



To: Richmond City Council
From: Councillor Harold Steves, Chair
Planning Committee
Re: **The Trade, Investment and Labour Mobility Agreement (TILMA)**

Date: May 24, 2007
File: 01-0150-01/2007-Vol
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The Planning Committee, at its meeting held on Wednesday, May 23rd, 2007, considered the attached report, and recommends as follows:

Committee Recommendation

- (1) That the report (dated April 2, 2007, from the Manger of Economic Development), regarding the Trade, Investment and Labour Mobility Agreement (TILMA), be received for information.*
- (2) That a letter be sent to the Provincial Government, with a copy to the Union of British Columbia Municipalities (UBCM), requesting that the Provincial Government consult with the UBCM and the City of Richmond to work through the areas of concern relating to the Trade, Investment & Labour Mobility Agreement,*

Councillor Harold Steves, Chair
Planning Committee

Attach.

VARIANCE

Please note that staff recommended the following:

That the report (dated April 2, 2007, from the Manger of Economic Development), regarding the Trade, Investment and Labour Mobility Agreement (TILMA), be received for information.

Staff Report

Origin

At the February 20, 2007 Planning Committee meeting, the following was referred to staff:

That staff review the Trade, Investment, and Labour Mobility Agreement (TILMA), as referred to in the letter from Mayor Derek Corrigan dated February 8, 2007, City of Burnaby, and provide comment and advice to the Planning Committee at a future meeting.

Findings Of Fact

The TILMA is an agreement between the provincial governments of Alberta and British Columbia that took effect April 1, 2007.

The intent of the Agreement is to facilitate the movement of business services and labour between the two provinces, and eliminate what the provincial governments would deem as discriminatory practices against businesses that are not from the province.

While the agreement takes effect immediately, the provisions that apply to municipalities are exempt during a two-year transition period until April 1, 2009, during which time the province will consult with municipal governments on the agreement and its provisions. During this transition period municipalities are exempt from the provisions of TILMA except being bound to:

- involvement in further consultations and negotiations to identify any special provisions, exclusions and other transitional provisions;
- reconciling differences in standards and regulations, investment, business subsidies, labour mobility, and procurement of professional services of architects and engineers;
- not establishing new or amending or renewing existing standards or regulations that operate to restrict or impair trade, investment or labour mobility.

The Agreement applies across all sectors of the economy, and a special dispute resolution mechanism is in place that is accessible to both governments. Non-compliance can result in a fine of up to \$5 million but is only applicable to the provincial governments. According to the provinces, the agreement is intended to be incentive-based and not penalty-based, emphasizing the resolution of disputes through consultation, with the goal of correcting the situation not enforcing a penalty. Any fines that may ultimately get levied will be against the provincial governments, there is no mechanism for fines to be levied against municipalities.

Analysis

Trade practices have evolved substantially between and among countries whereby effective trade agreements have been established on a continental basis. The benefits of these trade agreements, and ultimately the elimination of barriers that prevent free trade are well documented.

The new agreement between BC and Alberta is an enhancement of the existing Agreement on Internal Trade (AIT) that was signed by the provinces (including BC) in 1995, which states there will be no discriminatory practices when hiring contractors and service providers that favour local providers over non-local providers—assuming all things are equal.

Concerns have been raised by some BC municipalities with respect to how this agreement may erode municipal authority when it comes to favouring ‘local’ purchasing policies, however the City of Richmond has no such policy. An analysis conducted on behalf of UBCM by the law firm of Lidstone, Young, Anderson has been attached to this report to provide a more detailed analysis of some of these potential concerns.

A key aspect of the report focuses on the concern that there are no clear special provisions for governments who may have extraordinary circumstances, and that the agreement applies a blanket requisite to all local and regional government bodies to adhere to the Agreement in all aspects of conducting its governance business. Mr. Lidstone states that, “Although local governments are not parties to the agreement, their measures are subject to the agreement. This does not mean a local government measure will be invalid if it runs afoul of the agreement. It means that even if the measure (e.g., a bylaw) is valid under British Columbia law, it may be subject to TILMA and the dispute process under TILMA.”

The agreement however is not intended to restrict or impair trade, or the regular business of governance carried out by municipalities. It is intended to ensure there is equity in all measures of purchasing goods and services between Alberta and British Columbia.

Other areas of concern include the lack of earnest dialogue and consultation with municipalities regarding the agreement and the issue of business licensing reconciliation. Though the Province has promised a two-year period of adjustment and consultations with the municipalities, there is some uncertainty about how much flexibility will be employed in making any changes to the agreement once it has already been signed. There may be a more significant consequence around the commitment in the agreement for the reconciliation of all business registration and reporting requirements. The province has already begun to meet with municipal staff in terms of establishing a single, province-wide business license. There is little clarity at this time on what that looks like, how it will be implemented, how it will affect revenues to municipalities in terms of monies collected through business licensing, and moreover how licensing will be enforced. Examples of extraordinary cases where local enforcement is vital is around the scrap metals legislation currently being implemented.

The UBCM has made a strong commitment to their member municipalities to represent these issues to the province over the next two years.

The agreement also restricts business subsidies that provide any advantage, entice or assist an enterprise to relocate from another province. This provision is already in place through the Charter, and the City of Richmond does not engage in this practice. Of interest is that Alberta currently does provide subsidies to business in a variety of ways which has historically made it difficult for BC to compete in the retention and attraction of business investment. The

equalization of this practice, or restriction of it in Alberta, will create a more level playing field between the two provinces, benefiting British Columbia.

Overall, municipalities will not have to be in compliance with the new Agreement (TILMA) until April 1, 2009, during which time the province will consult with the municipalities on the agreement. The City of Richmond is generally in compliance already, although there are some provisions in TILMA, that differ from the AIT agreement, that may impact the City. The limits associated with public advertising bid opportunities under TILMA are more stringent than those covered under AIT. The amounts listed in Article 502 and subsequent Annex 502.4 (for Municipalities) of the Agreement on Internal Trade are:

- \$100,000 or greater, in cases where the largest portion of the procurement is for goods;
- \$100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by Annex 502.1B; or
- \$250,000 or greater, in the case of construction.

The current amounts as set out in Article 14 of TILMA are \$10,000, \$75,000 and \$100,000 respectively. Throughout the two-year transition period governments and agencies are expected to align those limits.

Financial Impact

None.

Conclusion

This report is provided for the information of the Planning Committee.

Lee A. Malleau, EcD.
Manager, Economic Development
(4216)

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**TRADE, INVESTMENT AND LABOUR MOBILITY
AGREEMENT: OVERVIEW OF IMMEDIATE
IMPLICATIONS FOR LOCAL GOVERNMENT**

April 30, 2007

Report prepared for the Union of British Columbia Municipalities

Report prepared by Donald Lidstone
Lidstone, Young, Anderson
Barristers and Solicitors

TRADE, INVESTMENT AND LABOUR MOBILITY AGREEMENT: OVERVIEW OF IMMEDIATE IMPLICATIONS FOR LOCAL GOVERNMENT

Introduction

This report was prepared for the Union of British Columbia Municipalities to provide a general commentary on the immediate legal implications of TILMA for local governments. Accordingly, this report contains a brief overview of local government issues as opposed to a review of the virtues of TILMA or a comprehensive analysis. This report is not a legal opinion and represents the preliminary views of the author. Readers are advised to seek legal advice before acting on views expressed in this report.

On balance, TILMA will not have major impacts on local government that cannot be addressed during the current two year consultation period during which the Province of British Columbia is consulting with the Union of British Columbia Municipalities. The key issues relate to threshold values for tendering; clarity around procurement policies; whether business regulations will be harmonized; assistance to business under section 21 of the Community Charter; and the remote possibility that a regulatory (including land use) bylaw might have the effect of restricting or impairing an investment in British Columbia by an Alberta investor. The agreement is vague and there are no precedents, so one of the issues for councils and boards is the uncertainty that surrounds TILMA.

Consultation

TILMA creates a number of legal issues for local governments. The Province has initiated a consultation process with the UBCM. The two-year transition period under TILMA will provide the UBCM and individual municipalities with an opportunity to consult with the Province in respect of the impacts on municipalities. In this regard, the Province will be including the UBCM in TILMA negotiations (analogous to the First Nation Treaty Advisory Committee process). This will give the UBCM on behalf of municipalities an opportunity to address the TILMA impacts on local governments, such as the need to give local governments options in regard to the reconciliation of methods of inter-provincial registration and to give local governments special procurement thresholds.

It is apparent there will be a need on the part of British Columbia and Alberta to address the exceptions and special provisions required in respect of local governments. In this regard, the UBCM may wish to enter into an arrangement with the Province respecting consultations on TILMA under section 277 of the Community Charter. Under that section, the Minister must engage in the negotiations and use all reasonable efforts to reach agreement in negotiating an arrangement. It is understood that the consultation process will commence immediately so that local governments will have more certainty and predictability in regard to TILMA implications.

Scope of TILMA

TILMA is an agreement between British Columbia and Alberta under Article 1800 (trade enhancement arrangements) of the 1995 Agreement on Internal Trade ("AIT"). The purpose of

TILMA is to liberalize trade, investment and labour mobility between the two provinces beyond the level imposed under the AIT. Other provinces such as Ontario are considering entering.

The structure and spirit of the agreement are such that everything is included unless expressly excluded. TILMA applies to any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure of either province or of their "government entities" which include municipal governments. "Government entity" is defined as including any "regional, local, district or other forms of municipal government". This means the agreement applies to municipalities and regional districts. The Islands Trust is not excluded, and is a government entity because it is one of the "other forms of municipal government" and does not fit under any of the other "government entity" definitions. Accordingly, the agreement applies to all bylaws, resolutions, policies, orders, administrative practices or other procedures ("measures") of local governments and the Islands Trust, subject to a limited number of exclusions. Examples of measures include zoning, subdivision, noise, business, tax exemption or other bylaws; procurement policies; licensing bylaws and practices; and "voluntary gifting" policies.

Although local governments are not parties to the agreement, their measures are subject to the agreement. This does not mean a local government measure will be invalid if it runs afoul of the agreement. It means that even if the measure (e.g., a bylaw) is valid under British Columbia law, it may be subject to TILMA and the dispute process under TILMA.

Obligations under TILMA

Generally, the agreement provides that each province must ensure that its measures (and those of the government entities including forms of municipal government) do not restrict or impair trade, investment or labour mobility between the provinces. Articles 3 and 4 are borrowed broadly from the style and content of Canada's international trade agreement commitments in relation to services, investment and procurement.

Although Article 3 of TILMA provides that a local government must ensure that its measures do not operate to restrict or impair trade between or through the territory of the Parties, or investment or labour mobility between the Parties, this does not prevent local governments from continuing to enact bylaws in accordance with their citizens' needs and in the public interest. Article 3 would apply to situations where local governments adopt measures that affect the flow of investment or trade across the border from Alberta to British Columbia. Measures commonly referred to as "internal measures" (such as zoning bylaws) will be reviewable under Article 4 ["Non-discrimination"]. In some cases, local governments will be able to take the position that land use or other regulatory measures may control what can be done with a specific investment but they may not restrict or impair the act of making an investment in the first instance. The key is to treat Alberta and Alberta persons in a non-discriminatory manner.

Article 4 of TILMA provides that each party must accord the other party treatment no less favourable than the best treatment it accords, in like circumstances, to its own citizens or those of any non-party. This treatment applies, for example, in relation to zoning, subdivision, or other

regulatory bylaws; tax, fee or charge bylaws; "voluntary gifting"; procurement; business regulation and licensing; and "assistance" whether under partnering agreements or otherwise.

Based on the phraseology of TILMA and the approaches taken by the dispute resolution panels under international trade agreements, the "non-discrimination" provisions may impact local governments in a number of ways. These require clarification, given the absence of certainty in the agreement and of precedential decisions. For example, local governments must give "like, directly competitive, or substitutable goods; persons; services and investors or investments" the highest level of consideration that is currently provided to the best of a local government's suppliers or the local government's own forces. Although there are some exceptions for some narrowly defined "legitimate objectives", such do not include protection or favouring of the production of an enterprise of a local government.

Further, it has been submitted by some commentators that the non-discrimination provisions might conceivably affect a local government's freedom to undertake or change existing operations in regard to services provided by private enterprise (e.g., solid waste, liquid waste, signage, building maintenance and cleaning or other local government provided services that do not satisfy "legitimate objectives" tests). The Province does not concur with this view and takes the position that TILMA does not restrict the ability of local governments to bona fide regulate in the public interest, which might well include changes to existing regulations governing services provided by private enterprises, provided they do so in a non-discriminatory manner.

TILMA does not contain provisions relating to "compensation for expropriation" that are found in other trade and investment agreements such as Article 1110 of NAFTA or in the modern bilateral investment treaties that Canada has entered into.

Clarification is also required in relation to the ability to consider "excellence" or "quality" as a criterion when selecting a successful proponent under a request for proposals or tender for goods or services.

One of the special provisions requires the two provinces (and so local governments) to reconcile all business registration and reporting requirements so that an enterprise meeting the requirements of one will be deemed to have met those of the other. In the case of business licensing and reporting requirements relating to massage parlours, escort services, pawnbrokers, second-hand good dealers or copper wire resellers, for example, these measures arguably might be satisfied by having one set of standards and requirements applicable uniformly in all municipalities. This has to be considered in context of the right to establish different standards for legitimate objectives such as protecting public safety.

The agreement also provides that municipalities must not directly or indirectly provide business subsidies unless to offset a subsidy offered by a non-party or by another government entity. TILMA prohibits local governments from providing "one-off" assistance that might favour one investor or business undertaking over another. Exceptions include grants to non-profit entities, subsidies to aboriginals, grants to persons for social policy reasons, or assistance in respect of culture, academic research, disaster relief or prescribed agricultural matters. Since Alberta

municipalities currently have more authority to provide subsidies, this provision may be of indirect benefit to local governments in British Columbia.

In regard to bylaws, resolutions or orders, the agreement would require that the two provinces mutually recognize existing standards or otherwise reconcile them to the extent they restrict or impair trade, investment or labour mobility. New standards or regulations that operate to restrict or impair trade, investment or labour mobility would be caught by TILMA. As well, the parties must cooperate to minimize differences in standards or regulations. Further, TILMA provides that existing standards and regulations that impact on trade, investment or labour mobility must be recognized by the other or reconciled to remove the differences. Although the two provinces have said that this does not require harmonization, this provision could lead to “reconciliation” at the lowest common denominator noting Article 3(1) “measures do not operate to restrict or impair trade” and Article 6(1)(b) “not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective”. In this regard, although the word “harmonization” is not in TILMA, Article 5 requires “mutual recognition” of each province’s regulations that could allow an investor, ultimately, to apply the weaker regulations of the two regimes to his or her investment. Nothing in TILMA obligates either province to accept a lower standard as equivalent or acceptable.

There are exceptions, including measures designed to achieve a “legitimate objective” (which includes public security and safety, public order, or protection of health or the environment, but not where this is merely designed to favour an enterprise of the municipality itself). Exceptions of interest to local governments include measures relating to water or water services; taxation; other revenue generation; assistance for recreation or to non-profit organizations; certain prescribed government procurement such as from philanthropic institutions, public bodies or non-profit organizations; licensing of motor vehicles for hire; and measures relating to management and disposal of hazardous and waste materials. The other exceptions are not generally of interest to local governments.

Local governments must also provide open and non-discriminatory access to procurement. Despite the AIT tender procurement thresholds, TILMA will require municipal governments to tender goods, services and construction that exceed much lower thresholds:

	TILMA	AIT
Goods	\$10,000.00	\$100,000.00
Services	\$75,000.00	\$100,000.00
Construction	\$100,000.00	\$250,000.00

These thresholds are too low for local governments given the real costs of preparing notices and documentation in respect of comparatively small procurement exercises traditionally addressed by less formal competitive measures. Reference is made to posting tender notices for all “covered” procurement through an electronic tendering system or other accepted means.

Effective Dates

The agreement comes into force on April 1, 2007. Article 9.2 provides for a two-year transitional period during which the parties must undertake further consultation and negotiate any required special provisions, exclusions or transitional provisions to determine coverage to measures of municipalities or municipal organizations. Although Article 9.1 provides that measures of municipalities and municipal organizations are not subject to the obligations, general rules, special obligation provisions or dispute resolution procedures during the two-year transition period (presumably while the provinces undertake consultation with respect to any required special provisions, exclusions or transitional provisions), the following matters nonetheless apply to municipalities and municipal organizations during the transition period:

1. under Article 9.4(a), no measure of a municipality or municipal organization may be amended or renewed in a manner that would decrease its consistency with TILMA;
2. the dispute resolution procedures apply to Articles 9 and 13, so if a municipality or municipal organization fails to ensure that no measure is amended or renewed in a manner that would decrease its consistency with TILMA, a complainant may attack the measure under the dispute resolution procedures during the transition period;
3. Article 23.2 [which applies to all regional, local, district or other forms of municipal government during the transition period and is not excluded under Article 9 (transitional provisions)] provides that neither party between the date of execution and April 1, 2007 may adopt a measure that would be inconsistent with TILMA or amend or renew a measure in a manner that would decrease its consistency with TILMA – it is therefore arguable that any measure adopted between April 28, 2006 and April 1, 2007 could be affected by TILMA to the extent the measure was inconsistent with the agreement or was amended or renewed in a manner that would decrease its consistency with TILMA;
4. local governments must work on reconciling differences in standards and regulations, investment, business subsidies, labour mobility and procurement of professional services of architects and engineers; and
5. local governments will be involved in further consultations and negotiations to identify special provisions, exclusions or other transitional provisions.

In a letter to the UBCM dated January 24, 2007, the Province stated that TILMA is intended to simplify and expand coverage of the AIT and, accordingly, the AIT obligations respecting open access to procurement, reconciliation of transportation measures, open access to employment opportunities, etc., will continue.

Dispute Resolution

A person (including a business corporation) or a province may elect to proceed against a province within which a government entity (including a local government) is alleged to have restricted or impaired trade, investment or labour mobility or where there is a need to resolve any

matter regarding the interpretation or application of TILMA. Individuals or corporations do not have unrestricted access to TILMA's dispute settlement process. They must first approach the relevant Party and request that the Party initiate the dispute process on their behalf. Likely the Parties would agree to initiate the process in cases that are not vexatious or frivolous, noting an aggrieved person may, if the process is established by statute, be in a position to seek judicial review of a decision not to initiate the process. If consultation is refused or fails, the disputing province, individual or corporation may cause a dispute resolution panel to be established. If the province initiates the process on behalf of the person, that person no longer has any further legal standing or formal role to play in the dispute settlement process and the person would also not be in a position to obtain a monetary award.

If a Party fails to comply with a panel recommendation (e.g., change an offending measure by a deadline), the panel may issue a monetary award or authorize retaliatory measures of equivalent economic effect. If one of the disputants is an individual or corporate person, the dispute resolution entity may issue a monetary award addressing the nature and extent to which the measure has caused economic injury. Monetary awards are limited to five million dollars with respect to each matter under consideration. A combination of TILMA's limitation period, the fact that a measure cannot be initiated while an existing challenge to that same measure is ongoing, and the time it takes to initiate and complete the dispute resolution process suggests that, realistically, no more than two cases relating to the same measure would be initiated.

Part IV of TILMA sets out the dispute resolution procedures. The scheme is based on traditional dispute resolution precepts. There is an obligation to attempt to resolve the matter through consultations, failing which an independent panel is established. A complaint may only be launched if a province or government entity has breached the TILMA obligations. If the independent panel so finds, the province or affected local government is obliged to change the offending measure. If the offending measure is maintained, the panel may make the financial reward to the complainant as an inducement but not a financial award of damages.

It is interesting to consider who would qualify as a private claimant. Article 25.2 provides that a complainant is a "person of a Party" who initiates a complaint against a "responding Party". Under the North America Free Trade Agreement, a dispute resolution panel found that a person resident in Mexico could initiate a claim against the Mexican government because he had retained U. S. citizenship. The implication is that a person who is a resident of Alberta, has a corporate registered and records office in Alberta, or otherwise has adequate Alberta ties may be defined as a person of Alberta and permitted to commence dispute resolution proceedings against British Columbia under TILMA. TILMA itself will permit companies registered in British Columbia to be deemed to be registered in Alberta.

It is also unclear whether local governments would be permitted to intervene in, or even to attend, dispute resolution proceedings. There is no provision for intervention to allow local governments to defend their measures other than those contained in the UNCITRAL rules, which generally apply to TILMA's dispute settlement process. Subject to concerns relating to confidential information, possible impediments to law enforcement, legitimate commercial interests, or the public interest, if the international trade agreement model is followed, the hearings would be open to the public, including to the affected local governments.

On March 15, 2007, the Province introduced legislation to amend the Enforcement of Canadian Judgments and Decrees Act to add decisions by TILMA dispute resolution panels to the definition of a Canadian judgment.

Position of Province of British Columbia

The Province has commenced the consultation process with the UBCM. In the letter to the UBCM dated January 24, 2007, the Minister of Economic Development stated that it is the intention of the Province to "...ensure the interests of local governments, their residents, and the business communities of British Columbia and Alberta are represented in these discussions". The Minister also published a media release dated January 26, 2007 responding to a report prepared by the Council of Canadians. In the media release, the Minister stated *inter alia* the following:

1. the two year transitional period gives the parties time to undertake further consultations and negotiate required special provisions or exclusions for local governments, and in this regard, Ministry officials are consulting with the UBCM and other interested local governments on TILMA's implementation;
2. nothing in TILMA requires a municipality to change laws to match those in the other province, or to match the desires of a business or any other person;
3. if a bylaw does not treat a B. C. or Alberta business or investor more or less favourably than those of other provinces, there is no discrimination and therefore no complaint under TILMA (noting that the vast majority of municipal actions are non-discriminatory and have no restrictive effects on trade, investment or labour mobility and are thereby not affected by TILMA);
4. under TILMA there is no requirement to change land use decisions in relation to signs, building height, zoning, agricultural land or parks;
5. municipalities are not required to defend their own measures or pay monetary awards under the dispute resolution mechanism.

Public Policy Debate

Since TILMA reads like an international trade agreement and speaks to curtailment of government measures, there is significant public debate about the implications of TILMA. There are numerous publications, articles, editorials and pamphlets published by entities such as the Council of Canadians, Canadian Union of Public Employees, the Canadian Centre for Policy Alternatives, and others raising concerns about the implications of TILMA. On the other hand, there are statements by the Canada West Foundation, business organizations, the Province of

British Columbia, the Conference Board of Canada and others that highlight the benefits and advantages of TILMA and address the concerns raised by others. These documents are readily accessible on the internet and so we are not reciting or appending them.

TILMA Effect on Local Government Measures

TILMA was established under the trade enhancement arrangements provisions of the AIT. Those provisions allow the provincial parties to enter into additional arrangements to liberalize trade, investment and labour mobility beyond the level required by the AIT.

Although the Province wrote to every municipality in 2002 to advise that they must comply as of April 1, 2002 with the AIT, there is no legislation to compel adherence in British Columbia. Other provinces have enacted legislation to require compliance. As in the case of the AIT, the Province has no enactment in force to require municipalities to comply with TILMA. The Ministry of Economic Development has informed us that there are no plans for legislation at this time. "Just as there is no one piece of legislation relating to AIT, there is no one piece of legislation relating to TILMA. If required, individual regulatory or legislative changes will come forward on a case by case basis". On February 1, 2006, we were informed by the Ministry in relation to the AIT that although the Province has no enactment in force to require municipalities to comply, if there are complaints or problems the Province could consider putting some teeth into the program.

Despite the absence of legislation in relation to the AIT and TILMA, there are a number of ways the Province could require compliance. First, the Province could impose TILMA-related conditions in relation to grants. For example, a wastewater treatment plant grant could be subject to compliance with TILMA. Second, the Province could use existing or new legislation to supersede or reject a local government measure. Third, the Province could as a matter of policy demand indemnity from a municipality that contravenes a TILMA provision that results in the Province having to pay a monetary award. In this regard, although the January 26, 2007 media release from the Ministry of Economic Development states that municipalities are not required to defend their own measures or pay monetary awards, we asked the Province whether it would seek indemnity from a municipality that takes valid measures under its statutory and common law authority but where the measures are found under the dispute resolution mechanism to trigger a monetary award against the Province. The TILMA negotiators responded as follows:

"Given the hypothetical nature of the proposed situation (specifically that a municipal measure inconsistent with the TILMA would get to the point of triggering a monetary award), it is impossible to answer the question definitively. As is the case with the AIT, only the parties (not their entities) are subject to dispute resolution proceedings, as the parties are responsible for the compliance of their entities [e.g., municipalities]. The course of action that the Province would take in any dispute proceeding involving municipalities would depend on the particular circumstances of the dispute".

Although municipalities are not required to defend their own measures under the TILMA dispute resolution mechanism, it would appear such dispute resolution processes are not always open to the public and local governments are not entitled to defend their own measures.

It is the scheme of TILMA that a local government may take valid measures under its statutory and common law authority but the measures nonetheless may be found to contravene TILMA and therefore trigger a complaint against the Province. In this regard, it should be noted that the powers and jurisdiction of municipalities have been amplified recently in a number of decisions of the Supreme Court of Canada. The Supreme Court of Canada has recently upheld the right of a municipality to establish higher regulatory standards than those set by the provincial or federal governments; the Court has interpreted “omnibus” provisions of provincial statutes in a broad, liberal, remedial manner; the Court will uphold local government bylaws enacted within jurisdiction that affect civil and property rights; and the Courts will not substitute their views for those of democratically elected local governments unless the local governments’ decisions are patently unreasonable or clearly beyond their express or implied powers. At the same time, the Community Charter has expanded the powers of municipalities in British Columbia. Accordingly, there is some prospect of collision between these new broad powers of municipal councils on the one hand and the TILMA concepts of standardization and harmonization on the other hand.

Conclusions

The literature indicates that TILMA could add to British Columbia’s real GDP and create a significant number of new jobs as a direct result of liberalization of trade, investment and labour mobility. Opponents of the scheme have raised concerns about the implications for local governments. One of the things that sets local governments apart from all of the other government entities referred to in TILMA is the fact that each local government is like an order of government and has a sense of community based not only on its geography, history and culture but also on the evolution and application of local rules and customs that are reflected in the local government’s policies, bylaws and resolutions as well as practices and procedures. Some British Columbia local governments are world-class tourism destinations and paradigms for community sustainability, yet some of the practices, procedures, laws and policies that make up their central identity could run afoul of TILMA unless local governments’ issues are addressed effectively during the two year consultation process.

April 30, 2007