1996. Many of them were administered, until 1969, with involvement by the Roman Catholic, Anglican, United, Methodist and Presbyterian churches. Children suffered as a result of harsh discipline, poor food, unsafe living conditions and institutionalized neglect and abuse. More than 6,000 children died in the schools. Many of the 80,000 residential school survivors who are still alive today shared their stories with the TRC. Most are deeply scarred by their experiences.

The commission made 94 recommendations to "redress the legacy of residential schools and advance the process of Canadian reconciliation." They address all aspects of the relationship between Aboriginal and non-Aboriginal peoples, including the material well-being of Aboriginal communities, the legal rights of Aboriginal peoples and the responsibility of non-Aboriginal peoples to acknowledge and atone for this uncomfortable history. Ultimately, the TRC hopes that a mutual understanding of the past between Aboriginal and non-Aboriginal peoples in Canada will enable a long-lasting mutual respect in the future. (Hadrian Mertins-Kirkwood)

Staff picks

Our summer reading

THIS SUMMER I plan on indulging in my favourite pastime reading by getting to some of the books on my "to read" list. Already waiting on the shelf is ***Parenting Through the Storm*** by Ann Douglas (Collins, February 2015), a book for parents raising children with mental health issues, or neurodevelopmental or challenging behavior. Parents of special needs children often feel alone and this book looks like a good support when you are ready to throw your hands up in the air—again. Next in line is ***Orphan Train*** by Christina Baker Kline (William Morrow Paperbacks, April 2013), a fictional account of the many orphans sent from the East Coast to Midwest farmlands between 1854 and 1929. Following the orphan theme, I hope I can also get to ***The Women Who Raised Me*** by Victoria Rowell (Avon, April 2008). Rowell's memoir tells the story of a foster child and the women who inspired her as she grew up and overcame tough odds. And I



might as well switch it up and add ***Deliver Us*** by Kathryn Casey (Harper, January 2015), one of my favourite true crime authors. *Deliver Us* is an account of the 20-plus murdered women who died not far from the I-45 highway between Houston and Galveston, Texas—a story with eerie parallels to the Highway of Tears that runs from Prince George to Prince Rupert, B.C.

Anskia Gingras, development and database officer, CCPA

I'M INTERESTED IN how positive change takes place in the face of austerity. Many of us cheered on the massive Quebec student movement, *Printemps Erable* or Maple Spring, in 2012. On the heels of the Arab Spring and Occupy Movement, Quebec students successfully organized against the Charest government's student fee

increases, and more broadly for democratic control over the commons. I was pleased to see this movement documented in the first full-length English account, ***Generation Rising: The Time of the Quebec Student Spring*** by Shawn Katz (Fernwood, April 2015). As a Manitoban, I have long admired the passion in Quebec for social justice, rooted in the Quiet Revolution. In the 1960s, expansion of public education was fundamental to democratic reform in Quebec. Efforts were taken to increase access, with the ultimate goal of free education. But this was never realized and access to university education eroded, as it has across Canada. In 2012, in response to large fee increases, the "network generation," as Katz calls them, used social media to put forward their message and successfully organize. *Generation Rising* has a revolutionary and optimistic tone. It is an insightful account of the role of today's student movements, and social movements overall, in the struggle for democratic control over our common resources.

Molly McCracken, director of the CCPA–Manitoba

THIS SUMMER I'LL be reading ***Is Gwyneth Paltrow Wrong About Everything? When Celebrity Culture and Science Clash*** by Timothy Caufield (Viking, January 2015). Despite its title, this book isn't intended as a takedown of celebrity culture. Rather, it's an examination of how celebrity influence is shaping our perceptions about beauty, affecting our health care decisions and the things we do to stay healthy, and changing our aspirations. Whether we like it or not, celebrity culture is playing an increasingly large role in society. Take juice cleanses, a gluten-free diet, and even the anti-vaccination movement—all have gained popularity due in large part to celebrity endorsements, despite the lack of scientific evidence behind them.

In the name of research, Caufield subjected himself to numerous celebrity-recommended beauty routines and diets (including a 21-day Gwyneth-endorsed juice cleanse) and put them under scientific scrutiny in order to debunk the messages and promises that flow from the celebrity realm. Spoiler alert: Gwyneth Paltrow is wrong about almost everything.

Kerri-Anne Finn, senior communications officer, CCPA

What are you reading this summer? Let us know: monitor@policyalternatives.ca.

Chandra Siddan

Representing the invisible

Canadian documentaries at Hot Docs 2015

FROM THE FRIGHTENING to the joyful, stunningly shot to barely captured, heart-breakingly poignant to the explosively funny, melancholically slow to the mercurially fast-paced... the 200 documentaries that screened at this year's Hot Docs film festival in Toronto once again defy summation. Some Canadian entries successfully take on bold ways of telling real life stories that defy representation, others not so much.

The Amina Profile, which won the Special Jury Prize for a Canadian feature documentary, was surprising not only in the story it told, but also how director Sophie Deraspe unpacks it — with the slow burn of a mystery thriller. Beginning with an account of an online romance between Sandra Bagaria, a Montreal woman, and Amina Arraf, a Syrian-American woman living in Damascus, the film gradually changes from being about the Syrian uprising to something else.

A budding romance thrives on idealistic expectations of the uprising. Encouraged by Sandra, Amina begins a brave blog, "A Gay Girl in Damascus," to report on-the-ground stories of resistance. Her accounts become popular, but within weeks Amina is abducted, and Sandra begins her campaign to find her. When no one, not even the U.S. state department, can help, the international hunt for the blogger takes the shape of an intriguing thriller. When finally Sandra's search for her online lover finds its object we are left marvelling at the mysteries of subjectivity in the realm of virtual reality. Will you feel fooled or seduced by Deraspe's visual invention?

Another, almost legendary subject defying straightforward visual representation is Anas Aremeyaw Anas, the masked hero of *Chameleon*, directed by Ryan Mullins. A Ghanaian investigative journalist, Anas finds and reports on the perpetrators of corruption, sometimes working in tandem with police to jail the criminals he interviews. Like the British graffiti artist Banksy, Anas is a mysterious person. When not in disguise, he wears a hat with a bead screen dangling in front of his face.

Though legally problematic, Anas's work could be seen as a kind of super-heroism, all the more for its incognito status. It would be a challenge for anyone to capture this character — the human face is gold for the documentary filmmaker, providing the readable surface of myriad expressions — and Mullins, who won the Emerging Canadian Filmmaker award, never quite solves that problem. He barely manages to follow the action unleashed by his hero, as the audience hangs on desperately.

No Place to Hide: The Rehtaeh Parsons Story features another unrepresentable hero, international hacker group Anonymous, but the film's focal point is the unfathomable cruelty of online bullying that drove the raped and harassed Nova Scotian teenager to suicide in 2013.

While director Rama Rau succeeds at capturing the enormity of the crime, through the articulate bafflement of Rehtaeh's parents at the institutional stonewalling of their daughter's tragic collapse, she barely approaches the fundamental question of how teenage boys could circulate videos of a passed-out victim being raped and get away with it — until, that is, Anonymous, the self-styled Robin Hoods of the web, made it their business to correct it. The unintended, bitter irony of the film is that it is Stephen Harper, not Anonymous, who gets face time as being tough on crime.

All the Time in the World takes on time itself in the form of a fami-

Suzanne Crocker fulfils her children's wish in *All the Time in the World*.

Whose seas? Our seas! *How to Change the World* follows the rise of Greenpeace.

ly living in the Yukon wilderness for nine months of winter. The children's wish to have their parents around all the time, not worried about work, is granted when their parents leave their jobs to live in a cabin in the woods, cats and dog in tow. What does a family at play for nine months look like? A lot of cooking, baking, sleeping, reading stories and crying, getting married to fictional characters and engaging with bears.

"Inside is our storage place, but outside is actually our home," says one of the children. As home expands into the outside, the passing seasons provide the expansive stage for the blossoming of unfettered playfulness, in harmony with pure time, untroubled by the clock. Suzanne Crocker, the filmmaker and mother to the subject family, took a beautiful risk with this documentary experiment. She has created a contemporary *Walden* that enfolds kids and adults in the inspiring dream of finally *having time*.

How to Change the World, about the origins of Greenpeace, is near the top of my favourites list from this year's Hot Docs festival, and happily there were no problems involving the visibility of its subjects. Director Jerry Rothwell uses never before seen footage shot in the 1970s, brought together beautifully — it won the Special Jury Award for Editing at Sundance — and narrated by surviving members of the early group. We meet a motley crew of acid-dropping, draft-dodging, shit-disturbing, vegetarian, nudist, Buddhist tree huggers led, reluctantly, by Bob Hunter, and euphorically ready to take on the world. The film is a joyful celebration of the movement while also observing the difficulties it faced as Greenpeace grew internationally.

A final noteworthy Canadian entry, *Jesus Town USA*, by Julian Pinder and Billie Mintz, frames the change of faith in a young actor playing Jesus in the annual passion play of a small Oklahoma Christian community. The film is so well composed, theatrical and funny that many audience members later wondered if it was really a documentary. It honours the expressivity of the lead character (who has become a Buddhist and questions the existence of God) and his devoutly Christian community in a way that is not condescending.

The film's style is so original — it's doubtful two cameras have ever been put to such good use to record subjects representing themselves, as if life itself is a passion play — that it renders the strict categories of fact and fiction irrelevant. Once we acknowledge, as they say, that you can tell the whole truth only in fiction, we can finally appreciate the artistry of documentary, and its multiple modes of representing the invisible. M

SUPPORT
THE CCPA

VISIT OUR WEBSITE AT WWW.POLICYALTERNATIVES.CA
OR PRINT/PHOTOCOPY AND RETURN THIS FORM

WAYS TO GIVE

☐ **$300** ☐ **$100** ☐ **$75** ☐ **Other**

TAX RECEIPTS ARE ISSUED FOR CONTRIBUTIONS OF $15 OR MORE

☐ I prefer to receive my *Monitor* by e-mail
☐ I prefer a printed *Monitor* mailed to my address
☐ No *Monitor*, thanks
☐ Please do not trade my name with other organizations

PAYMENT OPTIONS

☐ **Monthly** $ ..... (monthly amount)

For automatic payments, please enclose a void cheque or fill in your credit card information below. You can stop payments at any time by contacting the CCPA.

☐ **Annually** $ ..... (annual amount)

Please enclose a cheque (made out to "CCPA") for your annual contribution, or fill in your credit card information below.

Credit Card

☐ Visa ☐ Mastercard Card

Card Number .....

Expiry Date ..... Signature .....

YOUR TELEPHONE NUMBER IS REQUIRED TO PROCESS CREDIT CARD TRANSACTIONS

CONTACT INFORMATION

Name .....

Address .....

City ..... Province ..... Postal Code .....

Telephone .....

E-mail .....

☐ Yes, I prefer to receive my tax receipt and updates by e-mail

500-251 BANK ST., OTTAWA, ON K2P 1X3 | 613-563-1341 | FAX: 613-233-1458

REGISTERED CHARITY #124146473 RR0001

CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
CENTRE CANADIEN
de POLITIQUES ALTERNATIVES