

**Presentation to Executive Committee
of the
City of Regina**

May 23, 2007

**EX07-28
Implication of TILMA on City Operations**



Trade, Investment and Labour Mobility Agreement

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Greetings from the Saskatchewan Federation of Labour (SFL) to the Executive Committee of the City of Regina. Thank you for this opportunity to exercise a provision of the Charter of Rights and Freedoms involving freedom of speech on a subject that ironically would impact democratic rights. The democratic rights of individuals who elect local governments and the powers of those local governments who in turn act on behalf of their constituents. All of this framed under the caption of trade, investment and labour mobility and encompassed under a trade scheme called TILMA or the Trade, Investment and Labour Mobility Agreement.

We would also like to thank the City Manager and the Office of the City Solicitor for their analysis of the impact of TILMA and although we would have hoped that the Administration would have provided specific direction to City Council rather than a position of neutrality, we am pleased that time and effort were undertaken to bring forward some of the concerns over TILMA. Similar concerns which we shared with you on April 25, 2007.

B.C and Alberta's Best Kept Secret - TILMA

The SFL has continued to raise concerns over the secrecy surrounding the Agreement in particular the process surrounding its initial signing on April 28, 2006, and its subsequent effective date of April 1, 2007. In the two signatory provinces, only now are meetings being held with stakeholder groups such as the MASH sector (municipalities, academia, schools and health). Unfortunately like the residents of this Province and across Canada, residents of B.C. and

Alberta still have little knowledge of the agreement their Premiers have signed. We continue to work to ensure that the public is provided information regarding TILMA and engage their elected officials on this issue.

We also acknowledge your umbrella organization, the Saskatchewan Urban Municipalities Association (SUMA) and the City of Saskatoon for their analysis on this important topic. We applaud them for the respective positions they have taken on TILMA and their stalwart defence of those positions.

In my previous submission, I provided a fairly lengthy opinion on the potential problems with TILMA. Today, I will review the report from the City of Regina Administration and respond to the analysis. I would agree that unfortunately there is no “economic stigmata” of the actual impact of TILMA on municipalities but we think it is important to consider the potential impact on all levels of government. In fact, TILMA contains many provisions that are open to interpretation and carry with them the potential of unintended consequences. The interpretation of many of these clauses will not be fully understood until the dispute panel tests the limits.

SFL Supports trade, investment and labour mobility

The Saskatchewan Federation of Labour has continued to state that we are not opposed to trade, investment or labour mobility. In fact, the fruits of the prosperity of our 93,000 affiliates involve those

economic factors. Workers in Canada have continued to pursue opportunities throughout Canada and we are pleased that labour mobility issues, have been effectively addressed by the Agreement on Internal Trade.

In addition, we support trade as it applies both between Provinces and internationally. Unfortunately, trade agreements like the North American Free Trade Agreement have not served Canadians fairly and with respect to jobs, it is estimated that Canada lost in excess of 300,000 jobs as a result of NAFTA. The softwood lumber issues is one which still resonates among Canadians as an issue which the United States chose to disregard the rules of trade under NAFTA.

Regarding investment, like many individuals the labour community has been fortunate to be able to participate in the Canadian economy through participation in numerous pension plans. These plans continue to be an economic driver in the Canadian economy, owning real estate, bonds, and significant cash holdings.

It is evident that as working people, trade unionists form a part of the economy as we work, live and support our communities, your communities.

It was interesting to hear people being interviewed on the street after the last City of Regina budget announcement of a mill rate increase. I know that must have been difficult for you to ask the Regina residents for such financial support but the residents responded positively. In fact, residents see a direct link between local

government, taxation and the services they receive. Your constituents rely upon you for to be accountable in your decision making. They also elect you to ensure that you provide the necessary safeguards to ensure a safe, vibrant and sustainable City. We share a common position, I being a front line worker and you as front line elected officials.

TILMA – A Solution Looking for a Problem

In order to understand the Trade, Investment and Labour Mobility Agreement, you must consider its partner agreement, the Agreement on Internal Trade (AIT). In fact both agreements coexist to create an extremely comprehensive agreement. It is our position that any safeguards previously protected under the AIT would now fall under TILMA as provisions from either agreement can now be used. In addition, as your Administration has stated, TILMA is designed with top-down coverage meaning that all measures are included and only those measures considered exempted or as legitimate objectives remain. Unfortunately the agreement continues to place all measures under an annual review to ensure that they do not operate to restrict or impair trade, investment or labour mobility.

In the Administration's brief, the comment is made with respect to creating a "free trading" zone between the two provinces. In fact what is actually being created is a free market or a free enterprise system where the public domain is forced to compete with private

interests. To use such phraseology is to accept the notion that there are significant barriers to trade. In fact, there are few trade barriers restricting east to west trade and within the AIT those which remain include regulations relating to margarine, butter blends and imitation dairy products. The “so-called” barrier of how bales are to be stacked for transportation appears to relate to issues of road width or overpass height rather than specific provincial highway regulations. Although proponents of TILMA indicate that there are numerous trade barriers, they fail to substantiate what barriers exist.

The ultimate adjudicator will be a private court system where decisions rendered will not be based on the principles of common law but on the principles of international trade law. The arguments have continued to be that international trade rules are not designed to fairly adjudicate issues involving public policy.

Obligations under TILMA

Article 3: No Obstacles

This article clearly places all measures/bylaws under the TILMA lens conditional upon their restriction or impairment to trade, investment or labour mobility. Simply stated, in a free enterprise system, basically all measures would be considered a restriction or impairment to trade, investment or labour mobility. Such measures as those applicable to the legislative authority granting Cities their power and indirectly allowing Cities to pass bylaws for the common good.

Article 5 Standards and Regulations

This Article places significant limitations on existing and future government measures in B.C. and Alberta. Consideration must be given to all measures under the TILMA lens with respect to potential impairment or restriction to trade, investment and labour mobility. The SFL believes that *“to mutually recognize or otherwise reconcile,”* means to harmonize and under the TILMA lens to be reduced to lowest standards if not eliminated. Again TILMA dictates that in a free enterprise system, measures may be maintained which do not limit or restrict trade, investment or labour mobility. That a province is not obliged to accept a lower standard would entail overlooking the considerable pressure it might be under to do so if faced with fines up to \$5 million under the dispute resolution process for any measures ruled to be in violation of TILMA. The penalties would become the ultimate basis for deregulation or re-regulation.

Article 5.3 further provides the ultimate restriction in that no new measures will be permitted between the parties *“that operate to restrict or impair trade, investment or labour mobility”*.

Article 6 Legitimate Objectives

This Article allows measures to be maintained by the Parties to the Agreement and only after the application of the three-part TILMA test:

- a) *“the purpose of the measure is to achieve a legitimate objective;*

b) the measures is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and

c) the measure is not a disguised restriction to trade, investment or labour mobility.”

It is still uncertain as to what standing municipalities in B.C. and Alberta will have to defend their measures once TILMA is fully implemented on April 1, 2009. We would agree with the Administration's concern as to whether municipalities would be provided intervenor status during the dispute panel hearings. Also we would agree that bylaws, which are defined under TILMA, would be subject to the terms of the Agreement and Article 6 does not reference bylaws being considered legitimate objectives.

The Administration acknowledges that under other trade schemes such as the North American Free Trade Agreement, governments have not been successful in defending actions, which are similar to legitimate objectives. We agree that although untested, TILMA would impact the City of Regina in its ability to govern.

TILMA and Codes

With respect to various codes, we believe that standardization has been in place for many years with respect to National Fire and Building Codes. Depending upon the jurisdiction, some codes/bylaws may provide greater requirements and as a result may not be able to sustain the “legitimate objective” test of Article 6.

TILMA and Bylaws

With respect to land use restrictions, the Regina Zoning Bylaw would be seen as a limit or restriction to trade, investment and labour mobility. Current regulations in place to control commercial development may be seen as a restriction or impairment and subject to a TILMA challenge. We would agree with the statement, *“It is possible that some of these types of regulations would restrict trade. To the extent that these types of regulations in the Regina Zoning Bylaw do not work towards the enhancement of sustainable development, consumer and environmental protection and health, safety and labour standards or cannot be justified as a legitimate objective as defined in TILMA.”*

The City of Regina has continued to review The Licensing Bylaw and has voluntarily abandoned many of the typical forms of licensing found in similar jurisdictions. We agree with the Administration’s view that under TILMA, *“Where the City of Regina requires licensing and another jurisdiction does not, there would be an expectation that the differences in licensing would be minimized and that consequently the City of Regina’s licensing provisions (where more restrictive) might not apply.”*

Economic Incentives

Business subsidies and regional economic development are an integral part of the local government economic landscape. Local

governments often enter into such arrangements in order to attract the potential new jobs, which come with the prospective business. Such actions would be considered discriminatory under TILMA and provisions contained within Article 12 would prohibit such activities basically restricting preferential treatment of specific sectors or regions of the economy. Provinces or Cities, which have booming economies such as in Alberta, do not have to worry about subsidies as they can provide lower taxes to all sectors of the economy.

Procurement

The purchasing thresholds contained within TILMA are significantly lower than those contained within the AIT. As a result of the lower thresholds, additional time and administration costs would result due to more of the current practices being subjected to the rules of TILMA. This would involve more tendering across Canada which could result in costly time delays. Probably most significant would be the impact on local businesses which rely upon local government for business.

Article 17: Ministerial Committee

One Article overlooked by many in their analysis of TILMA is Article 17 and forms a significant limitation on those measures considered as legitimate objectives. TILMA continues to subject legitimate measures to an annual review so even measures considered as legitimate one year could be reduced or restricted in a subsequent year.

1. *“Each Party shall appoint a Minister to a Ministerial Committee to:*

b) review annually the exceptions listed in Part V with a view to reducing their scope;”

This would mean that the City of Regina would have to be prepared for the administration of their bylaws and the annual defense of bylaws to ensure their compliance with TILMA.

Dispute Panel

TILMA establishes a dispute panel similar to that found within international trade agreements such as NAFTA. Although there is a mediation process which precedes the actual TILMA private court system, most disputes will be resolved by the panel. Any measure can be taken before the dispute panel if it is a restriction or impairment to trade, investment or labour mobility. In fact, even an interpretation of the Agreement can be taken to the panel. Municipalities may not face direct challenges but their measures/bylaws would be threatened. The Provinces will be subjected to the monetary penalties levied by the panel even when involving municipal bylaws. The Province could choose to passively pay the penalties which could reach up to \$5-million per claim, demand payment from the municipality or withhold transfer payments. Remember that there is no limit to the number of challenges which can occur against a measure/bylaw. What becomes evident is that

with numerous claims against a measure/bylaw, eventually elected officials may not be able to afford to maintain the measure/bylaw and subsequently choose abandonment. Ultimately all the claims would be paid by you and me as supporters of the municipal tax base and the provincial tax base.

Again we would like to thank the Administration for their analysis which we believe when combined with the position of SUMA and the City of Saskatoon, will allow to you to say **KNOW** TILMA and as a result send a message to the current and future governments that inter-provincial trade schemes like TILMA do not support your Vision of Regina.

Thank you,

Marvin Meickel, Treasurer
Saskatchewan Federation of Labour