CASE NAME:

LONE PINE V CANADA

SUMMARY:

Oil and gas company suing the Canadian government over a moratorium on fracking in Quebec

STATUS:

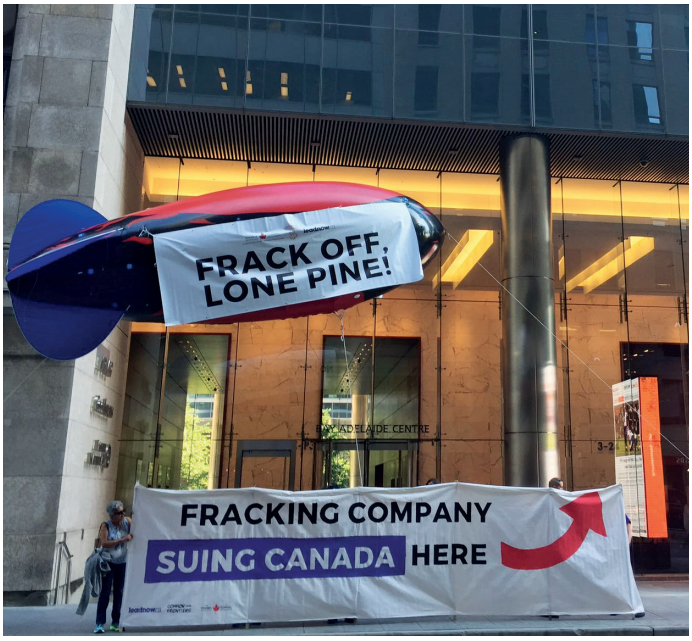
Awaiting decision (as of January 2019)

AT STAKE:

£90 million

DETAILS:

Case started September 2013 using the North American Free Trade Agreement



Activists draw attention to the Lone Pine case as the arbitration process takes place in Toronto, October 2017.

WHAT IS THE CASE ABOUT?

Oil and gas corporation Lone Pine Resources was given permission by the provincial Quebec government in Canada to explore possibilities for fracking for shale gas. Between 2006 and 2011 they got permits covering 11,600 hectares under the St. Lawrence River which connects the Great Lakes to the Atlantic Ocean.

During these years, public opposition to fracking grew. More than 130,000 people signed an online petition and over 100 local citizens groups formed. A protest walk was held in which 50 people walked 700km along the St. Lawrence River. Celebrations were held along the route and they were met at the endpoint in Montreal by crowd of over 10,000 – the largest environmental demonstration held in the province. 60 municipalities passed by-laws that protected drinking water from fracking. By 2011 surveys showed that 78% of the public in Quebec did not support fracking.

Responding to the pressure, the provincial government commissioned studies on environmental impact and in 2011 it acted on the study recommendations and introduced a moratorium on future fracking. The same year it passed Bill 18, an Act to Limit Oil and Gas Activities which revoked all permits for oil and gas development under the St. Lawrence River and prohibited further exploration.

As part of this, Lone Pine's permits were cancelled. Notably, it had only ever received exploration permits – it had not secured actual mining permits and it is not automatic that it ever would have done.

The devolution angle

Lone Pine is bringing a case against the Canadian federal government over the actions of the provincial Quebec government.

This has implications for the devolved parts of the UK. For instance, Scotland has an extended moratorium on fracking, but the current UK government supports fracking. If a company were to sue the UK over the Scottish moratorium, it is the Westminster administration that would be responsible for defending the case. However if they lost, it is the Scottish administration that would be responsible for paying any fine. As it happens, the companies with fracking licenses in Scotland are all British and so could not use ISDS, but it illustrates what could happen in many areas where devolved policy differs from Westminster policy.

Canada now has structures for provincial governments to be involved in negotiating trade deals. However the UK currently has no way for devolved administrations and legislatures to have any say on trade deals.

CORPORATION'S COMPLAINT

Although Lone Pine's headquarters is in Calgary and its operations are in Canada, it was formally registered in the US. It used its US base to bring an ISDS case against the Canadian government as a foreign investor. The company acknowledged this was because it would be harder to bring a case in the Canadian courts.

Lone Pine says the fracking moratorium was an "arbitrary, capricious, and illegal revocation of the Enterprise's valuable right to mine" which was introduced "without any notice or consultation with Lone Pine" and that "there is no valid public purpose to the moratorium".

It is not only asking for the money that it had invested so far, it also wants compensation for the future profits it had hoped to make.

OUR VERDICT

Fracking is fundamentally incompatible with tackling climate change. At a time when we should be leaving fossil fuels in the ground if we are to have any hope of cutting carbon emissions, the growth of the fracking industry is a reckless sprint in the opposite direction. It also poses dangers around contamination of the water supply, public health and the damage to the local environment.

There is no 'right to mine' and the Quebec government's moratorium on fracking was a responsible public policy measure. It followed the usual legislative processes, following several years of public campaigning, research and consultation. Far from being arbitrary it was predictable and based on evidence.

The cost of a Lone Pine victory in the ISDS courts will not only be counted in terms of the money they are seeking but of the renewed hope it gives dirty energy companies everywhere to try and roll back hard fought moratoriums on fracking. People and parliaments are taking action to prevent a planetary emergency, yet corporations can use ISDS to try and stop them.

Investor-State Dispute Settlement (ISDS,) or 'corporate courts', gives corporations far reaching privileges and access to their own legal system to enforce them. This mechanism threatens society, democracy and the planet. **STOP ISDS!**

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