

# HOWARD MANN

## INTERNATIONAL INVESTMENT LAW AND ARBITRATION

Chelsea, Québec, Canada

[howardlmann@gmail.com](mailto:howardlmann@gmail.com)

[www.howardmann.ca](http://www.howardmann.ca)

### CURRICULUM VITAE

**PERSONAL:**           Citizenship:    Canadian  
                          Languages:   English, French

#### LEGAL PRACTICE

- 1993–**           **Private practice specializing in international law**
- Private practice specializing in international law consulting services
  - Clients have included the Government of Canada, international organizations, national and international non-governmental organizations
- 1999–2020**    **Senior International Law Advisor, International Institute for Sustainable Development, Canada**
- Senior Legal Advisor on international investment law and sustainable development to leading Canadian research and policy institute on sustainable development
  - 2000–2009: Initiated and managed Investment and Sustainable Development program ([www.iisd.org/investment](http://www.iisd.org/investment))
- 2015- 2020**    **Senior Advisor to the Secretariat, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable**
- Senior Advisor on strategy and policy
  - Founded project on tax base erosion and profit shifting in the mining sector
- 1988–1993**    **Counsel, Department of Justice, Ottawa**
- Joined Department of Justice as articling Student, 1988
  - Counsel, International and Constitutional Law Section, 1988–1991
  - Counsel, Legal Services, Environment Canada, 1991–1993
  - Lead responsibility for international environmental negotiations for Department of Justice, Canada
- 1983–1988**    **Assistant to Prof. Rosalyn Higgins, Professor of International Law, London School of Economics, London UK**
- Academic research assistant, 1983–1988
  - Research for private legal practice, 1984–1988

## **RELATED APPOINTMENTS AND EXPERIENCE**

- 2019-**            **Adjunct Professor, University of Ottawa Faculty of Law**  
Appointed to teach a new seminar course on CML 4114 International Economic Law in the 21<sup>st</sup> Century: Assessing success and failure in a complicated world
- 2017-**            **Appointed as Arbitrator in *Saint Patrick Properties v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/16/40**
- 2016-2020**       **OECD Guiding Principles for Durable Extractive Contracts**, member of drafting advisory committee.
- 2015**            **The E15 Initiative: Strengthening the global trade and investment system for sustainable development, Task Force on Investment Policy**, a combined project of the World Economic Forum and International Centre Trade and Sustainable Development, Geneva, 2015
- 2012-2015**       **University of Dundee**  
Honorary Associate, Graduate School of Natural Resources Law, Policy and Management, Centre for Energy Petroleum and Mineral Law and Policy, appointment of the University Senate.
- 2009–2011**       **International Bar Association, Mining Law Committee**  
Member of the Administrative Committee for the development of the Model Mining Development Agreement for use in developing countries
- 2006–2008**       **International Commission of Jurists**  
Member of the Expert Panel on Corporate Complicity in International Crimes
- 2003–2004**       **Government of Canada**  
Member, Ad-Hoc Expert Advisory Group on international investment law, leading to the preparation of the 2004 Model Canadian bilateral investment treaty
- 1997–1999**       **Government of Canada**  
Member, Special Advisory Committee on international trade law and the environment
- 2000–2002**       **Adjunct Professor, University of Ottawa Faculty of Law**  
**1989–1991**       Sessional lecturer, international law on sustainable development, 2000–2002;  
Sessional lecturer, public international law introductory course, 1989–1991

## **PRACTICE HIGHLIGHTS**

- Appointed as Adjunct Professor, University of Ottawa Faculty of Law, specializing in international economic law and globalization.
- Appointed as Arbitrator in *Saint Patrick Properties v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/16/40, 2017

- OECD, member of drafting advisory committee for OECD Guiding Principles for Durable Extractive Contracts, 2020
- Senior advisor to Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development in transition process for IISD to become the IGF Secretariat, and on strategy and policy direction; major project manager.
- Provides legal and policy advice to developing country governments on investment treaty negotiations, now numbering over 75 governments including through regional organizations, 2005–present.
- Provides legal advice to several developing country governments on domestic laws relating to foreign investment, in particular in Africa, 2010–present.
- Lead consulting lawyer, Southern Africa Development Community (SADC), preparation of SADC Model Bilateral Investment Treaty Template and Commentary, 2010–2012; and revisions, 2016–2018.
- Lead, SADC/IISD Training Programme, Negotiating International Investment Treaties, Pretoria, 30 July–3 August 2012.
- Member of advisory team to Government of Ecuador, Ministerio de Recursos Naturales no Renovables, Proyecto de Diseño de Contrato Minero (Model National Mine Development Contract project), June–October 2010.
- Member of the Drafting Committee and the Administrative Committee for the development of the International Bar Association’s Model Mining Development Agreement for use in developing countries, 2009–2011.
- Prepared a briefing paper for Prof. John Ruggie, United Nations Special Representative of the Secretary General for Business and Human Rights, entitled *International Investment Agreements, Business and Human Rights: Key Issues and Opportunities*; active participation in related expert advisory meetings on the resulting “Responsible Contracting” project, 2007–2011.
- Team leader, training session on international investment law for developing country investment treaty negotiators, at the United Nations Economic Commission for Latin America and the Caribbean, Santiago Chile (2007), involving over 20 private practice, government and non-governmental lawyers.
- Lead drafter, first *amicus curiae* submission in international investment law arbitrations, cited in *Methanex v. United States*, 2000–2005.
- Lead drafter, first *amicus curiae* submission under International Centre for the Settlement of Investment Disputes (ICSID) revised Arbitration Rules, cited in *Bivater v. Tanzania*, 2006–2007.
- Lead writer, IISD Model International Agreement on Investment for Sustainable Development, 2004–2005.

- 2004–2005, Special Counsel on behalf of municipal governments and others, Federal Court of Appeal, Canada, in *Sumas Energy 2, Inc. v. Canada (National Energy Board)* (Federal Court of Appeal)[2006]1 F.C.R. 456, the first case in Canada’s domestic courts to address the scope of NAFTA’s Chapter Eleven on Investment.
- Prepared international law and Canadian constitutional law case materials for Supreme Court of Canada and Federal Court of Canada cases on international sovereign immunity (*United States of America v. Public Service Alliance of Canada* [1992] 2 S.C.R. 50), and Canadian and international environmental law.
- Member of Canadian delegation to multiple international negotiations at the United Nations, including climate change, hazardous waste, United Nations Conference on Environment and Development (UNCED)1992,, and in NAFTA and bilateral US-Canada negotiations. Received Prime Ministerial citation for work relating to UNCED, 1992.
- Contributed legal advice on the preparation of several pieces of Canadian federal environmental law, including the Canadian Environmental Impact Assessment Act and regulations under the Canadian Environmental Protection Act.

## **EDUCATION**

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| <b>1985–1988</b> | <b>PH.D., London School of Economics</b> , London, United Kingdom, joint degree in international law and international relations |
| <b>1983–1984</b> | <b>LL.M., London School of Economics</b> , London, United Kingdom, International Law   |
| <b>1982–1983</b> | <b>Barreau du Québec</b> , Bar Admission Course  |
| <b>1979–1982</b> | <b>McGill University, Faculty of Law</b> , Montreal, Canada, Bachelor of Civil Law   |
| <b>1975–1978</b> | <b>Concordia University</b> , Montreal, Canada, Bachelor of Arts   |

## **PUBLICATIONS**

- *Environmental, Social and Economic Development Provisions in Investment Contracts: A Resource for Government Lawyers in the Commonwealth*, Commonwealth Secretariat publication, forthcoming 2020/2021, co-author with Motoko Aizawa.
- “**Civil Society and International Investment Arbitration: Tracing the Evolution of Concern**”, co-author with Nathalie Bernasconi-Osterwalder and Martin Dietrich Brauch, in Thomas Schultz & Federico Ortino eds., *The Oxford Handbook of International Arbitration*, Oxford University Press, 2020.
- [\*\*Don't Throw Caution to the Wind: In the green energy transition, not all critical minerals will be goldmines\*\*](#), Co-author with Perrine Toledano, Martin Dietrich Brauch and Solina Kennedy, Columbia Centre on Sustainable Investment, May 2020.

- [“Making FDI more sustainable: Towards an indicative list of FDI sustainability characteristics”](#), co-author with Karl Sauvant, *Journal of World Investment & Trade*, Vol. 20(6) 2019, pp 916-952.
- [“Investment Facilitation for Sustainable Development: Getting it right for developing countries”](#), co-authored with Martin Dietrich Brauch, *Perspectives*, Columbia University, August 2019.
- [“Modelling for Sustainable Development”](#), co-author with group of 11 authors, IISD, 2019.
- [“CETA and Investment: What is it About and What lies Beyond?”](#), co-author with Nathalie Bernasconi-Osterwalder; pp. 339-358 in *Foreign Investment under the Comprehensive Economic and Trade Agreement (CETA)*, eds. Makane Mbengue and Stefanie Schacherer, Springer, 2019.
- [“Using Permits and Contracts to Reduce International Investment Agreement \(IIA\) Risks to Climate Change Regulations: The Washington Gas Purchase”](#), IISD, 2019.
- [“Mining a Mirage: Reassessing the shared-value Paradigm in light of the technological advances in the mining sector”](#), co-author with Aaron Cosbey, Nicholas Maennling, Perrine Toledano, Jeff Geipel and Martin Dietrich Brauch, IISD/Columbia Centre for Sustainable Investment, October 2016.
- [“The New Frontier: Economic Rights of Foreign Investors versus Government Policy Space for Economic Development.”](#) pp. 289-323 in Chin Leng Lim, ed., *Alternative Views of the International Law on Foreign Investment: Essays in Honour of M. Sornorajah*, Oxford University Press, 2016.
- [“The Gold-Plated CETA: Whose gold and at what cost?”](#), IISD Commentary, March 2016.
- [“The TPP: A Deal too Far”](#), IISD Commentary, January 2016.
- [“IISD Handbook on Mining Contract Negotiations for Developing Countries VOLUME I: PREPARING FOR SUCCESS”](#), April 2015.
- [“Investment Law and the 1%: On which side of the divide?”](#) Investment Treaty News, Vol. 6, Issue 2, p. 12, May 2015.
- [“Bilateral Investment Treaties, Mining and National Champions: Making it Work”](#), United Nations Economic Commission for Africa, Background paper for the Ad Hoc Experts Group Meeting: Bilateral Investment Treaties and National Champions 18th Meeting of the Inter-Governmental Committee of Experts (ICE) “National Champions, Foreign Direct Investment and Structural Transformation in Eastern Africa” Kinshasa, February 17–20, 2014; with Aaron Cosbey.
- [“Reconceptualizing International Investment Law: It’s Role in Sustainable Development”](#), Lewis & Clark Law Review, Volume 17, 2013, pp. 521-544.
- [“Foreign Investment in Agriculture: Some Critical Contract Issues”](#), Uniform Law Review/Revue de Droit Uniforme, Volume XVII, 2012-1/2.

- [“Stabilization in Investment Contracts: Rethinking the Context, Reformulating the Result”](#), Investment Treaty News, Volume 2, October 2011.
- [“Civil Society Perspectives: What Do Key Stakeholders Expect From The International Investment Regime?”](#), in Jose Alvarez and Karl Sauvant, eds., *The Evolving International Investment Regime, Expectations, Realities, Options*, Oxford University Press, 2011.
- [“Foreign Investment Contracts and Sustainable Development: The New Foundations Begin to Emerge”](#), Investment Treaty News, Volume 1, July 2011.
- [“The Realities of Sustainability”](#), featured interview, International Financial Law Review, 4 October, 2010, prepared for International Bar Association.
- [“A Thirst for Distant Lands: Foreign Investment in Agricultural Land and Water”](#), Howard Mann and Carin Smaller, International Institute for Sustainable Development, 2009.
- [“International Investment Agreements, Business and Human Rights: Key Issues and Opportunities”](#), prepared for the United Nations Special Representative for Business and Human Rights, February, 2008.
- [“Transparency and Consistency in International Investment Law: Can the Problems be Fixed by Tinkering?”](#), in Karl P. Sauvant ed., *Appeals Mechanism in International Investment Disputes*, Oxford University Press, 2008.
- [“The Final Decision in Methanex v. United States: Some New Wine in Some New Bottles”](#), Transnational Dispute Management Volume 3, Issue 5, December 2006.
- [“Implications of International Trade and Investment Agreements for Water and Water Services: Some Responses from Other Sources of International Law”](#), reprinted in Transnational Dispute Management, Volume 3, Issue 5, 2006.
- [“IISD Model Agreement on Investment for Sustainable Development”](#), lead author, with Konrad von Moltke, Aaron Cosbey and Luke Peterson, International Institute for Sustainable Development, 2005. Reprinted in the ICSID Review, Fall, 2005. Second edition published 2006.
- [“The Emperor’s Clothes Come Off: A Comment on Republic of Ghana v. Telekom Malaysia Berhad, and the Problem of Arbitrator Conflict of Interest”](#), Transnational Dispute Management, Volume 2, Issue 1, 2005.
- [“International Law and the Child Soldier”](#), Volume 36 ICLQ 1987, pp. 32-57.

## CONFERENCES

- [International Arbitration and Globalization: The Battle Between Private “Justice” and Public Law”](#), Hyman Soloway Annual Lecture in International Economic Law, University of Ottawa Faculty of Law, January 15, 2020

- **Taxation, revenue management and resource nationalism: what are the next steps for achieving the right balance?**, Mining INDABA, Cape Town, South Africa, February 2019
- [Debunking Resource Nationalism Parts 1 & 2](#), Centre for Energy, Petroleum and Mining Law and Policy, University of Dundee, October 24, 2018
- **Reimagining International Investment Governance**, 13<sup>th</sup> Annual Columbia International Investment Conference, Columbia University, New York, September 2018
- **Redefining Trade Negotiations: Why Today's Model No Longer Works for Sustainable Development**, 3rd Annual "Building Africa's Negotiating Capacity for Improved Engagement with the World", Accra, Ghana, 5-8 December 2017
- **Closing panel, debate on Legitimacy Deficit in Arbitrations Involving States**, Association Suisse de l'Arbitrage, Annual Conference, Zurich, January 2016
- ["Salient Legal Issues in the Substantive Standards of Protection in CETA"](#), McGill University Faculty of Law, Conference on the Canada – EU Comprehensive Economic and Trade Agreement, November 1, 2014
- **"Community Engagement – Frameworks and Approaches"**, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, , 20 October 2014
- **"The MMDA and International Best Practices for the Mining Industry"**, Mining in Africa: Opportunities and Legal Challenges, International Bar Association, Dar es Salaam, 8 September 2014
- **"Bilateral Investment Treaties, Mining and National Champions: Making it Work"**, Ad Hoc Experts Group Meeting: Bilateral Investment Treaties and National Champions, 18 February, 2014
- **Workshop on International Investment Treaties & China 2013**, Shanghai Consultative Centre on the World Trade Organization,, 11 November, 2013
- **"Preparing for Mining Contract Negotiations"**, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, 28 October 2013
- **"Do We Need Investment Treaties?"**, International Law Students' Association, International Law Weekend, October 2013, Fordham University, New York.
- **"Where Public Meets Private: International Law and the Dynamic Interpretation of Treaties in the Context of the Draft UNCITRAL Rules on Transparency"**, VALE Columbia Centre on Sustainable International Investment, February 2013, New York.
- **"Is There a Need to Rebalance the Investor-State Relationship?"**, Seventh Columbia International Investment Conference, VALE Columbia Centre on Sustainable International Investment, November 2012, New York.



- **“Whether to Protect Investment from Tax Increases? Stabilization and Fiscal Arrangements in a Sustainable Development Context”**, Dundee University Centre for Energy, Petroleum and Mineral Law and Policy, Annual Mining Seminar (“Minerals Taxation and Sustainable Development”), June 2012, London.
- **“Integrating Corporate Standards Into International Investment Treaties”**, Kings College, University of London, Conference on Embedding Human Rights into Investment Treaties, May 2011, London.
- **“The International Bar Association’s Model Mining Development Agreement (MMDA)”**, Dundee University Centre for Energy, Petroleum and Mineral Law and Policy, Annual Mining Seminar (“Minerals and Mining: What Role in a Sustainable Future?”), May 2011, Dundee, Scotland.
- **“The New Gold Rush: Foreign Investment in Developing Country Natural Resources”**, American Bar Association Section on International Law, April 2011, Washington D.C.
- **“Public Policy for FDI and Sustainable Recovery”**, Fourth Columbia Investment Conference, November 2009, Columbia University.
- **“Foreign Investment in Developing Country Agriculture”**, Experts Meeting, United Nations Food and Agriculture Organization, Rome, July 2009.
- **“Civil Society Perspectives: What Do Key Stakeholders Expect From the International Investment Regime?”**, Second Columbia International Investment Conference, October 2007, Columbia University.
- **“Transparency and Consistency in International Investment Law: Can the Problems be Fixed by Tinkering?”**, First Columbia International Investment Conference, October 2006, Columbia University.
- **[“Is Fair and Equitable Treatment Fair, Equitable, Just or Under Law?”](#)**, American Society of International Law, 100<sup>th</sup> Anniversary Meeting, March 2006.
- **“Implications of International Trade and Investment Agreements for Water and Water Services: Some Responses from Other Sources of International Law”**, Fourth World Water Forum, Mexico City, March 2006.
- **“Procedural Issues in International Investor-State Arbitrations”**, United Nations Conference on Trade and Development (UNCTAD), Commission on Investment, Technology and Related Financial Issues, 9<sup>th</sup> Session: Policy Dialogue on “Investor-State Disputes and Policy Implications”, Geneva, March 8, 2005.
- **“Reshaping International Investment Agreements”**, Royal Institute for International Affairs (Chatham House) Conference, “Trade and Sustainable Development Priorities, Post Doha”, London, April 2003.