

Chapter Eleven of NAFTA Remains a Threat to National Sovereignty

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Watching the Canadian English leader's debate probably didn't have a defining moment for most people. Instead, they were treated to five party leaders saying what they thought would be best for the country, and how as prime minister, they would do a better job than the others. The dynamics of the debate were different than previous ones as it was the first time that a Canadian Green Party leader was allowed to participate. Elizabeth May held her own and injected some new ideas, bringing up some critical issues such as Chapter 11 of NAFTA. Her position is that it needs to be re-opened and fixed. Jack Layton has also vowed that an NDP government would make it a priority to fight to re-open NAFTA, including removing Chapter 11 from the agreement.

Some have described NAFTA as more of an investment agreement that holds member nations at the mercy of corporations who have been granted new rights and privileges. Chapter 11 allows foreign investors to sue the governments of the U.S., Canada, and Mexico if they feel that their profits have been restricted. It guarantees fair and equitable treatment to foreign investors. In many instances, Chapter 11 is not being used to defend trade, but as a means to challenge and override domestic laws and international treaties. To deal with disputes, NAFTA created secret trilateral tribunals that meet behind closed doors. They have the power to award monetary compensation, which is paid with taxpayer's dollars, and their decisions do not have to be fully disclosed. Some claimants have not been big corporations, but small to medium-sized companies. There has been speculation that through the Security and Prosperity Partnership, NAFTA tribunals could be expanded into a North American Union style court system. More and more, Chapter 11 is being used to challenge unfavorable laws and governmental decisions.

Since its inception, there have been fears that NAFTA could be used to further dismantle Canada's health care system. Many believe that the agreement's safeguards are too vague, and that any future expansions into homecare or pharmacare are not adequately protected. For years, both Liberal and Conservative governments have insisted that Medicare is protected from an American-style system.

In July, a group of 200 American investors lead by an Arizonan businessman filed papers alleging that, as a result of barriers put in place, they were unable to open more private health care clinics in the province of British Columbia. They are asking for \$4 million in incurred expenditures as well as an additional \$150 million in potential lost profits. This case could be settled by formal arbitration hearings under Chapter 11 and represents the first

ever challenge to Canada's health care system. There are some who question how serious of a claim this really is, but regardless, it could lead to future attacks. NAFTA's investment rules continue to put Canada's health care system at risk of future privatization. The next Canadian government must further enforce the Canada Health Act to prevent more challenges.

In 1996, Jean Chrétien's Liberal government tabled a bill that banned imports of MMT, a gasoline additive. This was done as a result of studies that showed it posed a health risk. The U.S. Ethyl Corporation maker of MMT sued Canada, claiming discriminatory treatment under Chapter 11 of NAFTA. Lawyers advised the Canadian government that they might very well lose the case, so they sought a settlement prior to the ruling. Ethyl received over \$13 million, which covered damages to its reputation, lost profits, and legal fees it incurred. They forced the Canadian government to repeal the bill, banning MMT imports. The government also had to issue an apology and public statement saying that the additive posed no health or environmental risks. How disturbing that a corporation practically dictated the terms of the settlement and overturned the law of a supposed sovereign nation.

NAFTA has led to the corporate dominance of North America, and has essentially given foreign investors the power to challenge and even overturn labour, public safety, and environmental laws. It continues to undermine our democracy and breakdown national sovereignty. NAFTA was a monumental step towards continental integration. Chapter 11 of the agreement has been the source of much discontent and is a prime example of why so many believe that NAFTA must be re-negotiated.

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