

## **MEDIA BACKGROUNDER & KEY CONCLUSIONS**

### **Shrybman Opinion on Bill 32/TILMA**

21 May 2008

The *Trade, Investment And Labour Mobility Agreement Implementation Act* ("TILMA" Act) has been tabled for the purpose of implementing a bi-lateral agreement entered into by Alberta and British Columbia in April 28, 2006.

Because TILMA prohibits all non-exempt government "measures" that "operate to restrict or impair" trade, investment or labour mobility, it casts a dark shadow over a broad landscape of public policies, laws and programs that may now be challenged for offending these and other broadly worded TILMA constraints.

The real impact of the TILMA regime arises not simply from the breadth of its application, but most importantly from the effectiveness of its enforcement regime. These enforcement procedures entitle countless private parties to claim as much as \$5 million in monetary awards where ad hoc tribunals determine that some action taken by a government or other public body offends TILMA rules.

Bill 32 proposes to amend sixteen BC provincial statutes to make them TILMA compliant, including BC's *Enforcement of Canadian Judgments and Decrees Act*, which would make a TILMA monetary award enforceable against the province as if it was a judgment made by a Canadian superior court.

According to Shrybman: "By imposing financial and other sanctions on the otherwise lawful acts of the province, municipalities and other public bodies, Bill 32 and the Agreement it seeks to implement directly confront basic constitutional norms, including the rule of law and democracy."

CUPE supports the Union of BC Municipalities in its rejection of TILMA, and is campaigning broadly to promote the threats posed by TILMA to communities, public services, governments, and judicial autonomy.

### **Key conclusions of Shrybman's legal opinion on Bill 32/TILMA**

- i) Because Bill 32 purports to deal with matters of inter-provincial trade, investment and labour mobility, it infringes federal constitutional authority with respect to trade and commerce under 91(2) of the *Constitution Act*, 1867.
- ii) By imposing financial penalties and other sanctions on the province for the lawful actions of governments and other public bodies, TILMA and Bill 32 improperly fetter (tie the hands) of the legislature, municipalities and many other public bodies.
- iii) By empowering ad hoc arbitral tribunals to adjudicate private claims concerning the otherwise lawful actions of government and other public bodies, Bill 32 improperly derogates from the authority and independence of Canadian superior courts which is protected under s. 96 of the Constitution.
- iv) By empowering Cabinet the discretionary power to nullify, through regulation, the application of provincial laws, Bill 32 offends constitutional limits on the delegation of legislative power to

the executive. The courts have named such provisions “King Henry VIII clauses” after the propensity of that monarch to arrogate legislative power by proclamation.

As several independent assessments of TILMA rules have pointed out, the reach of the TILMA regime, and of the potential sanctions it authorizes, extend well beyond the sixteen statutes that are referenced by the provisions of Bill 32.

For these reasons, Mr. Shrybman’s opinion describes Bill 32 and the Agreement it seeks to implement as presenting an unprecedented challenge to the most fundamental principles and norms of Canada’s constitutional arrangements.

For more information: <http://www.cupe.ca/TILMA>