



May 26, 2008

Dalton McGuinty, Premier
Legislative Building
Queen's Park
Toronto ON M7A 1A1

Sent by fax: (416) 325-3745, and by e-mail via the Government of Ontario website

Dear Premier McGuinty,

On April 9, 2007, the Council of Canadians met with Jim Peterson, your government's key negotiator in discussions with Quebec to improve inter-provincial trade and labour mobility. From that meeting, and from correspondence between one of our chapter activists and Sandra Pupatello, minister of economic development and trade, we are left with the impression that you are considering signing an agreement with Quebec that may closely resemble the Trade, Investment and Labour Mobility Agreement (TILMA) between Alberta and British Columbia. We think that this would be a monumental error for several reasons outlined below.

The Council of Canadians is Canada's largest citizens' organization with members and chapters across the country. We work to protect Canadian independence by promoting progressive policies on fair trade, clean water, energy security and public health care. Since late 2006, we have also campaigned heavily against TILMA in western Canada, and have toured Ontario to warn residents about the possibility that your government would either sign on to that agreement or come to a similar arrangement with Quebec.

We see TILMA as dangerous to local democracy in Canada. And we believe that we were contacted by Mr. Peterson to comment on inter-provincial trade issues because of the strength of our arguments and our opposition. We are not convinced that what few inter-provincial trade barriers there are put a significant or even moderate burden on the Canadian economy. Those few barriers that might exist can and should be amended politically – not in legal documents like TILMA that essentially enshrine corporate rights above democratic rights.

TILMA has been met with stiff resistance, mostly in British Columbia but also in Saskatchewan, where public consultations convinced the previous government that it was not in the province's interests to sign the agreement. In B.C., the opposition has been particularly strong from the municipalities who see that TILMA places enormous constraints on their otherwise lawful duty to enact legislation and draft regulations in the public interest. It does this by stipulating that there should be "no obstacles" to the free flow of trade, investment and labour mobility between provinces, and by establishing a legal process, borrowed from NAFTA but much more inclusive, by which almost all government policy – including municipal government, school board and health authority decisions – can be challenged as a veiled barrier to cross-border trade.

In September 2007, the Union of British Columbia Municipalities passed a resolution outlining its concerns about the agreement, including TILMA's binding dispute resolution process, which is off

limits to the same municipal governments whose measures may be challenged. This process has been called unconstitutional by trade lawyer Steven Shrybman, "by imposing financial penalties and other sanctions on the province for the lawful actions of governments and other public bodies... [and] by empowering ad hoc arbitral tribunals to adjudicate private claims concerning the otherwise lawful actions of government and other public bodies."

The UBCM was also concerned with the low procurement threshold – purchases of over \$10,000 must be opened up to inter-provincial bidding – and TILMA's requirement to harmonize standards and regulations, which "would obviate local control over what the community considers to be unacceptable business practices (or other issues of local interest)."

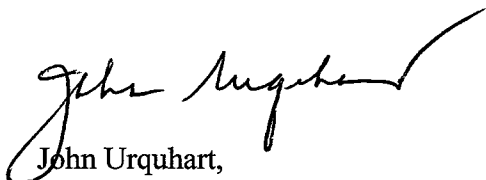
The Council of Canadians has come across no evidence that TILMA, or a TILMA-like agreement between Ontario and Quebec, will be able to safeguard policies aimed at protecting the environment or public health from corporate challenges. While a provincial government can claim that such policies represent legitimate objects exempt from the agreement, the very legitimacy of those policies is precisely what the TILMA dispute process is designed to test. TILMA's requirement that the provincial government prove its measures, or the measures of a municipal government or agency, are the least restrictive possible to achieve a stated objective will only increase the number of NAFTA-like tribunal decisions against those measures.

We realize that you and Quebec Premier Jean Charest have yet to announce a trade pact similar to TILMA. But based on media reports, statements from Mr. Peterson, and correspondence with your government, we are concerned that it will be on the agenda for your June 2 joint cabinet meeting in Quebec City. Again, we urge you not to sign any agreement that resembles TILMA, specifically one that might include TILMA's lopsided dispute resolution process and its requirement that governments mutually recognize standards and regulations.

Finally, we encourage you to bring the discussion about so-called inter-provincial trade barriers to the public for a full debate. The 2007 public hearings in Saskatchewan brought together an incredible variety of opinions on the issue and allowed the government to make an informed decision on whether or not to sign TILMA. We feel the fact that the previous NDP government decided against signing the Alberta-B.C. agreement, and that the current Saskatchewan Party government has similar reservations, speaks volumes to the redundancy of heavy-handed legal pacts like TILMA, and to why Ontario and Quebec must avoid replicating it.

We look forward to your response.

Sincerely,



John Urquhart,
Executive Director, The Council of Canadians

Cc: Howard Hampton, Ontario NDP Leader
John Tory, Ontario Progressive Conservative Leader