

Key ISDS Environmental cases

Ethyl v Canada - Settled

Following the banning of MMT, a gasoline additive, on the basis that it had the potential to cause harm to public health, fuel additive company Ethyl Corporation launched an attack against the Canadian government, claiming expropriation under NAFTA. The Canadian government settled out of court, compensating Ethyl for USD\$13 million, but also reversed the ban on the chemical and issued a statement asserting that Ethyl's product was safe as long as proper safety instructions were followed.

Reference: Public Citizen, Ethyl Corporation v.s. Government of Canada: Now Investors Can Use NAFTA to Challenge Environmental Safeguards, <https://www.citizen.org/our-work/globalization-and-trade/ethyl-briefing-paper>

St Mary's v Canada - Settled

A proposed quarry was prevented by the local minister following mass community rejection the project. The quarry was found to have had the potential to harm groundwater that fed wetlands and streams, vital for surrounding agricultural land, as well as long term effects on local drinking water supply. Following a democratic consultation process with the local community that received hundreds of formal objections to the proposal, the provincial government of Ontario prohibited the use of land for the quarry. St Mary's then filed a claim for \$250million in lost future profits, effectively forcing the government to pay up in order to protect a valued community area.

Reference: St Mary's v Canada, <https://www.italaw.com/sites/default/files/case-documents/italaw8369.pdf>

Dow Agrosiences v Canada - Settled

The American company filed a case against the province of Quebec's ban of pesticide 2,4-D. The cosmetic use of the pesticide was banned due to potential risks to public health. The case was eventually settled before proceeding to tribunal, with Dow Agrosience withdrawing its request without any monetary compensation. One of the terms of settlement was the Government of Quebec issuing a statement that products containing 2,4-D do not pose an unacceptable risk to human health or the environment provided that the instructions on their label are followed. One legal commentator suggested that Dow's claim appeared to be aimed 'as much at deterring other governments from taking similar steps to reduce pesticide use for health and environmental reasons, as much as it [was] meant to win compensation of \$2 million, as claimed, for the incidental impacts on Dow's sales in Quebec'. Indeed, the relatively small amount of compensation claimed suggests that the US company launched the case in an attempt to influence how other provinces and districts legitimately use their municipal powers to protect the health of their population and the environment.

References: Van Harten, G 2009, Reforming the NAFTA Investment Regime and Cooper, K et al 2013, Seeking a Regulatory Chill in Canada: The Dow Agrosiences NAFTA Chapter 11 Challenge to the Quebec Pesticides Management Code, Golden Gate U. Envtl.

Lone Pine v Canada - Pending

In June 2011, after extensive consultation and debate, the provincial Government of Quebec placed a fracking moratorium on drilling beneath the St. Lawrence River in order to properly study the environmental risks associated with the controversial technique. Soon after, Lone Pine Resources, an oil and gas developer, filed for arbitration against Canada under Chapter 11 of NAFTA. While being a

Canadian-based company, Lone Pine was able to sue the Government of Canada through its US affiliate, accessing NAFTA's chapter 11 and suing its own government under the provision that they had not been given 'fair and equitable treatment' as a foreign investor, demanding over USD\$100 million in compensation. In the ongoing claim, Lone Pine claims that the temporary ban on fracking impeded on their 'right to mine', claiming actions taken by the government of Quebec were tantamount to expropriation, and that 'no valid public purpose' exists for the moratorium, despite the clearly rational grounds presented by the government of the need for further research into the extractive method.

References: Lone Pine Resources Inc v Canada <https://www.italaw.com/sites/default/files/case-documents/italaw1596.pdf> p 4 and Lone Pine Resources Inc v Canada, p 16