

Risk 12: Litigation / Treaty / Trade Disputes



Risk Definition

The government of Canada (DFAIT) may lose in significant or high profile litigation or trade/treaty disputes.

Compliance is often required with international legislation and commitments. Further, trade disputes and treaty compliance are both areas that are exposed to potential for litigation.

If it were to materialize, this risk has the potential to obstruct DFAIT's ability to achieve all of its strategic outcomes.

Sources of Risk

Increasingly Litigious Environment

An environmental factor driving this risk is the increasing tendency towards pursuing litigation as an option for recourse within society. As Canada becomes more litigious, DFAIT's exposure to litigation is increasing proportionally. Some sources of exposure include staffing issues, HR practices, LES wrongful dismissal suits, immigration disputes, Consular cases, and fraud cases. Further, commitments to the international community may expose Canada to litigation as well.

A key driver increasing Canada's exposure to this risk is Risk 7: Knowledge and Records Management. Trade disputes are litigated based on history and precedence; in the absence of good record-keeping, DFAIT is at higher risk for losing in litigation.

Also, Canadian LES can use either the local justice system or the Canadian legal system for litigation against the Crown, increasing the complexity of legal risk management.

Changing Global Business Context

As previously described, in an environment of increasing globalization, several other Departments that have enhanced their internal international trade capabilities are recruiting their own trade legal staff. Also, the existing legal management framework for trade litigation may not always be complied with. This exposes Canada to potential for inconsistent legal advice.

Provinces are domestic partners in ensuring compliance, while