

Submission to the Standing Committee on the Economy,

Government of Saskatchewan

By Gary Schoenfeldt, Chairperson,

Trade Committee of the Saskatchewan Federation of Labour

The Trade Investment and Labour Mobility Agreement: A Massive Attack on Democracy

The Trade Committee would like to take this opportunity to thank the Saskatchewan Government for holding these public hearings. As you may know, the governments of Alberta and British Columbia signed what has been called a “far – reaching” Trade, Investment and Labour Mobility Agreement between those two provinces without the sort of widespread public consultation that one might expect prior to accession to such an agreement.¹ That apparent lack of consideration for the views of the public remains the most perplexing and alarming signal that has emanated from Edmonton² and Victoria since those legislatures began to encourage Saskatchewan and other provinces to join them in the agreement known by its acronym as TILMA.

A meeting sponsored by the CD Howe Institute in Regina on April 20, 2007, promoting TILMA with the help of Alberta and BC government officials, underlined those concerns when a request was made for media to not report on the meeting.³

Therefore we are pleased that this government is not following in the footsteps of our two media-shy and non-consultative western neighbors. It is the hope of the committee that I represent, that the Saskatchewan Government will tread with extreme caution as it traverses what we see as a potential minefield, in its review of the implications of TILMA on our traditional democratic way of life in Saskatchewan.

Lest there be any doubt, please let me state from the beginning: The SFL Trade Committee is not against interprovincial trade, investment or labour mobility. It is simply of the opinion that decisions on those matters should left to democratically elected governments, certainly not by means of the Trade, Investment and Labour Mobility Agreement with its NAFTA – style enforcement mechanisms.

¹ 2007 Legislative Session Third Session 38th Parliament Official Report of Debates of the Legislative Assembly of British Columbia (Blues) Hansard Blues Transcript, Monday March 5, 2007.

² Briarpatch Magazine, December 2006 / January 2007 *Ralph's last laugh: Interprovincial trade deal ties the hands of government*, by Ellen Gould.

³ Straight Goods, April 24, 2007 “(Not) talking about TILMA CD Howe holds secret meeting on trade talks” by Gary Schoenfeldt <http://www.straightgoods.ca/ViewFeature7.cfm?Ref=236>.

1.) What are the possible legislative Impacts of TILMA on workers, in particular, how will TILMA affect labour rights?

The Trade committee is concerned that TILMA will provide corporations with the ability to conduct attacks on workers' rights that have been, up until now, protected under The Trade Union Act, Occupational Health and Safety Act, Labour Standards Act, the Human Rights Code and other legislation.

The Trade Union Act is not listed among the exceptions in Part V, Exceptions⁴ to the TILMA between Alberta and BC. Saskatchewan union members currently enjoy greater protections under the Saskatchewan Trade Union Act than what we feel are enjoyed by our sisters and brothers in other provinces. If an Alberta company objected to Saskatchewan's labour laws on the grounds that they are not "equal to" or as weak as in other jurisdictions, how would TILMA affect Saskatchewan's ability to protect those rights on behalf of unionized workers? There are likely any number of employers who would jump at the chance to force Saskatchewan to scrap its modestly progressive labour laws in favor of the US – style legislation that is becoming popular in jurisdictions where workers' rights are seen as a hindrance to profit. We think that such an attack would be a certainty, under TILMA.

Part V of TILMA "grants" exceptions to some legislation such as labour standards, occupational health and safety regulations, human rights codes, pension regulations, privacy laws and so on, but those exceptions appear to be temporary, since TILMA prescribes that they be subject to annual review, in processes that are to be conducted "with a view to reducing their scope".⁵

If exceptions are to be treated as something that should be diminished over time, it is obvious that there is no respect for them. That lack of respect, we submit, would follow its logical course and eventually be extended to workers. The great efforts of generations of labouring people would be targeted by those with a financial interest in seeing that work destroyed. Hard – won democratic rights that all workers enjoy would become the first casualty of the new trade initiatives, with workers' rights subjected to challenge on the grounds that observing them would cut into some investor's right to make a profit, on the excuse that those rights are "barriers to trade".

⁴ Trade, Investment and Labour Mobility Agreement (TILMA) Between British Columbia and Alberta, April 2006 Part V, page 18

⁵ TILMA Part III, Article 17, 1. (b).

As business leaders and politicians⁶ join editorialists and talk show demagogues in demanding that Saskatchewan sign TILMA immediately, it is not even known to the present government if these exceptions would be permanent⁷ or if they would be capped.

We are also concerned that a chill would be applied to any ideas of introducing new legislation favorable to workers or to society in general, because of the need under TILMA to meet the agreement's standards instead of the will of the people. If amendments to existing legislation were contemplated, it seems clear - - from reading the TILMA document signed by Alberta and BC -- that such amendments would have to be "filtered" through the provisions of TILMA and that "better than" provisions in any regional legislation would have to be watered down to the lowest common denominator, nullifying democratically enacted regulations.

⁶ Regina Leader Post, March 10, 2007, letter by Ken Krawetz, Saskatchewan Party, "TILMA contains no threat to labour". Also, a rebuttal, Regina leader Post, March 27, 2007, "Exactly who is pushing TILMA?" by Gary Schoenfeldt, Chair, SFL Trade Committee.

⁷ *Review of TILMA* by Steven Shrybman, Goldblatt, Mitchell LLP Lawyers for the Ontario Federation of Labour, (Shrybman) February 1, 2007, pages 8 – 12.

2.) Labour Mobility

TILMA seems predicated on several myths not the least of which is the so-called problem of labour mobility. Canadian workers are already very mobile.⁸ In fact Saskatchewan workers are so mobile that the government has taken preventative measures to stop senior managers from leaving⁹ and to attract and retain nurses¹⁰. The Saskatchewan Government held a Young Workers Conference this year to address the concerns of youth including the reasons they would either stay in or leave Saskatchewan. The Premier and the Mayor of Regina have made recent attempts to lure workers of all kinds back from Ontario, Alberta and other jurisdictions.

Lawyer Steven Shrybman did a February 2007 study for the Ontario Federation of Labour in which he points out that the Canadian Institute of Chartered Accountants is but one professional body that stands opposed to TILMA being allowed to regulate professional standards.¹¹ That study also points out that under the existing Agreement on Internal Trade (AIT) Saskatchewan is already dealing with Labour Mobility¹² and that in fact if “serious and unjustified impediments to labour mobility remain in Canada, there is little evidence to suggest that the problem is widespread.”¹³

Part VI of TILMA states that regulations already exist for labour mobility, except for a number of listed professions. The SFL Trade Committee cannot understand why those professions can't be regulated in terms of mobility without TILMA. There are many professions that are already regulated by the Red Seal Apprenticeship Certification Program and numerous professional organizations in Canada. Why, we ask, do we need a new and all-encompassing regulatory regime when such structures already exist, and why would we as citizens allow such sweeping regulatory changes to occur by allowing TILMA to become a blank cheque for what we see as a massive deregulation initiative?

We are concerned that in the rush to deregulate professions, training will devolve into the lowest common denominator under TILMA. Saskatchewan residents will be short-changed by poor quality work, as cheap labour replaces skilled trades and professions. Saskatchewan workers are already mobile. We see no problem that needs to be addressed by TILMA. We say proper training, apprenticeship strengthening and higher education - not deregulation - is the answer. There is no emergency.

⁸ Shrybman, page 13 – 22. “*The Myth of Interprovincial trade barriers and TILMA’s Alleged Economic Benefits*”, By Mark Lee and Erin Weir, February 2007.

⁹ Leader Post “*Sask to spend \$19M to keep pay competitive*” by Anne Kyle August 29, 2006.

¹⁰ The Canadian press “*Sask Government to spend \$25M for recruitment of nurses*” by Tim Cook, September 5, 2006.

¹¹ Shrybman page 20, 21.

¹² Shrybman page 16, 17 notes that “Of ...23 disputes [on labour mobility of certain professions] 2 were upheld, 5 are ongoing and most of the others have either been withdrawn or resolved.”

¹³ Ibid.

3) Public Services: Will they remain viable under TILMA?

Saskatchewan residents are very protective of their Crown Corporations. This was illustrated in the last provincial election when some politicians, to their undoing, suggested that privatization may have been a possibility the voters might like to entertain. The public, however, voted to retain Crown Corporations, to protect public services. Under TILMA it does not look like we will have to worry about those kinds of issues coming up at election time since those decisions would be subject to trade rules, not to the will of the people.

TILMA says that there shall be no obstacles to trade or investment.”¹⁴ One wonders how long publicly owned automobile insurance would survive under TILMA after private insurance companies demand equal treatment as they enjoy in provinces where the right to make increasing profit over-rides the public interest.

Alberta and British Columbia have agreed in TILMA to bring Crowns into the agreement by 2009. We see that as a repudiation of public ownership by the two provinces. If the comments of government representatives from Alberta and BC at the CD Howe – sponsored meeting in Regina earlier this year are any indication, unrestrained trade is, at least in the minds of TILMA’s promoters, synonymous with the public interest.¹⁵ But we believe that TILMA is a way for moneyed interests from outside Saskatchewan to remove the so-called “barriers” to profit¹⁶ that publicly – owned enterprises endow upon the people of Saskatchewan, through infrastructure development, low cost services and the good –paying jobs that we enjoy.

Saskatchewan’s Crowns and other public services offer security, value and consistency of purpose that is embedded in our history, politics and culture. Valued for their contribution to the quality of life Saskatchewan, we wonder what their future would be under a market – driven regime like TILMA. Perhaps we need look no farther than the North American Free Trade Agreement (NAFTA). Chapter 11 of NAFTA also calls for “no less favourable” treatment to “investors of another Party”, language that has resulted in what is known as “Investor – State Litigation” that the Romanow Commission has been told threatens Canadian Medicare.¹⁷ We question why we would want to impose upon ourselves such a litigious and non-accountable system of deciding what is in the public interest.

¹⁴ TILMA Part II, B, General Rules, pages 2 and 3.

¹⁵ Straight Goods, April 24, 2007 “(Not) talking about TILMA CD Howe holds secret meeting on trade talks” by Gary Schoenfeldt <http://www.straightgoods.ca/ViewFeature7.cfm?Ref=236>

¹⁶ CCPA BC Office “Summary” February 2007, “Asking for Trouble, the Trade, Investment and Labour Mobility Agreement” by Ellen Gould.

¹⁷ Shrybman page 27, quoting David Schneiderman, “Investment Rules and The New Constitutionalism,” Law and Social Inquiry, Journal of the American Bar Foundation, Volume 25, Number 3, Summer 2000, pp 757 – 787; Jon R. Johnson, “How will international trade agreements affect Canadian Health Care?” The Commission on the Future of Health Care in Canada: Discussion Paper No. 22.

4) Local procurement: Will TILMA allow governments, boards or other public institutions to support local employment and local business?

The Saskatchewan Government along with many municipal governments, school boards, health authorities and publicly administered bodies give preference to local businesses. Local economic development and a local tax base provide local investors with incentives to expand within the communities in which they live and ensure local people have access to stable sources of employment. To that end, procurement policies exist that are designed to keep local government institutions from spending too much of their constituents' tax dollars on goods and services that result in wealth leaving the region.

TILMA will not allow this kind of "protectionism" unless the Parties are willing to pay repeated penalties that could reach as high as \$5 Million in each instance.¹⁸ TILMA is all about capital mobility, the freedom to dabble in markets without any responsibility to communities.

If an out of province business bid lower on a Saskatchewan Government contract, as is prescribed by TILMA, would it have to hire locally? What would happen if it brought in workers from a jurisdiction with lower minimum wages? What if those workers decided to join a local union? Would local labour legislation be considered a barrier to trade? Ellen Gould's CCPA analysis indicates that TILMA's rules on procurement¹⁹ would apply despite a "preference" by "a Party." In other words, local procurement and hiring preferences would be targeted under TILMA regardless of the will of local citizens or those whom they had elected.²⁰

TILMA is designed to strip citizens and governments of their rights to regulate in the public interest. A similar law in Oregon just dealing with land use has resulted in over 6,000 legal claims worth \$6 billion.²¹ TILMA is an agreement that will use the language of trade and investment to usher in an era of deregulation that would be impossible otherwise, due to the constraints of civil society and the institutions of democracy. It is part of an international attempt to harmonize every area of public policy, across the Americas.²²

¹⁸ Canadian Centre for Policy Alternatives, Ellen Gould, February 2007, "Asking for Trouble, the Trade Investment and Labour Mobility Agreement", "TILMA's Dispute Process", pp. 33 – 36. Also. See *Legislative Report No. 2 – 2007 Section B*, Office of the City Solicitor, City of Saskatoon February 26, 2007 (Analysis of B.C. – Alberta TILMA by the City of Saskatoon reproduced by Saskatchewan Federation of Labour under the heading "City of Saskatoon Prefers "Local Choice").

¹⁹ TILMA Article 4 and 14.

²⁰ CCPA / Gould, page 18. Also, Review of the Conference board of Canada's report: Assessing the Impact of Saskatchewan Joining the BC-Alberta Trade, Investment and Labour Mobility Agreement by John F Helliwell, Page 1.

²¹ The Tyee, Corporate Rights Deal to Make Us April Fools, by Murray Dobbin, January 24, 2007 <http://thetyee.ca/Views/2007/01/24/TILMA/>

²² Ibid, page 1

In Correspondence Between December 2006 and the beginning of 2007, between SFL President Larry Hubich and Minister of Government Relations, The Honourable Harry Van Mulligan, President Hubich asked Minister Van Mulligan about this.²³ The Minister's reply indicated that it was not entirely clear whether a preference for local hiring would likely be overruled under a TILMA challenge. This is troubling to us because it is a very important point that Saskatchewan workers, communities, government bodies and related organizations and boards will want to know about prior the signing of any such agreement.

Furthermore as one Saskatchewan resident, University of Regina Sessional Lecturer, and CCPA researcher, Loretta Gerlach put it: "There must be a firm mandate from constituents" before any such sweeping agreement is made on behalf of the people of the province.²⁴ The SFL Trade Committee concurs with this assessment and would venture to add that such a far-reaching decision affecting people's democratic institutions and the ability to govern in the interests of the people, must be only be done in complete agreement with the will of a majority of the citizenry.

²³ Hubich/Van Mulligan Q & A #5. Hubich letter to NDP MLAs Dec. 21, 2006, Van Mulligan's reply, February 8, 2007. "TILMA does not prescribe local hiring..." and "It is not yet clear if/ how preferential local hiring by Crown corporations ... will be affected..." Also see TILMA Article 14.

²⁴ CCPA Saskatchewan Notes, Vol. 5 Issue 6, Dec. 2006 Examining the implications of TILMA, by Loretta Gerlach.

5) Similarities to the North American Free Trade Agreement (NAFTA) and its notorious “Chapter 11”

As stated above in #3 Public Services, the similarities in the TILMA of the Investor State Provisions of NAFTA are of concern to Saskatchewan residents including former Premier Roy Romanow who commissioned a study of Chapter 11 revealing its potential negative impact on Canadian Medicare.²⁵

Why, we ask, should corporations or individuals, especially those from outside Saskatchewan be allowed to claim damages for their definition of “lost profits”, “extra costs” or “unjustifiable regulations” when a Saskatchewan government entity makes regulations at the behest of and to the betterment of Saskatchewan residents? We have seen how this works under NAFTA. Canada has been forced to respond to foreign litigation 15 times up to March 1, 2007. Of these cases:

- 6 were challenges to Canadian environmental protection regulations in which Canada lost 2 with damages awarded.
- 3 involved our natural resources.
- 2 postal services challenges are underway
- 1 cultural policy challenge was filed
- 1 agriculture challenge and,
- 2 “other” challenges

These cases resulted in \$27 million being awarded, payable by the taxes of Canadians.

Mexican taxpayers paid out \$18.2 million in damages, in 17 cases in which they were named as respondent. While the USA had 14 cases filed against it, the total cost of damages assessed were \$0.00.²⁶

As we believe will occur with TILMA, these decisions affecting governance of nations were heard in NAFTA tribunals, not open to the public. This in our view is a most anti-democratic way of removing regulations that have been developed rather than arbitrarily imposed over many years, the result of democratic, parliamentary and lawful processes. Saskatchewan workers believe that secret tribunals are not the way to deal with major policy-altering litigation proceedings.²⁷

²⁵ Shrybman page 27

²⁶ CCPA, NAFTA Chapter 11 Investor – State Disputes, compiled by Scott Sinclair, Trade and Investment research Project. March 1, 2007.

²⁷ Saskatchewan Union of Nurses, letter to the Honourable Len Taylor, Saskatchewan Minister of Health, December 11, 2006, by President Rosalee Longmoore, RN.

It is important to note that TILMA will give firms based in low tax jurisdictions such as Alberta, an added advantage over what they already enjoy when competing with Saskatchewan firms. Under TILMA the already considerable downward pressure on our corporate and personal taxes will increase irresistibly, much like has happened under NAFTA between Canada and the USA. While this may well be the true goal of the proponents of TILMA, some Saskatchewan businesses may not survive such a reorganization of the economy. ²⁸

Just as important to Saskatchewan workers is the economic impact of TILMA on our government budgeting. With its NAFTA - style dispute resolutions mechanisms and its downward ratcheting effect on regulations, Saskatchewan is sure to find itself on the receiving end of litigation with the inevitable demands for damages. Why should Saskatchewan workers want to have their taxes diverted away from areas where they want them applied and have them handed over to outside interests as “damages” just because some corporate entity doesn’t like the way we run our affairs? And how will the government be able to absorb the added budgetary pressures of having to set aside millions of our dollars for potential settlements under TILMA? It is our opinion that the money will have to be taken from somewhere, thereby adding yet another dimension to the deregulatory pressures that seem to be the defining feature of TILMA.

If any government, board or municipal council hopes to stay in power for any length of time, it must give the people something of value. If that value to the people is seen as a barrier to trade, investment or labour mobility, the only way that it will be able to be maintained under TILMA will be if the Party governing the jurisdiction where the regulation exists is willing to pay possible damages. This is unacceptable, and yet there may be no way around it. No wonder the Canadian Union of Public Employees call TILMA a “deregulation agenda disguised as a trade agreement”. It will allow corporations to veto measures taken by provinces and by local governments in the public interest. ²⁹

²⁸ Helliwell, pp. 2 and 3.

²⁹ CUPE Communications, media release, Secret trade deal flies in the face of democracy: CCPA, CUPE BC calls for public hearings, MLA debate on TILMA in wake of damning reports. February 15, 2007. Also, CCPA, Behind the Numbers: The Myth of interprovincial trade Barriers and TILMA’s Alleged Economic Benefits, by Marc Lee and Erin Weir, February 2007, page 2.

6) TILMA, a Massive Attack on Democracy

The SFL Trade Committee after months of study has not been able to find any rational justification for TILMA. It is the representation of a reckless betrayal of the public trust and the public interest.³⁰ The fact is there are very few barriers to interprovincial trade, investment or labour mobility. The Trade Committee has been studying this for many months and has not been able to find any substantial list of such barriers.³¹ Studying this issue, we tired of hearing repetitive anecdotes about the “scandal” of uncolored margarine in Quebec and the ridiculous, unproven assertion that truckers cannot haul bales of hay across provincial borders without stopping and restacking their trailers. Even beer, that quintessential symbol of all that is Canadian, the elixir that used to be shut off in an instant during a strike in any province can now be shipped across borders with little or no restrictions. Moosehead, Pil, Molsons and Labatts all grace the shelves of retail outlets from coast to coast. It may not be the greatest thing for a trade unionist to brag about, but neither can the brewers complain that a labour dispute in the 21st Century might cause a province-wide “beer drought” like used to be the case just a few decades ago. The reason is simple. There are no significant barriers to interprovincial trade.³² Nor are there any unreasonable barriers to labour mobility or investment between the provinces. Canada is a free country.

The idea that a government mandate can be relegated to a so-called treaty³³ and parliamentary debate based on the will of the electorate handed over to be dealt with by a mere tribunal is to our minds the most gross abuse of and distortion of democracy.

TILMA should be torn up on the grounds that we, the citizens of Saskatchewan, reserve the right through the election of responsible government to do the kinds of things that TILMA’s proponents hope to subvert to the service of their own narrow market-driven, profit-seeking interests. In the most simple of terms, the best that we can say about TILMA is this: TILMA is bad. TILMA is a massive attack on Democracy.

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³⁰ Shrybman, page 5, Ibid.

³¹ Interprovincial Barriers to Trade, an updated review of the evidence by Brian R. Copeland, Prepared for the BC Ministry of Employment and Investment, January 1998.

³² The Myth of Interprovincial trade barriers and TILMA’s Alleged Economic benefits, By Mark Lee and Erin Weir, February 2007

³³ Shrybman, page 29.

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