

PUBLIC NOTICE

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

ATTACHMENT

1. Proposed Bylaw No. 8583.

B2) Enquiry - Councillor C. Clark (December 18, 2006)
Trade, Investment, Labour Mobility Agreement
(File No. 127-1)

RECOMMENDATION: that the direction of City Council issue.

Councillor Clark made the following enquiry at the meeting of Council on December 18, 2006:

“Would the Administration please investigate the terms of the Trade, Investment and Labour Mobility Agreement which has been signed between British Columbia and Alberta, with an open invitation to join to other provinces and report to Council on the impact that this agreement would have on the City of Saskatoon’s jurisdictional powers.

In addition, would the Administration also inquire with the Provincial Government as to their intentions in regards to signing onto the Tilma Agreement with Alberta and British Columbia?”

This report is in response to the first part of the enquiry.

BACKGROUND

In April of 2006, the Provinces of British Columbia and Alberta signed a Trade, Investment and Labour Mobility Agreement (copy attached). The Agreement comes into effect on April 1, 2007. “TILMA”, as it is called, is basically an interprovincial free trade agreement. As set out in the attached material from the British Columbia and Alberta governments, the Agreement is comprehensive, applying to all government measures such as legislation, regulations, standards, policies, procedures and guidelines that affect trade, investment and labour mobility.

The key requirement of the Agreement is that governments will ensure that government measures will not operate to restrict or impair trade, investment or labour mobility between the parties. A key goal of the Agreement is to mutually recognize or reconcile standards and regulations that operate to restrict or impair trade, investment or labour mobility between the parties.

Governments which are alleged to be restricting or impairing trade, investment or labour mobility contrary to the Agreement may be taken to a binding dispute resolution process by any individual or corporation within the boundaries of the signatory provinces. The dispute resolution body may award damages of up to \$5 million.

There are exceptions set out in Part V of the Agreement. These exceptions list measures which are exempt from the operation of the Agreement. The Agreement also includes a list of “legitimate objectives” which can be used by governments as a justification and defence of their actions when appearing before the dispute resolution body. However that body, and not the government, will decide whether or not, in fact, the law, regulation or government policy can be protected as being in aid of a “legitimate objective”.

A province may withdraw from the Agreement by giving 12 months’ written notice.

Like other free trade agreements, TILMA is the subject of significant debate. Attached is a “pro-TILMA” article by Mr. Robert Roach of The Canada West Foundation and an “anti-TILMA” article by Ms. Ellen Gould of The Canadian Centre for Policy Alternatives. There are a number of articles for and against TILMA available on the Web.

TILMA is written to include municipalities. However, the municipalities have been granted a two-year transitional period. During that time, the two Provinces are to negotiate any required special provisions, exclusions and transitional measures to determine the extent of the coverage of the Agreement regarding municipalities. As of April 1, 2009, TILMA (with presumably some amendments) will be fully applicable to municipalities in British Columbia and Alberta.

We asked the Alberta Urban Municipalities Association and the Union of British Columbia Municipalities to share with us their position papers, research, etc. on the effect of TILMA on municipalities. We were advised that they have no such information. They were told of TILMA shortly before signing, and advised that they would be consulted during the two-year transition period. No consultations have occurred to date.

It is our understanding from a City of Burnaby council report that in British Columbia, leading up to TILMA, consultations were carried out by the Provincial Government with government departments and agencies, business groups, academic institutions and provincial regulatory bodies. No consultations were done with municipalities and no apparent analysis was done of the real impact of TILMA on municipalities.

We have not had an opportunity, as yet, to talk to individual Alberta cities as to what is occurring in their communities.

Effect on The City of Saskatoon

This report is not intended to deal with the pros and cons of TILMA for the Province of Saskatchewan. Its sole focus is to review the possible effects of a TILMA-type agreement on The City of Saskatoon. Whether TILMA is good for the Province and whether TILMA is good for Saskatoon can be two different issues. This is because of the significantly different roles of provincial governments and local governments.

Provinces are in the business of regulating trade, investment and labour mobility. They set regulations for the registration of vehicles and businesses. They set the criteria for professions and trades. They set minimum standards in areas of health and safety. They regulate transportation, agriculture, energy and minerals, forests, fish and wildlife, the environment and financial institutions. There is an argument to be made that it makes sense to try to harmonize at least some standards and regulations across provincial boundaries (although the critics would say that TILMA goes far beyond this goal).

The role of cities however, is to establish unique rules in specific areas to achieve the specific goals of their community. This aspect of local government is described in several different ways. For the purposes of this report, it is called local choice. Local choice allows cities to deal with local issues according to the wishes of their citizens.

The right of cities to local choice has been considerably strengthened in recent years by both the courts and by legislation. For example, in 2001, the Supreme Court of Canada in *Spray Tech v. Town of Hudson* upheld the town's right to set higher standards for the use of pesticides than those set by the provincial and federal governments. In Saskatchewan, *The Cities Act* was passed in 2002 with the support of all three political parties. A major purpose of *The Cities Act* was to recognize and strengthen the right to local choice.

There is, in our view, a fundamental problem in trying to reconcile local choice with the TILMA concept of standardization and harmonization. A few examples of this in Saskatoon are as follows:

1. **Enhancement of Downtown**

Saskatoon's success in maintaining a healthy downtown is widely recognized. That success has been created in many ways by many different people. One component of that success was the issue of the location of stadium-style theatres. Throughout North America, stadium-style theatres have been built almost exclusively in suburban areas. Saskatoon went against the trend and insisted that stadium-style theatres be built only in downtown. The risk, of course, was that the theatre companies would refuse to invest in Saskatoon and the community would have no stadium-style theatre. In the end, that did not happen. The Galaxy Theatre was built downtown. By all accounts, it is a significant success for both the theatre company and for a healthy downtown. That is the kind of independence and risk-taking by cities which does not fit with the TILMA concept of standardization of regulations affecting business investment.

2. **Business Subsidies**

Part of maintaining a healthy downtown in Saskatoon has been the granting of tax incentives for developing housing downtown. In addition, the areas of the City immediately adjacent to downtown have been declared a Municipal Enterprise Zone. The purpose of the Zone is to revitalize the core areas by encouraging business investment through a variety of small incentives. All of these incentives are not only successful in achieving their purpose, but also are widely supported in the community. They are examples of local choice. All such incentives would be prohibited by TILMA as business subsidies, as we understand the Agreement.

Interestingly, as we read TILMA, because taxation is exempted, TILMA would not deal with or prohibit the real business subsidies in the municipal world, which are the ability of cities like Calgary to offer lower property taxes because of much larger infusions of cash from the Province of Alberta and a much lower dependence on property tax for funding education in that Province.

3. **Residential Housing Standards**

Saskatoon is a leader in Canada in setting property maintenance standards for residential property and making enforcement thereof a priority. This is an example of local choice. There is a direct connection between regulations like this and the condition of a City's housing stock. The condition of housing stock, in turn, is a significant factor in the creation and maintenance of healthy, stable urban neighbourhoods. Under TILMA, as we understand it, "investments" could include residential rental property purchases. Investors may be able to challenge the City's right to set higher standards for this industry, and perhaps, also, the City's right to set higher standards of enforcement.

4. **Smoking**

Saskatoon attempted to pass its first comprehensive anti-smoking bylaw in 1996 and succeeded in passing it, after a change in provincial legislation, in 2003. This was in advance of all other cities in the province.

More recently, Saskatoon has taken advantage of the right to set higher than minimum standards by banning smoking on outdoor patios and decks, and is moving towards restricting smoking in outdoor stadiums, etc. This is in advance of most cities in Canada. This is an exercise of local choice. It would not be permitted if harmonization with Regina, Calgary and Vancouver was required.

5. **Petitions and Referendums**

At the local government level, citizens have the ability to directly exercise their right to local choice through referendums. Saskatoon citizens take more advantage of this right than virtually any other city in Canada. Referendums often deal with business regulation and investment. For example, Sunday shopping was permitted in Saskatoon as a result of a referendum. As another example, it is fair to assume that Saskatoon is the only city in Canada which has, on two separate occasions, through a referendum, refused to allow a casino business within its boundaries. As we read TILMA, referendums would not have recognition or priority.

Based on the information that we have to date, we do not believe that local choice can be adequately protected by adding specific exceptions to TILMA. Some areas, such as “land use regulation” could be added to the TILMA exceptions. However, local choice is far broader than a few areas. It is also unpredictable. Over the last two decades, store hours, smoking and casinos have all been major issues of local choice in Saskatoon. None of these were obvious before they happened. They could not be written into “exceptions” in advance, because no one could predict that they were going to become issues. In order to write appropriate exceptions into TILMA, we need to know now what will be the local choice issues in Saskatoon in 2010, 2015 and 2020. And we do not (and can not) know that.

Writing “legitimate objectives” for cities into TILMA is also unsatisfactory. At best, legitimate objectives give cities a chance to defend themselves when challenged before a TILMA tribunal. The problem is that that defence is expensive and uncertain. The safe and reasonable course for cities under TILMA is to avoid being challenged. And the way to do that, will be to do what everyone else is doing, when everyone else is doing it. Cities like Saskatoon, which have a long history of doing things first and doing things differently, will be at the greatest risk of TILMA challenges.

SUMMARY

As we mentioned at the beginning, this report is not about the pros and cons of TILMA for the Province of Saskatchewan. That debate revolves around significant issues of inter-provincial trade.

The sole issue dealt with in this report is the potential effect of TILMA on local government, and specifically The City of Saskatoon. The issue for Saskatoon is the issue of local choice and its importance and priority to this community.

The assumption of the governments of British Columbia and Alberta seems to be that TILMA can be “adjusted” to fit cities. That is why they have been included from the beginning, with a two-year transition period. If that assumption is shared by City Council, then the two-year transition period is an option to be considered.

Our concern is that the British Columbia/Alberta assumption appears to have been made without any study or consultation. Based on the information that we have to date, it is equally possible to assume that TILMA cannot be adjusted to fit cities. It may well be that the issue which will be facing cities is “Do you want TILMA or do you want local choice, or at least a protected local choice, free from the risk of TILMA challenges?” That would be a very different debate than what is proposed for British Columbia and Alberta.

If City Council is concerned about local choice, the safer course is to ask the Provincial Government, should it decide to sign TILMA, to exempt cities completely at the beginning. A process can then occur which identifies whether TILMA and local choice can co-exist, or whether cities must essentially pick between TILMA and local choice. This process can occur without pre-assumptions. It would also be possible to discuss options not considered in British Columbia and Alberta, such as whether individual cities would have the right to opt-in or opt-out of TILMA. That would be an example of local choice applied to this issue.

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ATTACHMENTS

1. Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta dated April, 2006;
2. Document entitled “The British Columbia-Alberta Trade, Investment, and Labour Mobility Agreement” (two pages);
3. Two-page article by Mr. Robert Roach of The Canada West Foundation; and
4. Two-page article by Ms. Ellen Gould of The Canadian Centre for Policy Alternatives.

Respectfully submitted,

Janice Mann, City Clerk

Theresa Dust, City Solicitor