

## **Corporate Rights Deal to Make Us April Fools - TILMA will strip our ability to set local limits.**

By Murray Dobbin January 24, 2007 TheTyee.ca

By now most Tyee readers will have heard of TILMA, the corporate rights agreement signed by Gordon Campbell and Ralph Klein in April of last year. The agreement -- the Trade, Investment and Labour Mobility Agreement -- was first pitched as a deal that would create a western "powerhouse" of the two fastest growing provinces.

But that populist bromide didn't last long when it was discovered this fall that TILMA is actually being peddled to every province in the country and is backed heavily by the Harper government.

What TILMA is actually intended to do is to advance another, much larger agenda, the one often referred to as "deep integration" and now a formal agreement between the three NAFTA partners. It's called the Security and Prosperity Partnership of North America (SPP). The SPP will see Canada effectively harmonize virtually every important area of public policy with the U.S.: defense, foreign policy, energy (they get security, we get greenhouse gases), culture, social policy, tax policy, drug testing and safety and much more.

But to "harmonize" Canadian public policy with the U.S. requires massive deregulation across the country. Much of that regulation is provincial and municipal, over which Ottawa has no control. That's where TILMA comes in. I have to admit it's clever, if they ultimately get away with it. Prepare the country for assimilation into the U.S. by promoting an agreement that claims to be about domestic, inter-provincial trade.

What will be harmonized through TILMA is simple enough. A fundamental political difference between Canada and the U.S. is that they have property rights in their constitution and we do not. That's no accident. When the Charter of Rights and Freedoms was negotiated between the federal government and the provinces, the idea of property rights was vigorously discussed -- and then rejected. Canada's tradition of activist government and strong social programs demanded that social rights trump the rights of investors. TILMA does an end run around that historic, democratic decision and the constitution.

Stripping our authority, they are rooted in the ever-expanding definition of property rights in the U.S., expressed in something called "regulatory takings" -- in other words, expropriation by regulation. That is what NAFTA Chapter 11 is all about. Companies can sue Canada if any regulation effectively "expropriates" the value of their property, including their capacity to make a profit.

But TILMA goes far beyond NAFTA because individuals can demand compensation (up to \$5 million per challenge) if a regulation or law merely "restricts or impairs" an investment. This is an extremely low threshold for a legal challenge. One article in TILMA states outright there shall be "no obstacle" to trade, investment or labour mobility. It could release a flood of litigation. A similar law in Oregon just dealing with land use has resulted in over 6,000 claims worth \$6 billion.

TILMA comes into affect, appropriately, on April Fool's Day. There is a two-year phase-in for municipalities and school boards, and the agreement also applies to crown corporations.

What sorts of things could be affected?

When fully implemented, TILMA would allow legal challenges to the location and size of commercial signs, environmental set-backs for developers, zoning, building height restrictions, pesticide bans, and green space requirements in urban areas.

It also could allow challenges to restrictions on private health clinics, halt stricter rules for nursing homes and almost certainly overturn the current ban on junk food in B.C. schools.

With respect to the environment, regulations regarding air quality are at risk, as are restrictions on tourist developments, the establishment of ecological reserves, the Agricultural Land Reserves and the authority of the Islands Trusts.

There are exceptions to the agreement and a list of legitimate "objectives" that governments can try to protect. But even here, they have to prove to an independent dispute panel that the objective was met with the least possible restriction to business -- a very tough challenge.

### Deregulation domino theory

Most so-called "trade" agreements (none of them are actually about trade, they are about investors' rights) open up an investor challenge only if a regulation or "measure" is discriminatory; that is, if it treats an investor from one country differently than another. TILMA has such a clause (Article 4) but in addition it has a clause (Article 5) that enforces what is called "mutual recognition." That means, for example, that an investor from Alberta can choose to bring with him to B.C. the Alberta regulations that apply to his business. One example is Vancouver rent controls. An Alberta investor could build or buy an apartment block in Vancouver and use TILMA's Article 5 to demand that rent controls not apply to his apartments.

If you have trouble believing this, here's what federal Industry Minister Maxime Bernier told the Senate banking committee when testifying about TILMA. "Mutual recognition is an important principle from the economic standpoint because...such a situation places regulators in competition with one another [for having the weakest regulations]." This is a clear expression of the race to the bottom, but perhaps the first time a government minister has ever admitted it.

There is full court press on to get TILMA implemented across the country before the citizenry figures out what is going on. A critical player in that campaign is the Conference Board of Canada (CBoC) a think-tank that until now, at least, has played a relatively moderate role in its research studies on public policy. The CboC has done a whole flurry of studies (including a major one last week) raising the alarm about the allegedly devastating economic impact inter-provincial trade barriers are having on Canadian productivity and growth. It's an odd crisis because business has said virtually nothing about such barriers over the years. That is because such barriers, as normally understood, are minimal. That was the conclusion of a 1998 study done for the B.C. government by UBC economist Brian Copeland.

But according to the CboC, the barriers are so onerous that if we got rid of them -- just between B.C. and Alberta -- B.C.'s GDP would leap by \$4.6 billion a year. That is an amount equivalent to half our current exports to Alberta and 3.8 per cent of provincial GDP -- over 10 times previous estimates of such barriers done by Industry Canada.

To arrive at this inflated figure, Conference Board researchers arbitrarily assigned numbers to TILMA's effects in each economic sector. The study contains no hard data, no reference to other literature with actual evidence, no interviews with company CEOs, and, remarkably, no list of actual barriers to trade or investment. The study's huge numbers rely in large part on the benefits TILMA would provide to the resources sector: forestry, fisheries and mining. But these sectors are actually exempted from the agreement so will get no benefits whatsoever.

Just say whoa!

There is no attempt, either, to justify the study's unorthodox methodology, which seems designed to result in its radical conclusions. A CboC survey sent to selected Saskatchewan businesses for the government there painted a very positive picture of TILMA with almost no references to potential down-sides. Indeed, the Conference Board's objectivity was put into serious question when Glen Hodgson, its chief economist, appeared before the Senate Banking Committee and declared: "We strongly endorse and welcome the agreement between B.C. and Alberta..."

As for the national cost of inter-provincial trade barriers, the CboC admits it has no idea. It disavows the one per cent figure being attributed to the Conference Board by B.C. and Alberta politicians to promote the deal. Paul Darby, Conference Board deputy chief economist stated: "The figures don't exist. Nobody knows."

Opposition to TILMA is growing both here and in other provinces like Saskatchewan, and in the next few weeks promises to expand as municipalities, school boards, environmental groups and ordinary citizens find out about the agreement. But the promoters of this libertarian assault on government have a big head start. Much of the ability of governments to act in the public interest hangs in the balance.