

GUS VAN HARTEN

Associate Professor
Osgoode Hall Law School, York University
4700 Keele Street, Toronto, Canada M3J 1P3
1 416 650 8419 (tel); 1 416 736 5736 (fax)
gvanharten@osgoode.yorku.ca

PRIMARY SPECIALIZATIONS

International Investment Law, Administrative Law, Public Inquiries.

DEGREES AND QUALIFICATIONS

- 2002-2006 PhD in Law, London School of Economics & Political Science
Doctoral thesis: “The Emerging System of International Investment Arbitration”; supervised by M Loughlin and D Cass.
- 2004-present Member of the Bar of Ontario
- 1994-1999 Masters in Environmental Studies, York University
- 1995-1999 Bachelor of Laws, Osgoode Hall Law School
- 1990-1994 Bachelor of Arts (Hon), University of Guelph

ACADEMIC APPOINTMENTS

- July 2009-
present **Associate Professor**
Osgoode Hall Law School
- Jan 2008-
June 2008 **Assistant Professor**
Osgoode Hall Law School
- Sept 2005-
Dec 2007 **Lecturer in Law**
London School of Economics & Political Science

PROFESSIONAL EXPERIENCE

- June 2004-
January 2005 **Legal Advisor to the Commissioner**
Arar Inquiry, Ottawa
- June 2000-
May 2002 **Executive Assistant to the Commissioner**
Walkerton Inquiry, Toronto and Walkerton
- August 1999-
July 2000 **Law Clerk to the Justices**
Court of Appeal for Ontario

PUBLICATIONS

Books

Sovereign Choices and Sovereign Constraints: Judicial Restraint in Investment Treaty Arbitration (Oxford University Press, 2013) (approx. 200 pages) (peer reviewed).

Investment Treaty Arbitration and Public Law (Oxford University Press, 2007) (214 pages) (peer reviewed). *Published reviews:* J.E. Alvarez (2008) 102 *American Journal of International Law* 909; D.S. Meyers (2008) 31 *Houston Journal of International Law* 47; A. Newcombe (2008) 71 *Modern Law Review* 147; S.J. Shackelford (2008) 44 *Stanford Journal of International Law* 205; C. Wittayawarakul (2008) 5 *Manchester Journal of International Economic Law* 119.

Casebooks

with Gerald Heckman and David Mullan (50% attributed to Van Harten), *Administrative Law – Cases and Materials*, 6th edn (Emond Montgomery, 2010) (approx. 1400 pages) (non-peer reviewed).

Articles in Law Journals, Reviews, and Yearbooks

“The Canada-China investment treaty” (forthcoming) *Journal of International Economic Law (China)* (20 pages) (peer reviewed).

“A Critique of Investment Treaties and Investor-State Arbitration” (forthcoming) *Juridikum* (18 pages) (non-peer reviewed).

“Arbitrator Behaviour in Asymmetrical Adjudication: An Empirical Study of Investment Treaty Arbitration” (2012) 50 *Osgoode Hall Law Journal* 211 (57 pages) (peer reviewed).

“Reply to Franck, Garbin, and Perkins” *Columbia Yearbook on Investment Law 2010-2011* (2011) (21 pages) (peer reviewed).

“The Use of Quantitative Methods to Examine Possible Bias in Investment Arbitration” *Columbia Yearbook on Investment Law 2010-2011* (2011) (35 pages) (peer reviewed).

“TWAAIL and the Dabhol Arbitration” (2011) 3(1) *Trade, Law and Development* 131 (28 pages) (peer reviewed).

“Investment Rules and the Denial of Change” (2010) 60 *University of Toronto Law Journal* 893 (12 pages) (non-peer reviewed).

“Five Justifications for Investment Treaties: A Critical Discussion” (2010) 2(1) *Trade, Law and Development* 19 (40 pages) (peer reviewed).

“Weaknesses of Adjudication in the Face of Secret Evidence” (2009) 13 *International Journal of Evidence and Proof* 1 (30 pages) (peer reviewed).

“*Charkaoui and Secret Evidence*” (2008) 42 *Supreme Court Law Review* 251 (28 pages) (non-peer reviewed).

“The Public-Private Distinction in the International Arbitration of Individual Claims Against the State” (2007) 56 *International & Comparative Law Quarterly* 371 (24 pages) (peer reviewed).

with Martin Loughlin (80% attributed to Van Harten), “Investment Treaty Arbitration as a Species of Global Administrative Law” (2006) 17 *European Journal of International Law* 121 (30 pages) (peer reviewed).

“Private Authority and Transnational Governance: The Contours of the International System of Investor Protection” (2005) 12 *Review of International Political Economy* 600 (24 pages) (peer reviewed).

“Judicial Supervision of NAFTA Chapter 11 Tribunals” (2005) 21 *Arbitration International* 493 (15 pages) (non-peer reviewed).

“NAFTA Investor-State Dispute Resolution: *Pope & Talbot* and the Minimum Standard of Treatment” (2003) 9 *International Trade Law and Regulation* 139 (6 pages) (non-peer reviewed).

“Truth Before Punishment: A Defence of Public Inquiries” (2003) 29 *Queen’s Law Journal* 242 (41 pages) (peer reviewed).

“Guatemala’s Peace Accords in a Free Trade Area of the Americas” (2000) 3 *Yale Human Rights and Development Law Journal* 113 (46 pages) (non-peer reviewed).

Book Chapters

“Public Inquiries: Independence is the key” in S. Bagley and L. Jacobs (eds.) *Inquisitorial Processes in Administrative Regimes: Global Perspectives* (Ashgate, 2013) (23 pages) (peer reviewed).

“Investment Treaties as a Constraining Framework” in J. Christensen, S. Khan, and E. Paus (eds.) *Markets as Means or Master: Towards New Developmentalism* (Routledge, 2010) (28 pages) (peer reviewed).

“Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law” in S. Schill (ed.) *International Investment Law and Comparative Public Law* (Oxford University Press, 2010) (28 pages) (peer reviewed).

“Perceived Bias in Investment Treaty Arbitration” in M. Waibel *et al* (eds.) *The Backlash against Investment Arbitration: Perceptions and Reality* (Kluwer Law International, 2010) (peer reviewed).

“Investment Treaty Arbitration and the Policy Implications for Capital-Importing Countries” in D. Sanchez-Ancochea and K. Shadlen (eds.) *The Political Economy of Hemispheric Integration* (Palgrave Macmillan, 2008) (34 pages) (peer reviewed).

Other Papers, Commentary, Knowledge Mobilization

“Beware the discretionary choices of arbitrators” (forthcoming) *Columbia FDI Perspectives* (2 pages) (peer reviewed).

“Pro-Investor or Pro-State Bias in Investment Treaty Arbitration: Forthcoming Study Gives Cause for Concern” 2(3) *ITN Quarterly* (April 2012) (7 pages) (peer reviewed).

“The (Lack of) Women Arbitrators in Investment Treaty Arbitration” (February 2012) *Columbia FDI Perspectives* (3 pages) (peer reviewed).

Development and launch in October 2011 of a knowledge mobilization website, www.iiapp.org, intended to provide a gateway to research on investment treaty arbitration. The website includes a searchable database with 12 fields of information on about 200 investment treaty cases, summaries of about 20 investment treaty cases, biographical information on arbitrators, and other information on investment treaties and arbitration.

“Targeted reform of investor-state arbitration: Toward an independent rules-based system of trade and investment”, Report for the Macdonald Laurier Institute for Public Policy (2011) (14 pages) (peer reviewed).

“Contributions and Limitations of Empirical Research on Independence and Impartiality in International Investment Arbitration” *Oñati Socio-Legal Paper Series* (2011) (46 pages) (peer reviewed).

“Policy Linkages of Investor-State Dispute Settlement” *Commonwealth Trade Hot Topics*, Issue 82 (February 2011) (5 pages).

“Fairness and independence in investment arbitration: A critique of ‘Development and Outcomes in Investment Treaty Arbitration’” 1(2) *ITN Quarterly* 7 (December 2010) (18 pages).

with David Schneiderman, “Comment on Draft Text of the Canada-EU CETA Investment Chapter” (November 2010).

“Academic Experts Call for Reform of Investment Treaties” (October 2010), guest blog on www.triplecrisis.com.

“Thinking twice about a gold rush: *Pacific Rim v El Salvador*” (May 2010) *Columbia FDI Perspectives* (3 pages) (peer reviewed).

“Reforming the NAFTA Investment Regime” in *The Future of North American Trade Policy: Lessons from NAFTA*, Pardee Center Task Force Report (November 2009) (10 pages) (non-peer reviewed).

Written comment to the U.S. State Department Public Hearing on Bilateral Investment Treaty Reform (July 2009) (22 pages) (non-peer-reviewed).

“Policy Impacts of Investment Agreements for Andean States”, Research Report for Oxfam Spain (September 2008) (54 pages) (non-peer reviewed).

“A Case for an International Investment Court”, Working Paper No. 22/08 for the Society of International Economic Law Inaugural Conference, Geneva, July 15-17, 2008, available on SSRN: 1153432 (45 pages) (non-peer reviewed).

“Investment Provisions in Economic Partnership Agreements,” Report for Oxfam International (2008) (30 pages).

“*Dunsmuir* and the quixotic quest for certainty”, Case comment for www.thecourt.ca (27 March 2008) (4 pages).

“Chapter 11 and the *Franovich* Doctrine: Comparing State Liability Under NAFTA and EC Law,” Cahier de recherche 03-04, Centre Études internationales et Mondialisation, Université du Québec à Montréal (2003) (18 pages).

“Potential Implications of Future WTO Negotiations for North American Broadcasting Policies: An Overview,” Discussion paper prepared for the North American National Broadcasters Association (NANBA) (1998) (40 pages).

“Indigenous Rights to Land and Natural Resources,” Research paper prepared in Spanish and English with support from the Canadian International Development Agency and the Latin American Faculty of Social Sciences (FLACSO), Guatemala, 1997 (24 pages).

Short articles, interviews, or op-eds for various media including the Aboriginal Peoples Television Network, Bloomberg, CBC, CTV, Canadian Lawyer Magazine, Financial Post, Globe and Mail, Guardian, Hamilton Spectator, Investment Treaty News, Province, Toronto Star, Toronto Sun, Tyee, and Winnipeg Free Press.

Presentations (since 2006)

“Case Study: The International Investment Regime”, Legitimacy and International Courts Roundtable, Duke Law School, May 23, 2013.

“Comments on the Canada-India comprehensive economic partnership agreement (CEPA)”, House of Commons Standing Committee on International Trade, Ottawa, March 27, 2013.

“Moderated Discussion on Canada’s Foreign Investment Promotion and Protection Agreements and ICSID Ratification”, Canadian Council on International Law conference, Toronto, February 8, 2013.

“First Nations and the Canada-China FIPA”, Presentation to the Land Claims Agreements Coalition’s 4th National Conference, Ottawa, February 28, 2012.

“Presentation on Investment Treaties”, Queen’s Law School, November 7, 2012.

“Overview of Investor-State Arbitration”, Presentation to Japanese Agricultural Co-operative Executives, Osgoode Hall Law School, September 19, 2012.

“Special Program on Foreign Investment”, International Association of Law Libraries Annual Conference, Niagara Falls, October 4, 2012.

“Keynote Speech: Reform Needs of the International Investment Regime”, Roundtable Discussion with Members of the German Bundestag, Berlin, May 24, 2012.

“Public Law Aspects of International Investment Law”, Law and Globalization Seminar, Yale Law School, February 21, 2012.

“Legal Approaches to an Alternative Investment Policy”, Expert Workshop on Investment, Brussels, November 8, 2011.

“Administrative Law Blast”, Society of Ontario Adjudicators and Regulators Annual Conference, Toronto, November 3, 2011.

“Changing Claims in Investment Arbitration”, Fifth Annual Forum of Developing Country Investment Negotiators, Kampala, Uganda, October 18, 2011.

“Public Interest and Investor-State Arbitration”, International Chamber of Commerce Canada International Arbitration Conference, Ottawa, October 14, 2011.

“Public Inquiries: Independence is the Key”, University of Windsor Faculty of Law conference on Inquisitorial Processes in Administrative Regimes: Global Perspectives, Windsor, May 27, 2011.

“Analysis on Investment”, Canadian Environmental Law Association Briefing on the Canada-EU Trade Agreement (CETA), Toronto, May 20, 2011.

“Independence and Impartiality”, Society of Ontario Adjudicators and Regulators/ Osgoode Professional Development Certificate Program in Administrative Adjudication, Toronto, May 18, 2011.

Discussant for keynote address by Professor Jan Dalhuisen, GLSA conference on Transnational Law and a New Order of Global Governance, Toronto, May 9, 2011.

“Clustering, Accountability, and Governance”, The Canadian Institute’s Fundamentals of Administrative Law and Practice conference, Toronto, April 13, 2011.

“Investment Chapters in FTAs”, Capacity-building workshop organized by MSF and the Third World Network, Delhi, March 15, 2011.

“Contributions and Limitations of Empirical Research on Independence and Impartiality in International Investment Arbitration”, Osgoode-Jindal Joint Workshop on Global North and Global South Perspective on Transnational Governance: An Indian-Canadian Perspective, Jindal Global Law School, Delhi, March 13, 2011.

“Comments on the Abitibi Bowater settlement”, House of Commons Standing Committee on International Trade, Ottawa, March 8, 2011.

Discussant for three presentations on a panel at the 4th Annual Toronto Group Conference for the Study of International, Transnational, and Comparative Law, Toronto, January 29, 2011.

“Investment Aspects of the Proposed Canada-EU Trade Agreement”, Trade and Investment Research Project, Toronto, November 9, 2010.

“Political economy of NAFTA and other investment treaties”, University of Toronto, November 1, 2010.

“Overview of Empirical Research”, Directors at the Trade Law Bureau, Department of Foreign Affairs and International Trade, Ottawa, October 28, 2010.

“Investment Treaty Arbitration as the ‘Rule of Law’”, University of Ottawa Faculty of Law, International Law Club, October 28, 2010.

“Meeting the Challenges to Tribunal Independence”, The Canadian Institute Conference on Advanced Administrative Law & Practice, Ottawa, October 26, 2010.

“Governing Foreign Investment in India: The Evolving Relationship Between Domestic Law and International Treaties”, Osgoode-Jindal Joint Workshop on Global North and Global South Perspective on Transnational Governance: An Indian-Canadian Conversation, York University, Toronto, October 25, 2010.

“Public Inquiries: The New Frontier for Procedural Justice”, 6th Annual National Forum on Administrative Law & Practice, October 18, 2010.

“Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law”, McGill Law School, Montreal, October 14, 2010.

“Empirical Study of Potential Bias in Investment Treaty Arbitration”, LSE Transnational Law Project workshop, London, UK, September 1, 2010.

“The Use of Quantitative Methods to Study Investment Arbitration”, Oñati International Institute for the Study of Law Workshop on Socio-Legal Perspectives on the Adjudication of International Economic Disputes, Oñati, Spain, July 15, 2010.

“Investor-State Arbitration: Implications for Government Decision-making”, Ontario Ministry of Economic Development & Trade – International Trade Branch, Toronto, May 27, 2010.

“Investment Issues in RTA Negotiations”, Commonwealth Roundtable on Regional Trading & Integration Agreements, London, March 15-16, 2010.

“Empirical Research on Arbitrator Bias – Its Relevance and Its Limitations”, Columbia Law School Speaker Series on International Investment Law and Policy, New York, February 11, 2010.

“Elements of an International Investment Regime that Encourages Sustainable International Investment”, Fourth Columbia International Investment Conference, New York, November 6, 2009.

“Legal Aspects of the *Pacific Rim* claim against El Salvador”, York University, Toronto, October 28, 2009.

Respondent to a presentation by Martin Valasek on “International Investment Treaty Arbitration” to the Annual Workshop on Commercial and Consumer Law, Faculty of Law, Montreal, October 17, 2009.

“Adjudication and Closed Proceedings”, Ontario Bar Association’s 7th Charter Conference, Toronto, September 26, 2008.

“A Case for an International Investment Court”, Society of International Economic Law, Inaugural Conference on New Horizons of International Economic Law, Geneva, July 15-17, 2008.

“A Pragmatist Approach to the Standard of Review Analysis in *Dunsmuir*”, Roundtable on *Dunsmuir*, University of Toronto Faculty of Law, June 4, 2008.

“A Case for an International Investment Court”, Law and Society Association and the Canadian Law and Society Association, Joint Annual Meeting, Montreal, May 29-June 1, 2008.

Panel chair, “The Dilemmas of Free Trade: Is World Trade the New Terrain for a Global Constitution?”, Osgoode GLSA conference, May 10, 2008.

“Does a Perceived Structural Bias Undermine the Legitimacy of Arbitration?”, Harvard Law School conference on the Backlash Against Investment Arbitration, Cambridge, April 19, 2008.

“Secret Evidence, National Security, and the Courts”, Osgoode Professional Development conference on 2007 Constitutional Cases, Toronto, April 18, 2008.

“A Primer on Investment Arbitration”, National Critical Lawyers Group conference on Human Rights and Human Wrongs, University of Kent, Canterbury, February 24-25, 2007.

“The Investor Rights Approach in Investment Treaty Arbitration”, Queen Mary Centre for Commercial Law Studies conference on Human Rights and Capitalism: A Multi-Disciplinary Perspective on Globalization, London, September 18-19, 2006.

“Private Adjudication of Regulatory Disputes”, Institute for Advanced Legal Studies WG Hart Legal Workshop on The Retreat of the State: Challenges to Law and Lawyers, June 27-29, 2006.

“A Return to the Gay Nineties? The Political Economy of Investment Arbitration”, Institute for the Study of the Americas/ LSE conference on Responding to Globalization in the Americas, June 1-2, 2006.

External funding applications

Co-applicant, SSHRC Insight Grant on the role and impacts of litigation risk in regulatory decision-making, 2012-2015 (successful, \$113,000 total).

Co-applicant, SSHRC Partnership Development Grant on decision-making and dispute resolution in the mining sector in Ecuador, 2012-2015 (successful, \$200,000 total).

Lead Applicant, SSHRC Insight Development Grant on the role and impacts of litigation risk in regulatory decision-making, 2011 (recommended for funding but not ranked high enough to allow an award from available funds).

Co-applicant, SSHCR Major Collaborative Research Initiative on decision-making and dispute resolution in the mining sector in Ecuador, 2009-2010 (unsuccessful).

Peer reviews

Asian Journal of International Law
Alberta Law Review
UBC Law Review
Cambridge Journal of Economics
Cambridge University Press
Canadian Council for International Cooperation
Canadian Public Administration (2)
Columbia FDI Perspectives (3)
European Law Journal (2)
Forum on Democracy & Trade
Global Governance
Global Policy
Journal of International Dispute Settlement
Manitoba Law Journal
McGill Law Journal
Modern Law Review
National Research Foundation of South Africa
Osgoode Hall Law Journal
Osgoode Hall Review of Law and Policy
Oxford University Press (3)
Policy & Society
Queen’s Law Journal (2)
Refuge

Review of International Political Economy
Routledge (Books)
Social Sciences and Humanities Research Council of Canada
Sydney Law Review
Vale Columbia Center on Sustainable International Investment
World Bank
Yearbook on International Investment Law and Policy

SELECTED AWARDS

2012	SSHRC Insight Grant (co-applicant)
2012	SSHRC Partnership Development Grant (co-applicant)
2010	Osgoode Hall Law School Teaching Award
2010	Osgoode Hall Law School Research Fellowship
2006	William Robson Memorial Prize, LSE
2003-2005	Overseas Research Award, Universities UK
2002-2005	Doctoral Fellowship, SSHRC
1999	Michael Baptista Essay Prize, York University
1997	John Graham Fellowship, Osgoode Hall Law School
1996-1997	Ontario Graduate Scholarship
1996	Research Award, Canadian International Development Agency
1994	DC Masters Graduation Award, University of Guelph

LANGUAGES

Spanish (intermediate spoken and comprehension; basic written).