

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES**

BETWEEN:

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON,
DOUGLAS CLAYTON, DANIEL CLAYTON AND BILCON OF
DELAWARE INC.**

Claimants

AND:

GOVERNMENT OF CANADA

Respondent

GOVERNMENT OF CANADA

REPLY SUBMISSION ON COSTS

March 2, 2026

Trade Law Bureau
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I. INTRODUCTION

1. The Claimants' request for nearly USD 30 million in costs is unreasonable, disproportionate, and excessive. After having gone "all in" throughout the arbitration – advancing unmeritorious claims, pursuing an aggressive litigation strategy, and persisting with an unreasonable yet costly damages model that was rejected by the Tribunal, the Claimants were awarded USD 7 million -- just 1.5% of the USD 458.6 million they sought in damages. Their limited success cannot justify the extraordinary sum they now claim in costs.

2. The scale of the Claimants' ask bears no rational relationship to the outcome of the proceedings. While they portray themselves as the "successful party," the Tribunal rejected the majority of their claims, dismissed their damages theory, and awarded them only a sliver of the compensation they sought. The Claimants' demand for costs in an amount more than four times the amount of damages awarded, is facially disproportionate and fundamentally inconsistent with the governing principles of the UNCITRAL Rules.

3. The Claimants' submission further disregards their own conduct in the proceedings, which significantly inflated the costs they now seek to recover. They elected to pursue a discounted cash flow ("DCF") valuation that had no place in this arbitration; they tendered voluminous and often unnecessary expert evidence; and they prolonged and complicated the orderly progress of the case – conduct that continues to this day – through procedural positions that increased the time and expense incurred by both disputing parties and Tribunal. The Claimants must bear responsibility for the tactical decisions that resulted in these costs.

4. The Claimants' assertion that they are entitled to full, or even substantial, cost recovery mischaracterizes the Tribunal's findings, exaggerates the extent of their success, and ignores the proportionality, reasonableness, and equitable considerations that guide tribunals when allocating costs. When a litigant advances inflated claims, fails on key issues, and obtains only a modest damages award, tribunals routinely reject attempts to shift the majority of costs to the other side. The Claimants' claimed legal fees, expert fees, and third-party costs are neither reasonable nor proportionate within the meaning of Article 40 of the UNCITRAL Rules.

5. Canada's Reply submission on costs supplements its submission of January 14, 2026 and is organized as follows: **Section II** briefly sets out some of the key principles under the

UNCITRAL Arbitration Rules (1976) that are engaged by the costs claim the Claimants have put forward. **Section III** explains why the claim is unreasonable and disproportionate in light of the limited damages awarded and Canada's own efficiently incurred costs. **Section IV** demonstrates that the Claimants cannot properly be characterized as the successful party. **Section V** explains how the Claimants' unreasonable conduct throughout the proceedings warrants an order directing them to bear Canada's costs. **Section VI** concludes this submission with the order requested by Canada. **Annex I** details the additional costs Canada has incurred since the filing of the costs submission on January 14, 2026.

II. THE APPORTIONMENT OF COSTS MUST BE REASONABLE AND PROPORTIONATE

6. The disputing parties appear to agree that the principles of Article 40 of the UNCITRAL Rules govern the apportionment of costs in this arbitration.¹ When exercising its discretion, the Tribunal shall ensure that the apportionment of costs, including especially legal representation costs, is "reasonable" taking into account the circumstances of the case. It is well established that, notwithstanding a party's prerogative to retain legal counsel of its choice, the fee arrangements agreed between a party and its counsel do not, by themselves, automatically generate a reciprocal obligation on the losing party for total reimbursement.²

7. Arbitral tribunals have consistently applied the principles of reasonableness and proportionality when determining the apportionment of costs. In particular, tribunals have emphasized that recoverable costs must be "reasonable in amount and also reasonably incurred" in light of the amount in dispute, the complexity and length of proceedings, and any material

¹ Claimants' Costs Submission, 14 January 2026 ("Claimants' Costs Submission"), ¶¶ 14-15.

² **RA-180**, *NJSC Naftogaz of Ukraine and others v. Russian Federation* (PCA Case No. 2017-16), Award, 12 April 2023 ("*NJSC Naftogaz* – Award"), ¶ 712: ("With respect to costs of legal representation and assistance, in the view of the Tribunal majority, a bill of costs that a client agrees to pay counsel does not automatically generate a reciprocal obligation on the Respondent for reimbursement."); **RA-181**, *Venoklim Holding B.V. v. Venezuela II* (ICSID Case No. ARB(AF)/17/4), Award, 17 October 2024 ("*Venoklim* – Award") [Unofficial Translation], ¶ 285: ("The Tribunal considers that there is no justification for the unsuccessful party in this arbitration to fully assume the consequences of the successful party's decisions regarding contractual fees, and to be required to reimburse an amount more than three times greater than that incurred for its own defense."); **RA-182**, *Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Kenya* (ICSID Case No. ARB/15/29), Award, 22 October 2018 ("*Cortec* – Award"), ¶ 389: ("A party is free to spend as much money as it wishes on legal fees and expenses, but it does not follow that all such costs and expenses should be imposed on the opposing (unsuccessful) party.")

disproportion that may exist between the parties' respective costs, amongst other relevant factors.³ Tribunals also consider whether the explanations advanced to justify higher costs are credible and supported by contemporaneous records. Where claimed costs are found to be excessive, inadequately justified, or otherwise unreasonable when viewed against the overall circumstances of the arbitration, tribunals have exercised their discretion to reduce them and to award only the portion that reflects a reasonable and proportionate expenditure.⁴

8. In determining the appropriate reduction, tribunals have also taken into account proportionality between the quantum of damages sought and ultimately awarded, on the one hand, and the magnitude of the costs claimed, on the other hand, ensuring that the costs awarded remain commensurate with the economic stakes and procedural demands of the dispute.⁵ Also relevant to the proportionality analysis is the extent of disparity between the disputing parties' respective claims for costs. In a number of cases, arbitral tribunals have exercised their discretion to reduce

³ **RA-183**, *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt* (ICSID Case No. ARB/14/4), Award, 31 August 2018, ("Unión Fenosa – Award"), ¶ 12.16. See also **RA-184**, *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru* (ICSID Case No. ARB/19/28), Award, 20 December 2023 ("Latam Hydro – Award"), ¶ 1374: ("The Tribunal considers that the reasonableness of costs under ICSID Arbitration Rule 28(2) may take into account the amount in dispute, the complexity of proceedings, and their length, among other relevant factors."); **RA-185**, *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration and Production Company Limited and Bangladesh Oil Gas and Mineral Corporation* (ICSID Case No. ARB/10/18), Award, 24 September 2021, ¶ 343: ("When deciding allocation of a party's costs the Tribunal is of the view that it must consider not only whether the action for which the costs were engaged were reasonably justified; it also must consider whether the amount of the costs so engaged is reasonable."); **RA-186**, *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea* (ICSID Case No. ARB/13/33), Award, 5 May 2015, ¶ 406(e): ("The Tribunal considers that its decision on costs allocation should generally be guided by: [...] the reasonableness of the parties' legal costs, including any material disproportion that may exist between the parties' respective costs.").

⁴ **RA-184**, *Latam Hydro – Award*, ¶¶ 1375-1378: (The tribunal found some of the claimants' costs to be unreasonable even considering the parties' respective choices in legal counsel and case management because the respondent's claimed amount for costs is only 27% of the claimants' lower claim); **RA-180**, *NJSC Naftogaz – Award*, ¶ 712; **RA-182**, *Cortec – Award*, ¶ 389: ("In this case, the Respondent claims a "grand total" of US \$6,452,858.42. By way of comparison, the Claimants claim costs of US \$3,600,000.00. In the Tribunal's view, having regard to the nature and difficulty of the case, the Respondent's claim for costs is manifestly excessive."); **RA-187**, *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela II* (ICSID Case No. ARB/12/23), Award, 12 December 2016, ¶¶ 848-849: (The claimants sought close to USD 6 million in costs. After having considered the complexity of the case, the quantum of the claims and the work performed by counsel and experts, the tribunal found that reasonable costs total USD 2.8 million).

⁵ **RA-188**, *JSC Tashkent v. Kyrgyzstan* (ICSID Case No. ARB(AF)/16/4), Award, 17 May 2023, ¶¶ 802-805: (the claimants sought legal costs that represent more than 30% of the total claimed value of the investment in question. The tribunal found that "such a ratio indicates a lack of necessary proportionality." As a result, it reduced it ordered the reimbursement of 70% of the legal fees and expenses the claimants incurred).

the recoverable costs on this basis alone.⁶

9. Moreover, the authorities invoked by the Claimants to suggest that claimants may “recover the bulk of their costs” despite receiving only meagre damages do not support their contention.⁷ In each of those cases, the costs ultimately paid by the losing party were markedly lower than the damages awarded, underscoring that the outcomes were, in fact, proportionate rather than exceptional.

10. Finally, the inquiry also includes whether the costs claimed bear a rational and proportionate relationship to the tribunal’s actual findings.⁸ For instance, in *Elliott Associates L.P.*

⁶ **RA-189**, *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru* (ICSID Case No. ARB/19/19), Award, 3 October 2023, ¶ 621: (“The Tribunal is conscious of the considerable disparity between the overall costs claimed by Claimants (US\$ 11,832,816.02) and the amount claimed by Respondent (US\$ 6,612,390.11). [...] In light of this, the Tribunal finds that Claimants should only be entitled to recover 70% of the amount of their costs attributable to jurisdiction and the SFR Service Claim, i.e. US\$ 4,931,993.58”); **RA-181**, *Venoklim* – Award, ¶¶ 284-287; **RA-190**, *Transban Investments Corp. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/24), Award, 22 November 2017 (“*Transban* – Award”), ¶¶ 186-189: (The tribunal significantly reduced the claimant’s legal fees from USD 2,875,000 to USD 600,000 because it was “neither fully justified nor reasonable” and that “[i]t is four times higher than the Claimant’s expenses for its legal representation”. The tribunal noted that “the difference is striking”); **RA-023**, *EDF (Services) Ltd. v. Romania* (ICSID Case No. ARB/05/13), Award, 8 October 2009, ¶ 321 (stating that “the material disproportion between Claimant’s and Respondent’s arbitration costs” is “a circumstance that shall be duly considered when deciding the allocation of such costs”); **RA-183**, *Unión Fenosa* – Award, ¶¶ 12.16-12.17: (The tribunal reduced the claimant’s costs noting that “[t]here is a marked discrepancy between the total legal costs claimed by the Claimant and the total legal costs claimed by the Respondent. It is not fully explained on the materials before the Tribunal”).

⁷ See Claimants’ Costs Submission, ¶ 22. In *Bear Creek v. Peru*, the 75% of reasonable costs awarded amounted to nearly USD 6 million, while the damages awarded exceeded USD 18 million. In *Perenco v. Ecuador*, the claimant was awarded more than USD 448 million in damages, an amount that was proportionate to the USD 23 million in costs ultimately awarded to it – to be subtracted from over USD 6 million in costs it has to pay to the respondent. Moreover, that exceptional costs award was informed by circumstances not present here, including the respondent’s failure to abide by the tribunal’s decision on provisional measures, and its “overstated” “inefficient, costly and time-consuming” counterclaims that “added substantially to the costs of these proceedings”. None of these circumstances is analogous in the present case with Canada. In *Mason Capital v. Korea*, the costs awarded amounted to nearly USD 11 million, while the damages awarded exceeded USD 32 million. In *PSEG v. Turkey*, the costs yet to be paid amounted to nearly USD 4.6 million, whereas the damages awarded exceeded USD 9 million. In *Windstream v. Canada*, the costs awarded amounted to less than CAD 3 million, whereas the damages awarded exceeded USD 25 million. See **RA-191**, *Bear Creek Mining Corporation v. Peru* (ICSID Case No. ARB/14/21), Award, 30 November 2017, ¶¶ 730-731; **RA-192**, *Perenco Ecuador Limited v. Ecuador* (ICSID Case No. ARB/08/6), Award, 27 September 2019, ¶¶ 981, 1006, 1015; **RA-174**, *Mason Capital L.P. and Mason Management LLC v. Republic of Korea* (UNCITRAL), Final Award, 11 April 2024, ¶¶ 1143-1144; **RA-059**, *PSEG Global Inc. and Konya Ilgin Elektrik Uretim ve Ticaret Limited Sirketi v. Republic of Turkey* (ICSID No. ARB/02/5), Award, 17 January 2007, ¶ 353; **RA-146**, *Windstream Energy LLC v. Canada* (UNCITRAL) Award, 27 September 2016, ¶ 514.

⁸ **RA-193**, G. Bottini, et al., “Excessive Costs and Recoverability of Costs Awards in Investment Arbitration”, *The Journal of World Investment & Trade* (2020), Vol. 21, No. 2-3 [Extract], p. 253: (“We define excessive costs as those costs incurred by either party in connection with an arbitration that are not necessary for a fair and efficient resolution of the dispute, taking into account all the circumstances of the case and from the point of view of an objective third party.”) See also, **RA-190**, *Transban* – Award, ¶ 188.

v. *Republic of Korea*, the tribunal significantly reduced the legal costs of one of the claimant's external counsel, from USD 38.8 million to USD 8.8 million, because it "did not rely on the evidence [...] they prepared [...] in support of any of its findings".⁹

III. THE CLAIMANTS' REQUEST FOR COSTS IS UNREASONABLE, DISPROPORTIONATE, AND EXCESSIVE

11. The Claimants' requested costs cannot be said to have been reasonably incurred when measured against the damages ultimately awarded and the course of the proceedings. A significant portion of the costs now claimed by the Claimants was the direct result of their decision to pursue an expansive and ultimately unsuccessful lost profits theory, despite Canada's motion warning that such an approach was legally untenable and would result in costs thrown away. Indeed, the Claimants engaged 16 experts and spent over USD 3,874,621 on their damages theory which was of no assistance at all to the Tribunal in assessing compensation. Canada cannot be held responsible for the Claimants' own miscalculation. As the Tribunal noted in *Procedural Order No. 20*, it remained open to considering cost consequences arising from the Claimants' misguided approach.¹⁰ That time is now for the Tribunal to make that consideration.

12. The Claimants' submission also suffers from an absence of sufficient detail and transparency to justify the quantum of costs they seek. This problem is exemplified by their treatment of expert-related expenses. The Claimants removed only 10% of the costs associated with two of their experts, even though one of the three reports prepared by each expert was not admitted into evidence at all.¹¹ They provide no coherent explanation for why such minimal deductions are appropriate in light of the Tribunal's exclusion of two entire reports, nor do they offer any information enabling the Tribunal to assess whether the remaining expenditures were reasonably incurred. In the circumstances, the Claimants have failed to furnish a minimally adequate justification for the costs claimed.¹²

⁹ **RA-194**, *Elliott Associates L.P. v. Republic of Korea* (PCA Case No. 2018-51), Award, 20 June 2023, ¶ 992.

¹⁰ *Procedural Order No. 20*, 5 January 2016, ¶¶ 39-40.

¹¹ Claimants' Costs Submission, p. 39.

¹² A further illustration of the lack of specificity in the Claimants' claim is the nearly USD 3 million they seek for time spent on the file by Mr. Frank Borowicz (see Claimants' Cost Submission, p. 43). With due respect to Mr. Borowicz, no meaningful justification has been provided for this extraordinary amount, which represents 10% of the Claimants'

13. Moreover, the Claimants have identified no persuasive authority endorsing an award of costs that so markedly outstrips the quantum of damages awarded. To the contrary, arbitral practice as referenced above, including the very authorities cited by the Claimants, demonstrates that costs awarded must bear a rational and proportionate relationship to the damages outcome of the case.

14. Turning to proportionality, the Claimants' costs request is more than double what Canada incurred, and close to six times the amount Canada claims.¹³ The scale of their request is manifestly disproportionate. The Claimants suggest that Canada's figures are not a meaningful comparator because Canada was represented by salaried in-house counsel.¹⁴ That contention is misplaced. First, in investor-State arbitration, it is common for respondent States to be represented by government counsel. This does not render their costs submissions non-comparable for proportionality purposes, which also consider the outcome achieved. Second, the Claimants' own counsel are Canadian law firms that operate at prevailing market rates in Canada. There is no basis to assume they charge disproportionately above market such as to justify the void between the disputing parties' total costs. The differential cannot be attributed to billing models or market pricing; it reflects the Claimants' own choices and inefficiencies, the burden of which cannot be shifted onto Canada.

15. The disproportionality becomes even more apparent when examining more closely the Claimants' costs. Canada's submission includes out-of-pocket disbursements that are directly comparable across disputing parties. As an example, for a hearing of identical length and involving the same number of documents to manage for both disputing parties, the Claimants' disbursements were almost twice those of Canada.¹⁵ They offer no explanation for why routine expenditures would cost them nearly double what Canada reasonably incurred for the same procedural steps. This alone underscores that the Claimants' approach to expenditures was neither efficient nor

entire cost claim. The Claimants' explanation of "consulting services" and "strategic advice" is plainly inadequate. The fact is Mr. Borowicz did not testify, submitted no report, made no submissions, and there is no evidence that his work product informed any aspect of the Tribunal's findings. Such an unexplained large expenditure cannot be regarded as reasonably incurred.

¹³ Canada incurred approximately CAD 16.3 million in total costs, but claims only about CAD 5.1 million, whereas the Claimants claim close to USD 30 million.

¹⁴ Claimants' Costs Submission, ¶ 39.

¹⁵ The Claimants' disbursements were about USD 9.1 million; Canada's disbursements were about CAD 4.7 million.

aligned with what is typically considered proportionate in arbitral practice.

16. The mere fact that the Claimants elected to incur huge expense for legal services, consulting assistance, and strategic advice does not elevate those costs to recoverable status. Measured against the principles of reasonableness and proportionality, the Claimants' request is excessive. They seek an amount that vastly exceeds the damages awarded. They spent millions pursuing a claim for lost profits that they should have known would be rejected. They have failed to provide a proper explanation for many of their costs, such as a nearly USD 3 million claim for consultancy fees. Their overall request is also wholly out of proportion to Canada's costs for a hearing of identical length and complexity. The Claimants have not provided the Tribunal with anything close to a reasonable benchmark for the assessment of costs.

IV. THE CLAIMANTS FAILED ON THE MAJORITY OF THE CLAIMS THEY ADVANCED IN THE ARBITRATION

17. Despite acknowledging that the applicable standard for cost compensation is the disputing parties' relative success,¹⁶ the Claimants nevertheless portray themselves as "unquestionably the successful party".¹⁷ This characterisation defies reality, especially given that the results they obtained in both the jurisdiction/liability phase and the damages phase were, at best, modest.

18. In the jurisdiction/liability phase, while some of Canada's legitimate jurisdictional objections were ultimately not accepted, Canada nonetheless prevailed on the substance of the majority of the Claimants' claims. The Tribunal found no breach of NAFTA in respect of 25 of the 27 challenged measures and determined that only two measures constituted treaty breaches. This mixed outcome underscores that the Claimants' overall success on liability was limited and that Canada's defenses were largely successful.

19. In the damages phase, the Claimants were equally unsuccessful. Their assertion that the Tribunal "awarded them an amount of damages that was greater than the highest amount argued for by Canada" is factually incorrect".¹⁸ Canada expressly submitted that "the most the Claimants

¹⁶ Claimants' Costs Submission, ¶ 15.

¹⁷ Claimants' Costs Submission, ¶ 17.

¹⁸ Claimants' Costs Submission, ¶ 19.

are entitled to in damages is USD 8.7 million”.¹⁹ The Tribunal ultimately awarded USD 7 million, which falls well within the maximum amount advanced by Canada. Far from supporting the Claimants’ characterisation of success, the damages outcome confirms that they recovered significantly less than they sought, namely only 1.5% thereof, and no more than what Canada indicated could be justified on the record.

20. Measured against the standard of relative success, these outcomes do not sustain the Claimants’ narrative nor their costs request. The Tribunal’s findings show that the Claimants succeeded on only a small fraction of the measures challenged, and the damages ultimately awarded were modest. These results underscore that the Claimants achieved only limited success in both phases of the arbitration. In such circumstances, any costs award must reflect the degree of relative success actually obtained.

V. THE CLAIMANTS’ UNREASONABLE CONDUCT WAS THE PRIMARY DRIVER OF UNNECESSARY COSTS

21. The Claimants devote considerable effort attempting to attribute fault to Canada’s conduct. However, they entirely overlook the far more serious deficiencies in their own conduct.

22. Above all, the Claimants advanced an entirely inappropriate and ultimately unsuccessful lost profits claim by seeking USD 458.6 million for a project that was never approved and never a going concern. They did so despite Canada’s early position at the outset that such a theory was legally untenable and would require extensive, costly, and unnecessary evidence. Their decision to pursue a flawed DCF based claim forced both disputing parties to incur substantial additional costs, including voluminous expert and witness evidence that was ultimately of no help to the Tribunal.

23. Compounding this, the Claimants repeatedly disregarded the procedural rules governing the arbitration. They attempted to file expert reports outside the agreed schedule, submitted late and incomplete pleadings, and engaged in blanket and improper confidentiality designations, all of which required Canada to divert substantial time and resources and demanded the Tribunal’s intervention on multiple occasions. These actions wasted time, increased costs, and undermined

¹⁹ Canada’s Counter-Memorial on Damages, 9 June 2017, ¶ 162.

orderly procedure.

24. Taken together, the Claimants' insistence on pursuing an untenable damages theory and their repeated procedural non-compliance were the primary drivers of unnecessary costs in the damages phase. These factors must be reflected in any apportionment of costs.²⁰

25. The Claimants' portrayal of Canada's conduct relies on broad generalisations that overlook the complexity of the proceedings. They selectively highlight isolated incidents and present them as representative of Canada's overall approach throughout this lengthy arbitration, thereby mischaracterising the record. Throughout the arbitration, Canada conducted itself with diligence, transparency, and respect for the established processes. Canada consistently met its procedural obligations and engaged constructively at every stage of the proceedings. Far from the narrative portrayed by the Claimants, Canada's approach has been marked by sustained good-faith participation and a commitment to facilitating an efficient and fair resolution of the dispute.

26. The Claimants' selective examples do not withstand scrutiny. For instance, they suggest that Canada failed to determine whether any electronic correspondence relating to the environmental assessment was recoverable and imply that Canada erred by not previously contacting the Joint Review Panel for documents before being ordered so by the Tribunal.²¹ The record shows otherwise. Canada's best efforts to retrieve documents from panel members well predated the Tribunal's direction of August 27, 2010.²² Canada communicated on August 19, 2010 with the result of its searches which the Tribunal noted in its *Procedural Order No. 10* that it "is satisfied that the Respondent is addressing all pending document requests by the Investors".²³ Canada also promptly complied with the additional direction set out in that Tribunal's letter of August 27, 2010.²⁴ This sequence of events confirms that the Claimants' portrayal of Canada's conduct is inaccurate and unsupported by the procedural record.

²⁰ See **RA-175**, *Eco Oro Minerals Corp. v. Republic of Colombia* (ICSID Case No. ARB/16/41), Declaration on Costs of Arbitrator Philippe Sands, 4 April 2024, ¶¶ 4-8.

²¹ Claimants' Cost Submission, ¶ 26.

²² **R-872**, Canada's Letters to Dr. Jill Grant, Dr. Robert Fournier, Dr. Gunter Muecke, 26 March 2010.

²³ Procedural Order No. 10, 2 September 2010, Operative ¶ 1.

²⁴ **R-873**, Tribunal Letter to the Disputing Parties, 27 August 2010; **R-874**, Canada's Letter to the Tribunal with attachments, 30 September 2010.

27. As a further example, the Claimants' allegation that Canada adopted an obstructive approach to document production in the damages phase is unfounded.²⁵ As *Procedural Order No. 21* makes clear, the parties "had agreed on 50 out of 60 of the Investors' document requests", leaving only a small number of issues for the Tribunal.²⁶ With respect to those remaining requests, the Tribunal denied or significantly limited nearly all of the items the Claimants continued to contest.²⁷ This example illustrates that the Claimants' allegation is not merely unsupported, but significantly overstated.

VI. ORDER REQUESTED

28. For all of the reasons set out above and in its Costs Submission of January 14, 2026, Canada respectfully requests that this Tribunal order that:

- a) The disputing parties bear their own share of the arbitration costs.
- b) The disputing parties bear their own legal fees, and expert costs and disbursements of the jurisdiction and liability phase.
- c) The Claimants reimburse Canada its legal fees (CAD 2,486,810.95), and expert costs and disbursements (CAD 2,658,119.60), incurred in the damages and costs phases for a total of CAD 5,144,930.55.²⁸

March 2, 2026

Respectfully submitted on behalf of Canada,



Scott Little
Yu Cai Tian
Darian Bakelaar
Benjamin Tait

²⁵ Claimants' Cost Submission, ¶ 29.

²⁶ *Procedural Order No. 21*, 6 June 2016, ¶ 8.

²⁷ Annex to *Procedural Order No. 21*, 6 June 2016, lines 36-37, 40-43, 51, 53, 59-60.

²⁸ Pursuant to the Tribunal's letter of October 6, 2025, Canada has updated its claimed Legal Fees and total claimed costs to reflect Legal Fees incurred following the filing of the initial Cost Submissions on January 14, 2026.

ANNEX I
ARBITRATION COSTS AND LEGAL FEES – COSTS PHASE (UPDATED)

A. Arbitration Costs

Arbitration Costs	Total (CAD)
Tribunal Advancement	\$101,427.75 ²⁹

B. Legal Fees

FISCAL YEAR 2025-2026			
January 15, 2026 to March 2, 2026			
Participant	Rate	Hours	Total Fees
Scott Little, General Counsel	\$306.61	25	\$7,665.25
Yu Cai Tian, Counsel	\$250.84	33	\$8,277.72
Paralegals:			
Darian Bakelaar	\$203.89	17	\$3,466.13
Benjamin Tait	\$189.68	45	\$8,535.60
TOTAL:			\$27,944.70

²⁹ Pursuant to the Tribunal's letter of October 6, 2025 Canada includes this amount as it relates to the total costs incurred by Canada in these proceedings and reflects the updated costs incurred since the filing of the initial Cost Submissions on January 14, 2026. However, as explained in its initial Cost Submission and in its submissions above, Canada does not claim this amount in costs.