

TILMA: The corporate hammer on local governments

The Trade, Investment and Labour Mobility Agreement is a deal signed by British Columbia and Alberta in 2006. The deal, which came into force in April 2007, was signed without a debate in the provincial legislatures or consultation with local governments, circumventing democratic process.

The agreement protects corporate rights and investments while restricting the ability of provincial and local governments to govern in the best interest of their citizens and communities.

TILMA covers all provincial departments and agencies as well as municipalities, regional districts, school boards, and health and social service agencies. Nearly every action by these democratically-elected governments and boards is now potentially prohibited. Decisions that can be 'constrained' include:

- Land use planning
- Zoning bylaws
- Local or socially-responsible procurement
- Restrictions on noise, pesticide use and signs
- Heritage and cultural conservation
- Environmental and green space protection

Both Alberta and BC have introduced legislation to fully implement TILMA in 2009

TILMA is being promoted as one of the best things since sliced bread for the economy. According to a BC government report, the agreement will generate \$5 billion for the BC economy – by knocking down 'barriers' that simply don't exist.

Over the past year many citizens' groups, enlightened politicians, community organizations and unions have raised concerns about the far-reaching measures used in TILMA to deal with largely non-existent 'trade and labour mobility' irritants. TILMA, like other investor rights agreements (such as the World Trade Organization's General Agreement on Trade in Services and the North American Free Trade Agreement), is designed to elevate the rights of corporations and investors above those of governments and citizens.

The investor rights hammer

- Corporations can sue provincial governments under TILMA. An appointed arbitration panel rules on complaints.
- If a TILMA provision is found to restrict or impair investment or the potential to make profits, fines up to \$5 million may be levied against the province. Provincial governments can also be fined for failing to ensure compliance by local governments and authorities. The BC government has refused to rule out forcing local governments to pay such fines.
- There is no limit to the number of complaints that can be made on a single issue.
- Governments will be forced to deregulate, ‘pay to regulate’ and suffer from a regulatory ‘chill’ on all future decisions.

Other provinces are considering similar agreements. Behind the scenes, the federal government, under pressure from the corporate sector, is pushing provinces to negotiate a coast-to-coast internal trade deal. The deal would have similar investor rights provisions allowing corporations to sue governments for any interference with their investments. A pro-TILMA coalition of business, industry and professional groups is pushing the federal and provincial governments to implement more open trade nationwide, in a deal with corporate rights provisions similar to TILMA.

Alarming, few municipalities are aware of these trade agreements, and are excluded from negotiations.

TILMA and our communities

Children’s health

A proposed junk food ban in British Columbia schools could be challenged under TILMA for restricting investment, according to trade lawyer Steven Shrybman. He argues an Alberta company could invoke dispute-resolution procedures if it believed its business was affected by BC’s new guidelines for food and beverage sales in schools.

Most municipal measures covered by TILMA have nothing to do with trade but serve public and social purposes. Yet policies that serve the public good – including those protecting children’s health – can be challenged under TILMA. The BC government has resorted to voluntary agreements with vending machine companies rather than legislating them out of schools.

Climate change initiatives

BC Premier Gordon Campbell is planning to cut greenhouse gas emissions by one third by 2020. At the same time, provincial standards will be harmonized under TILMA, significantly weakening the government’s ability to take necessary measures on climate change.

Any regulations or policies in the province’s climate change plan that impose costs on manufacturers could be open to challenge. Legitimate measures can be proven to protect the environment, but the additional TILMA requirement that the measure not be “more restrictive than necessary” leaves plenty of room for arbitration. In the end, corporate lawyers outside the domestic legal system may decide the extent to which governments can protect the environment and avert climate change

Waste reduction and pollution initiatives

A municipal councillor in Turner Valley, Alberta has proposed a ban on petroleum-based, non-recyclable polystyrene, used in products such as disposable cups, food containers and shipping materials. This environmentally-motivated move may be illegal under TILMA Article 9 (4a). This clause stipulates that during the transition to TILMA's full application to municipalities in April 2009, no regulations may be modified to make them more restrictive to investment.

Labour standards

In December 2007, the BC government and the provincial teachers' college signed a teacher mobility agreement under TILMA. The deal 'harmonizes' Alberta and BC's teacher standards toward Alberta's requirements. BC's program went from four to three years, and requires fewer courses to achieve teacher certification. This demonstrates TILMA's pressure for a race to the bottom in labour standards. Skilled trades certification such as the Red Seal program is also on the table for so-called harmonization across the country.

Saying no to TILMA

Municipal, local and regional governments have responsibilities to protect citizen and community interests while developing public policy. TILMA seriously restricts local governments' power to protect the public sphere – and their very ability to govern.

Municipalities should call for a full public debate on TILMA and other restrictive trade agreements, just as the Union of BC Municipalities passed a resolution calling for the province to withdraw from the deal if it didn't address their concerns. We must raise our voices to oppose any further negotiation of this heavy-handed response to corporate demands.

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