

Overview:

In 2002, U.S. company, Bilcon applied to operate a quarry and marine terminal in Nova Scotia at Whites Point on Digby Neck. The controversial project was subject to an environmental assessment both pursuant to the *Canadian Environmental Assessment Act* (CEAA), and the *Nova Scotia Environment Act*. An independent joint review panel was established to conduct the assessment and recommended that the proposal be rejected in its report. Both governments (provincial and federal) accepted that recommendation.

Bilcon did not seek a judicial review of those decisions. Instead, it filed a claim pursuant to [Chapter 11 of NAFTA](#) – which gives corporations the right to sue the government if any public policy or government action denies them investment or profit opportunities. In other words, Bilcon claimed it was being treated unfairly. A NAFTA Tribunal agreed, and found that Canada breached NAFTA regulations.

The problem with the NAFTA Tribunal’s decision is that Bilcon turned down its opportunity to have a Canadian court rule on this alleged breach of Canadian law — the NAFTA tribunal decides questions of NAFTA law, not Canadian law. In other words, the NAFTA panel overstepped both its mandate and its expertise.

For this reason, [Canada applied to the Federal Court to set aside the Tribunal’s decision](#). Ecojustice lawyers are representing the Sierra Club Canada Foundation and East Coast Environmental Law (ECELAW), who are interveners in this case.

What happens at the Federal Court will have international consequences. If the Tribunal decision stands, future environmental review panels may hesitate to rule against projects regardless of the undue harms a project would have on the environment or communities. This would result in an absurd scenario where the looming threat of NAFTA disputes would compromise Canada’s ability to protect people and the environment – a critical step backwards for environmental protection across the country.

Background information:

Bilcon’s proposal would have seen the blasting, crushing and removing of 2 million tonnes of rock a year from a fragile, two-kilometre wide peninsula. Residents of the area, who were overwhelmingly opposed to the quarry, feared the loss of their quality of life, reduced property values, impacts to local tourism, and threats to the inshore fishery.

Members of ECELAW and Sierra Club Canada Foundation were full participants in the Joint Review Panel that resulted in the decision to reject the proposed quarry and marine terminal. The groups provided information and support to the community, brought their concerns to the attention of the public, and engaged with experts to provide valuable input on the ecological and socio-economic impacts of the coastal quarry.

Bilcon’s NAFTA complaint is not the first instance where Canadian taxpayers have been on the hook for international trade-related payments. Canada has been particularly vulnerable to NAFTA arbitration suits. Since the treaty came into force, Canada has paid out nearly \$220 million in NAFTA losses and settlements to U.S. investors.