

# What's the deal?

Ontario, TILMA and the threat to local democracy

## What is TILMA?

Put bluntly, the Trade, Investment and Labour Mobility Agreement is Canada's first corporate bill of rights. It's promoted as a harmless free-trade pact between Alberta and British Columbia, or as a clever way to knock down provincial trade barriers. In reality, the agreement is about reducing the scope of acceptable government action. Actually, TILMA turns governance on its head by forcing the provinces and their official agencies (i.e. municipalities, public school boards, hospitals, etc) to prove that the rules and regulations they enforce do not "restrict or impair" trade and investment (i.e. profits). Under TILMA, even rules designed to protect public health or the environment are vulnerable to legal challenges demanding compensation of up to \$5-million. That's expensive and the costs to local democracy are far greater.

## What does Ontario have to do with it?

Only Alberta and B.C. are currently official parties to TILMA. It is their agreement, after all. But there is an open invitation for other provinces to sign on – an idea the Harper Conservatives and the Canadian Chamber of Commerce are pushing among Canada's premiers. We know from news reports that Dalton McGuinty is talking about TILMA with B.C. and Alberta. In October 2006, he told a CanWest reporter, "I think it's a step in the right direction for us to move toward ultimately a state where there is free trade actually within this country." McGuinty is also discussing the idea of a free-trade pact similar to TILMA but with Quebec instead. If events progress as they did out West, McGuinty is going to make an executive decision – without consulting the public.

## "No obstacles" to trade and investment

So what would happen if McGuinty did sign TILMA? Article 3 of the agreement, titled "No Obstacles," states that each party to TILMA, "shall ensure that its measures do not operate to restrict or impair trade... or investment or labour mobility between the parties." Provincial entities covered by TILMA include municipal governments, school and health boards, Crown corporations and other official agencies. Since everything that these agencies do can be seen as somehow restricting or impairing investment, all government measures in Ontario would become vulnerable to corporate challenges. The aim of TILMA is to discourage and eliminate regulations in one province that differ from another, new regulations that are stricter than when TILMA was signed, and rules or regulations that treat local businesses more favourably than out-of-province competitors.

## How low can you go?

Article 5.1 of TILMA requires that governments "mutually recognize or otherwise reconcile their existing standards and regulations." This is a greater threat than regulatory harmonization. Federal Industry Minister Maxime Bernier explained to a Senate banking committee that TILMA's mutual recognition rules will put regulators in competition with each other to attract business. With mutual recognition, businesses will have the option of choosing which province's regulations they want to operate under. This is great for the corporate bottom line, because it allows businesses to choose the weaker regulation every time. From an environmental, public health or consumer protection perspective it means an inevitable race to the bottom.

## What do we have to lose from TILMA?

In a word – lots. The official TILMA website ([www.tilma.ca](http://www.tilma.ca)) defines “restrict or impair” as to “control, curtail, reduce, damage or weaken.” So a municipal or provincial junk food ban in elementary schools could violate TILMA because it curtails investment by soft drink, chocolate bar and potato chip companies. Similarly, land use regulations violate the agreement by controlling real estate investment. Local government zoning bylaws to prevent urban sprawl, green space requirements for housing developments, increased social housing and height restrictions on buildings are all further examples of potential TILMA violations because they operate to “restrict or impair” trade and investment.

## Is anything out of TILMA’s reach?

There is a small list of so-called “legitimate” objectives (i.e. measures related to water, aboriginal people, energy, forestry and mining) but these are to be reviewed annually, “with a view to reducing their scope.” Health and education are not out of TILMA’s reach, putting even Canada’s public health care system at risk. After all, a ban on private clinics operates to “restrict or impair” investment. Even government measures aimed at achieving certain legitimate objectives (i.e. air pollution laws) can be quashed if the government cannot prove to a TILMA dispute panel that its measures are the least restrictive imaginable – an almost impossible task.

## How is local democracy affected?

Municipal governments in Alberta and B.C. are learning the hard way that TILMA will put serious constraints on their ability to govern in the public interest. After all, they were never consulted prior to TILMA coming into effect on April 1, 2007. But dozens of B.C. municipalities have passed resolutions seriously questioning the purpose

of TILMA and demanding that local government measures be exempt from the agreement. A Vancouver city staff report on TILMA warned that the agreement, “may involve potential restrictions on City Council’s powers of local autonomy, and/or increased administrative costs.” There is also the issue of procurement. Under TILMA, purchases of goods as low as \$10,000 must not discriminate in favour of local businesses for any reason. This makes ethical or environmental purchasing policies impossible.

## A freeze on local government

TILMA threatens both current and future policies. Ellen Gould, a trade consultant with the Canadian Centre for Policy Alternatives, warns of a “chill” effect, “whereby governments eliminate measures or decline to introduce new ones to avoid TILMA challenges.” The B.C. government has said publicly that only the province will be financially responsible for TILMA challenges that rule in favour of the complainant. But officials have told the Union of British Columbia Municipalities that they cannot guarantee that local governments, already strapped for cash, will not end up footing the bill. Even the possibility of having to compensate companies will discourage municipalities from setting new rules.

## We can say no to TILMA!

Ontario is considering signing on to TILMA but it hasn’t made any commitments yet. Popular resistance to the idea will make it very difficult for Premier McGuinty to force Ontario into any kind of provincial free-trade pact without first holding an open public debate. A particularly successful strategy for raising awareness has been to mobilize municipal and other local politicians whose ability to govern in the public interest would be seriously compromised under TILMA. Together, we can say not to corporate rights at the expense of local democracy. Together, we can say no to TILMA in Ontario!