

# Reprint Island Tides

Visit [www.islandtides.com](http://www.islandtides.com) to read the current edition and more find more interesting articles on other BC, national & international topics in our extensive archive of newspapers and articles.

Reprint from Volume 21 Number 8

April 23, 2009

## Secret agreement would extend TILMA

On December 5, 2008, federal, provincial, and territorial trade ministers signed two agreements extending the terms of the 1995 Agreement on Internal Trade (AIT).

The first agreement, which was announced in December, formalized the right of any worker certificated in any province to work in any other province. It was made public only after it was signed.

The second agreement, which has not yet been published, reportedly enshrines dispute resolution and penalty procedures in the AIT. These are patterned on those included in the Trade, Investment, and Labour Mobility Agreement (TILMA) between BC and Alberta, which formally went into effect on April 1.

This secrecy apparently results from the fact that the AIT changes have not yet been ratified by all provincial and territorial cabinets, says Steven Shrybman, author of a recently released report on trade law, *State of Play – Canada's Internal Free Trade Agenda*. It reflects, he says, 'an internal trade agenda that is proceeding with very little transparency and virtually no public debate'.

### Interprovincial Trade

Interprovincial trade, says Shrybman, is a federal responsibility under the Canadian constitution, so the AIT is an agreement between the provinces, but legislated at the federal level. But because provinces cannot, constitutionally, legislate in this area, some provincial governments (particularly BC and Alberta) have chosen to sign 'agreements' between provinces in order to enforce internal rules covering trade, investment, and labour mobility. Such 'agreements' might turn out to be more permanent than normal provincial legislation, since they cannot be dismantled without the agreement of at least two provinces.

Shrybman emphasizes that there are actually few, if any, impediments to interprovincial trade. However, he alleges that the key clause in TILMA is Article 3 – No obstacles. Each Party shall 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.

TILMA does not limit enforcement actions in BC to residents of Alberta (or vice versa) but enables any individual or corporation to challenge virtually any law, action, or procedure in a tribunal which is established outside the normal court

system. As Shrybman says, 'everything a government does is likely to affect the market, i.e. investment, in some manner, or there would be no reason for government to act in the first place'.

He also notes that this provision applies not only to new measures, but also existing ones: i.e. no grandfathering.

Shrybman sums it up this way: 'the true purpose of this domestic 'trade 'agenda is to impose broad constraints on the exercise of governmental and public authority under the rubric of addressing trade barriers. At its core, this is an agenda to promote further privatization and deregulation.'

### Municipalities Refused Concessions

Municipalities, school districts, and other local elected bodies are clearly the most vulnerable to TILMA or AIT challenges, and to the legislative and policy 'chill' the possibility of such challenges presents. They have expressed great concern over how TILMA might be applied to their actions (including zoning, subdivision, business regulation, licensing, tax exemptions, and procurement policies), which started on April 1 of this year.

In negotiations between the Union of BC Municipalities and the BC Liberal provincial government, Shrybman reports that the government refused the following concessions:

- that municipalities be free to favour local businesses in procuring goods and services;
- assurance that the provincial government will not seek to recover damages imposed by a tribunal because it finds a municipal measure to be non-compliant with TILMA rules;
- for safeguards to prevent frivolous and vexatious challenges being brought to challenge municipal measures; and
- that municipalities be allowed to defend their own actions before a TILMA tribunal sitting in judgment of their conduct.

The refusal of this last provision seems tantamount to being tried in absentia, since TILMA requires that such actions be 'defended' by the province—the fox defending the henhouse. Besides somewhat clarifying the motives for TILMA, it also poisons the atmosphere between the provincial and local governments in BC.

### Labour Mobility

Extending the recognition of certificates and qualifications between all the provinces, says Shrybman, will inevitably lead

© Island Tides Publishing Ltd. This article may be reproduced with this attribution, in its entirety, with notification to Island Tides Publishing Ltd.

This article was published (April 23, 2009) in 'Island Tides'. 'Island Tides' is an independent, regional newspaper distributing 17,500 print copies throughout the Gulf Islands and the Canadian Strait of Georgia from Victoria to Campbell River to Howe Sound.

Island Tides, Box 55, Pender Island, BC, Canada.  
Email: [islandtides@islandtides.com](mailto:islandtides@islandtides.com).

Phone: 250-629-3660. Fax: 250-629-3838.  
Website: <http://www.islandtides.com>

to a 'race to the bottom', since in many occupations, training and qualifications required by law vary widely between provinces and are administered by different professional and trades bodies. He questions whether such a move really protects the public interest, particularly with regard to safety and professional integrity.

### **Dispute Resolution**

The trade ministers revealed last December that with the exception of Ontario, they had all approved a draft text setting out changes to the AIT's dispute resolution chapter. The AIT had been criticized by the BC government and others for having no 'teeth' or penalties built into resolution of disputes. Shrybman says that the ministers' December press release 'indicates that AIT dispute bodies are to be empowered to issue monetary awards against a province that fails to comply with tribunal rulings. While AIT dispute procedures may now be invoked by private parties, they are not as yet entitled to monetary awards as is the case under the TILMA.' But he anticipates that this will follow.

### **An AIT Energy Agreement**

Shrybman also reports that the trade ministers apparently achieved some progress towards an interprovincial energy agreement. A 2007 report by the Council of the Federation (an organization of provincial and territorial governments) indicated that such an agreement should include, besides several provisions encouraging 'green' energy, arrangements for 'speeding up regulatory approvals', and 'allowing direct provincial participation in international negotiations on energy'.

Again, there has been remarkably little public discussion on these moves and their significance. Shrybman avers that they may, however, reflect the reality that treaties signed by the federal government on behalf of Canada, but touching on constitutionally provincial areas of authority, must be implemented by the provinces themselves. He points out that NAFTA provisions 'seriously constrain' Canadian energy policy and law, including Canada's ability to meet its own energy needs before those of the US.

NAFTA, he says, exacerbates Canada's problems of energy supply and environmental policy. A secret AIT energy agreement, he says, could 'make matters worse'. ☞

---

© Island Tides Publishing Ltd. This article may be reproduced with this attribution, in its entirety, with notification to Island Tides Publishing Ltd.

This article was published (April 23, 2009) in 'Island Tides'. 'Island Tides' is an independent, regional newspaper distributing 17,500 print copies throughout the Gulf Islands and the Canadian Strait of Georgia from Victoria to Campbell River to Howe Sound.

Island Tides, Box 55, Pender Island, BC, Canada. Phone: 250-629-3660. Fax: 250-629-3838.  
Email: [islandtides@islandtides.com](mailto:islandtides@islandtides.com). Website: <http://www.islandtides.com>

---