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NAFTA lawsuits cost Canada almost $100 million more than previously estimated: report

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OTTAWA – The federal government has spent more than $95 million in unrecoverable legal fees defending the ballooning number of investor-state lawsuits filed against Canada under NAFTA's controversial investment chapter, according to new data obtained by the Canadian Centre for Policy Alternatives via an access to information request.

This newly uncovered amount is on top of the $219 million Canada has paid out in awards and settlements resulting from investor-state dispute settlement (ISDS) cases filed under NAFTA. As of January 1, Canada has lost or settled eight such claims, which frequently target legitimate, non-discriminatory environmental protection, public health and resource management decisions by Canadian governments. These cases, as well as all NAFTA claims filed against Mexico and the U.S., are documented in the new CCPA report, *Canada's Track Record Under NAFTA Chapter 11: North American Investor-State Disputes to January 2018*.

"The Trudeau government has more than enough reasons to remove the undemocratic investor-state dispute settlement process from NAFTA during the current renegotiations, as proposed recently by the U.S. administration," says the report's author, Scott Sinclair, a senior research fellow at the CCPA.

Since 2010, Canada has been sued over twice as many times as Mexico and the U.S. combined, continuing a worrying trend. Canada is currently facing eight active investor-state claims—including Omnitrax's recent NAFTA claim related to its broken rail line to Churchill, Manitoba, and Lone Pine's challenge to Quebec's fracking moratorium—that combined seek more than $475 million in damages.

According to Canada's chief NAFTA negotiator, "if the U.S. is going to opt out [of ISDS], Canada would opt out as well, and Mexico said they also would opt out. If the U.S. proposal were to be adopted…there would be no ISDS between NAFTA members." However, Canada's current position in the talks is to keep Chapter 11—despite Canada's poor track record and the costly, unreasonable threat ISDS poses to democratic policy-making.

“Since the U.S. is leading the ask on this issue, Canada could gain valuable negotiating leverage by withdrawing its opposition to the U.S. proposal to let countries opt-out of ISDS. This could help negotiators advance other key Canadian interests, such as safeguarding affordable access to medicines or securing meaningful continental labour standards,” adds Sinclair. “Canadian negotiators should not let this opportunity slip through their hands.”

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Canada’s Track Record Under NAFTA Chapter 11: North American Investor-State Disputes to January 2018 is available on the CCPA website. For more information contact Stuart Trew, 613-563-1341 ext. 304 or stuart@policyalternatives.ca.

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