

The DARK SIDE of TILMA

by Barry O'Neill

When the TILMA. the new trade deal between Alberta and British Columbia. comes into force in April most people in the two provinces will have still never heard of it. That's too bad. because it will have a big impact on their lives.

The Trade, Investment and Labour Mobility Agreement was in the works since 2004 and was announced in 2006. Despite the fact that it will have far more impact than most legislation. it was negotiated without debate in the legislatures. public hearings or public consultation.

Business interests were among the only groups consulted. The Conference Board of Canada. hired to look at the TILMA for the BC government. confined its questions to 24 organizations, "[...] from government ministries and 73 from industry organizations." The Conference Board report, incidentally. was written in 2005. but was kept secret until January 2007 when it was released only days before Freedom of Information requests came due.

Why all the secrecy? After all. in the 1980s Canadians actually got to fight an election on the Free Trade Agreement enacted by the Mulroney government. And the promises being made for the TILMA are enormous. BC's Premier Gordon Campbell says that the TILMA "will create \$4.8 billion of additional economic activity. It's expected to create about 80,000 new jobs in the province:"² That comes to

an increase in GDP of about 3.8% and an increase in employment of 3.6%.

Perhaps things were kept quiet because those big numbers are imaginary. They come from the Conference Board study paid for by the province. The Conference Board got the numbers by asking their key consulting groups (Industry and ministries) for their guesstimate as to what the impact of the deal would be.

People who have actually looked at the numbers suggest the real possible benefits are much smaller. Ron Parker. an Industry Canada deputy minister. told the Senate Committee on Banking. Trade and Commerce that studies suggest that the real cost of inter-provincial trade barriers is between 0.2% or 0.4% of GDP.³ Even those much lower figures are largely based on studies done before the provinces signed the Agreement on Internal Trade (AIT) in the mid-1990s to reduce trade barriers. In other words. claims for the TILMA's benefits are more than 10 times higher than the total impact of trade barriers. The deal is being oversold. Potential benefits are just not that big.

¹ The Conference Board of Canada. *An Impact Assessment of the BC-Alberta Trade, Investment and Labour Mobility Agreement*, September 2005. page 29.

² Campbell. Gordon. Speech to the Union of BC Municipalities. October 27. 2006. ³Parker, Ron, testifying before the Standing Senate Committee on Banking, Trade and Commerce. Issue 7. Meeting of October 4, 2006.



What are the people of Alberta and BC giving for minimal gains? The Canada West Foundation's Todd Hirsch told newspapers that the TILMA erased "the provincial boundary for all purposes except voting and the colour of the license plate";⁴

When our Fathers of Confederation created Canada as a federation, they felt that there was some value in having provincial boundaries. Even some of the people carefully selected to give the right answers to the Conference Board expressed doubts. Some of the government respondents suggested that "there are legitimate reasons for different standards and regulations:" "the specific regional and sector benefits may not outweigh the costs:" and "the agreement does not recognize that the growth or management of a provincial economy is a legitimate objective";⁵

In the hands of an aggressive business or industry, the TILMA is a powerful tool to undermine a government's ability to make decisions in the interests of its citizens.

Key to this are the deal's investment provisions that give more rights to corporations than those found in international agreements like the NAFTA. Under the TILMA,

"measures" that restrict investment are not permitted. No new standards or regulations that restrict investment are allowed.

It doesn't take a lot of imagination to think of ways that such language could be used against government activities. Almost any municipal zoning bylaw restricts investment rights in some way or another. Ethical or local purchasing polices will be prohibited. What about smoking bans or the prohibition of junk food in schools? A second Conference Board report on the TILMA identified some of the measures business found to be unacceptable intrusions. One of these was that Ontario's Fire Marshal was stricter than other provinces. And while the TILMA does permit some defense against possible challenges, it would be up to the government to prove that its measures are legitimate and that they are the least restrictive measure possible.

The issue will be decided not by the courts, but by a dispute process that Alberta Intergovernmental Affairs Minister Gary Mar describes as being "everything Canadian business asked for";⁶ The process uses

⁴Hirsch. Todd. *A Match Made in the West*, The Globe and Mail, July 10, 2006.

⁵The Conference Board of Canada. *An Impact Assessment of the BC-Alberta Trade, Investment and Labour Mobility Agreement*. September 2005, page 29.

⁶Mar. The Hon. Gary. Alberta Minister of Intergovernmental Affairs. Speech to the Richmond Chamber of Commerce. June 6, 2006. http://www.iir.gov.ab.ca/trade...policy/documents!SpkNotes_Mar-TILMA-GJun06.pdf

⁷Canadian Institute of Chartered Accountants testifying before the Standing Senate Committee on Banking Trade and Commerce. November 23, 2006.

a dispute panel similar to NAFTA and the World Trade Organization (WTO). WTO panels have frequently ruled that governments must change measures the panels find overly restrictive.

The TILMA also takes steps to reduce the differences between provinces in requirements for professions and trades. Canadians should have the right to move with their work between provinces, but the TILMA's measures will achieve this by adopting the lowest common denominator.

The Canadian Institute of Chartered Accountants, hardly a radical organization, has questioned how the TILMA achieves labour mobility. Speaking to a Senate Committee, it said: "As provincial

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standards for regulation of professions are not uniform to begin with, this provision essentially makes the lowest of the standards that may exist in Canada acceptable as the base

of qualification - essentially a race to the bottom, if you will. We do not believe that this is consistent with the obligation of legislators and governments nor of the professions themselves to ensure that the public is protected";⁷

The Chartered Accountants spoke for many Canadians when they told the Senate Committee: "In our striving for the ideal of a domestic free market open to unrestricted competition, it is critically important to remember that not all standards and regulations are inherently bad, nor are they necessarily anti-competitive, particularly where the standards and regulations are present for the specific purpose of protecting the public ...";⁸

Canadians can support the TILMA's goals. The way it is done cannot be supported. Businesses should be able to invest, but that right must be tempered by the right of governments to protect their citizens. People should have the right to move between provinces, but the lowest qualification in the country for a profession is not acceptable everywhere.

We can find measures that will achieve these goals, but those measures must be subject to public discussion that includes all groups in society, not just industry that has privileged access to two rightwing governments. The way that the TILMA has been created makes clear that the governments of Alberta and British Columbia consider democracy just as much of a nuisance as any trade barriers.

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