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TILMA bill violates constitution, says lawyer

Both the Trade, Investment and Labour Mobility Agreement (TILMA) between British Columbia and Alberta—and the BC legislation enabling it—violate the Canadian constitution by usurping the role of judges and endowing cabinet with too much power, says a leading trade law expert.

Lawyer Steven Shrybman, of Sack Goldblatt Mitchell LLP, says in his legal opinion that the TILMA and the BC Liberal government's Bill 32 'confront basic constitutional norms, including the rule of law and democracy,' by trumping the authority of both judges and parliaments.

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 the exercise of legislative and public authority,' Shrybman adds in the May 7 document.

They both also usurp the role of senior courts 'by empowering ad hoc tribunals to adjudicate private claims concerning the actions of government and other public bodies.'

TILMA and Bill 32 also offend constitutional limits on the delegation of legislative power to the executive branch of

government 'by amending certain provincial statutes to accord Cabinet the discretionary power to nullify, through regulation, the application of provisions of those laws to companies and other entities from outside the province.'

The legal opinion was commissioned by the Canadian Union of Public Employees (CUPE). At a press conference, CUPE-BC president Barry O'Neill, representing BC and Alberta, calls Shrybman's report 'the most damning indictment yet' of the controversial TILMA deal, which was reached in secret between the Campbell Liberals and Alberta's Ralph Klein government.

'Bill 32's amendment granting the Cabinet discretionary powers to overrule laws affecting companies from outside BC is one of the more arrogant manipulations of legislation we have seen from this government,' says O'Neill, 'This is power by proclamation, which the courts have referred to as 'King Henry the Eighth clauses'. Does Mr Campbell wish to be compared to such a monarch? 🍷

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