



**Submissions to the Public Works and Infrastructure Committee, City of Toronto**

**Re: Solid Waste Management Services Garbage Collection Request for Quotations (RFQs)**

**Stuart Trew  
The Council of Canadians**

April 26, 2011

Thank you Mr. Chair and councillors. My name is Stuart Trew, and I work in Toronto as trade campaigner with the Council of Canadians. The Council is one of the world's largest citizens' advocacy organizations with tens of thousands of members from coast to coast to coast. We have a very active chapter in Toronto, and we work through these chapters and our members locally, provincially, and nationally to promote economic, environmental and social policies that will make Canada more just and equitable.

I would like to draw this committee's attention to some of the potential trade implications of outsourcing waste disposal services in Toronto. There is not enough time here to address these concerns in great detail. In summary, I hope to impress upon committee the need to assess how existing and proposed new trade, investment and procurement agreements could affect tendering for, and regulation of, public services prior to making a final decision on whether or not to privatize garbage collection in District 2, west of Yonge Street to the Humber river.

Municipal governments have been, until recently, shielded to some extent from global trade rules designed to constrain public policy in order to "free" capital and investment flows. This "free" trade agenda has limited what governments can do to govern economic development, set environmental policy, and provide services to the public. A new generation of inter-provincial and international trade agreements—I will refer specifically to the Ontario-Quebec Trade and Cooperation Agreement, the Canada-U.S. Agreement on Government Procurement, and the half-finished Canada-EU Comprehensive Economic and Trade Agreement—will affect municipal governments in important ways that are rarely discussed until it is too late.

Before getting to these trade agreements, a quick reality check on privatization. The international experience with privatization or outsourcing shows that service levels tend to stay

the same or decline, and with no cost advantage. Public sector wages are often higher (very slightly higher in the case of waste management in Toronto), with obvious benefits to paying workers a fair wage. But savings are as often cancelled by the private supplier's profit expectations. With much respect for City staff, the report before you showing potential savings of \$8 million annually does not jive with this international experience. A closer study may be necessary.

For example, the City of Sherbrooke, Quebec<sup>1</sup> recently re-municipalized its garbage collection services to realize considerable cost savings -- \$750,000 per year. In the European Union, United States and Latin America, many cities are re-municipalizing privatized water services for the same reasons. The public option is often the cheapest and always the most accountable option for local communities looking to contain costs and keep service levels high.

Contracting out to private firms, whether for waste removal, water treatment or transit, is frequently unnecessarily secretive. Contracts between municipal governments and private firms are rarely made public, as Winnipeg residents are learning the hard way after the City signed a long-term contract for water treatment upgrades with French firm Veolia. For private firms, the emphasis will always be on security of the investment not security of the service for public users. It's not uncommon following private tenders for the lowest bidder, who under the proposal in front of you must be granted the garbage collection contract, to quickly demand more money due to allegedly unforeseen costs. Promised savings vanish along with democratic accountability.

The inter-provincial and international trade agreements I mentioned previously compound these problems by further locking in the private firm's investment in previously public services. They make it difficult to introduce new regulations affecting that investment, while new procurement agreements prohibit municipal governments from favouring local or Canadian content, applying sustainability guidelines to contracts, or fostering fair wage programs. Trade agreements also make it punishingly expensive to re-municipalize failed privatizations in the frequent event of declining service or poor value for money.

### **Ontario-Quebec Trade and Cooperation Agreement (September 2009)<sup>2</sup>**

The Ontario-Quebec Trade and Cooperation Agreement, or TCA, was made public the same day it was signed on September 11, 2009. The agreement mimics to a large extent a Trade, Investment and Labour Mobility Agreement (TILMA) signed by Alberta and B.C. in April 2007. TILMA was expanded to include Saskatchewan last year and renamed the New West

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<sup>1</sup> La Ville de Sherbrooke prend en main la collecte des déchets et économise 750 000 \$, le 23 février 2011: [http://www.ville.sherbrooke.qc.ca/webconcepteur/web/VilledeSherbrooke/fr/service.prt?svcid=VS\\_COMMUNIQUES2&page=details.jsp&iddoc=219769](http://www.ville.sherbrooke.qc.ca/webconcepteur/web/VilledeSherbrooke/fr/service.prt?svcid=VS_COMMUNIQUES2&page=details.jsp&iddoc=219769)

<sup>2</sup> For a copy of the agreement: [http://www.ait-aci.ca/labour\\_en/links/Quebec-Ontario%20Trade%20and%20Cooperation%20Agreement%20English.pdf](http://www.ait-aci.ca/labour_en/links/Quebec-Ontario%20Trade%20and%20Cooperation%20Agreement%20English.pdf)

Partnership. Municipal governments were sidelined in the preparation of both the western and Ontario-Quebec agreements.

The TCA was less about addressing real barriers to trade and investment between Ontario and Quebec, of which there are few. Its main thrust can be found in its “no obstacles” and regulatory harmonization clauses, which apply to measures by the provinces and their entities, including municipal governments.<sup>3</sup>

On the former, the agreement prohibits existing and future government measures that “operate to create an obstacle to trade, investment and labour mobility.” This would apply to existing and future measures, including bylaws, regulatory standards, requirements, directives, programs, policies or administrative practices affecting the operations of a private garbage collection firm – even if the intent of such measures was not to create an obstacle but merely to encourage better practices, for example environmental protection.

While the Target 70 waste reduction strategy has not to date faced a trade challenge, and appears to create no new costs to private garbage collection firms in the GTA, the extent to which garbage collection, or any public service, is privatized in Toronto increases the risk that private investors will challenge City measures as impediments to their profits. The regulatory harmonization provisions in the TCA, and the inclusion of environment and sustainable development commitments, also heighten the threat of trade challenges, especially in the event the City of Toronto wanted to move further than other Ontario or Quebec jurisdictions in protecting the environment, reducing waste, etc.

### **Canada-U.S. Agreement on Government Procurement (February 2010)<sup>4</sup> and the Canada-EU Comprehensive Economic and Trade Agreement (TBD 2012)<sup>5</sup>**

A further risk of privatization from trade agreements comes from procurement agreements in the TCA and new international deals with the U.S. and European Union. Canada and the EU are negotiating a Comprehensive Economic and Trade Agreement, or CETA, which as the name suggests will be much broader than the NAFTA. The EU has requested—insisted would be a better word—that procurement by municipal governments be included for goods, services and construction over certain thresholds. Canada and the U.S. last year concluded a procurement agreement which included municipal construction projects only, and then only until October 2011.

To the best of my knowledge, the City of Toronto has not been kept entirely up to date on the CETA negotiations by the federal or provincial governments, nor was it included in Canada-U.S.

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<sup>3</sup> For a detailed assessment of the TCA, see Shrybman (October 2009):

[http://www.cupe.on.ca/aux\\_file.php?aux\\_file\\_id=2405](http://www.cupe.on.ca/aux_file.php?aux_file_id=2405)

<sup>4</sup> For a copy of the agreement: [http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ENG-Canada-USA\\_Government\\_Procurement.pdf](http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ENG-Canada-USA_Government_Procurement.pdf)

<sup>5</sup> Leaked copies of the January 2010 and October 2010 draft texts of CETA can be found at <http://tradejustice.ca>

procurement talks between 2009 and 2010.<sup>6</sup> The offer-exchange stage of the EU negotiations has been postponed several times and is now expected to take place in May. If Toronto is included in Ontario's procurement offer it will have a pronounced effect on how the City tenders for services such as garbage collection, drinking water and sanitation, transit, power and other social services.

According to a legal opinion of CETA's procurement chapter for the Centre for Civic Governance, the agreement as envisioned would:

- Prohibit municipalities from applying buy local or buy Canadian preferences to contracts, or requiring that bidders use some proportion of local or Canadian goods, services or labour. This would end the ability of municipalities to use procurement as a local economic or social development tool.
- Prohibit municipalities from procuring strategically, for example to create or support a market for innovative goods and services, including green technologies, if the effect would favour Canadian producers or attract investment to Canada.
- Prohibit municipalities from using procurement for sustainable development, for example buy local food policies like the one Toronto passed to reduce emissions from food miles.<sup>7</sup>

Depending on the timing of the EU deal, the City of Toronto's garbage collection decision could fall under new CETA rules giving EU-based waste management firms legal rights to challenge tender decisions in front of unelected trade tribunals with the authority to issue fines or overturn procurement decisions. There would be no way to prioritize a local garbage collection firm on grounds of economic development or local job creation, or to put above mentioned sustainability conditions into the terms of the contract. In fact, the CETA rules, far from streamlining government procurement as they are intended to do, could put more hurdles in the way of speedy decisions.

This is not hypothetical. Rather than run the risk of a TILMA trade panel, the District of Summerland, B.C. recently cancelled a garbage collection contract with a local firm, handing a five-year contract to a multinational firm with extensive operations across North America. Under the terms of the Alberta-B.C.-Saskatchewan trade agreement, the lowest bidder must get the contract. In this case, at least six full time jobs and numerous part time jobs will

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<sup>6</sup> Personal meetings with Council members and City staff.

<sup>7</sup> For more information on procurement and the CETA, including a legal opinion of the impact on municipalities, see the Centre for Civic Governance: <http://www.civicgovernance.ca/aboutceta>

disappear, taking money out of the community that would have gone to local taxes and local business.<sup>8</sup>

CETA, and existing inter-provincial trade agreements, also include services and investment provisions which will make it difficult or very expensive to change Toronto policy related to garbage collection over the course of the contract without compensating the firm for lost future profits. For example, if the City decided to increase the amount of waste it wanted to divert, or create other new guidelines for waste management, if these measures chipped away at the profits private waste collection firms, even if unintentionally, those firms would have rights to compensation. Similarly, decisions to break a contract early in the event service levels are lacking could become punishingly expensive.

### **Conclusion**

In conclusion, the Council of Canadians is opposed to the privatization of garbage collection in District 2, west of Yonge Street to the Humber River. International experience with outsourcing has not shown considerable cost or efficiency gains over public delivery. In fact, publicly delivered services are frequently cheaper, provide societal gains beyond bottom-line considerations, and are always more accountable. We are also concerned with how privatization will affect the City of Toronto's 70 per cent diversion targets and existing or new programs to achieve those targets, especially considering the trade considerations outlined here.

We strongly urge committee to seek an assessment of existing and proposed future trade agreements on the tendering for, and regulation of, public services such as garbage collection, and that this assessment happen prior to making a final decision with respect to garbage collection in District 2. More immediately, we encourage the City of Toronto to join the Union of B.C. Municipalities, BC School Trustees Association, and Town of New Tecumseth, Ontario in requesting a permanent exemption for municipal governments from the Canada-EU free trade agreement. I have attached a draft resolution for your consideration.

Thank you.

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<sup>8</sup> See "Garbage contract met trade agreement," Summerland Review, March 23, 2011:  
[http://www.bclocalnews.com/okanagan\\_similkameen/summerlandreview/news/118536969.html](http://www.bclocalnews.com/okanagan_similkameen/summerlandreview/news/118536969.html)

## **B108 TRADE AGREEMENT EUROPEAN UNION<sup>9</sup>**

Moved by Logan Lake, NS

WHEREAS the Canadian government has entered into negotiations with the European Union for a comprehensive economic trade agreement;

AND WHEREAS European corporations are insisting on full access to procurement by sub national governments - including local governments, school boards, universities, hospitals and other provincial agencies, which could significantly reduce or eliminate the right to specify local priorities when public money is invested in goods, services or capital projects;

### **THEREFORE BE IT RESOLVED that the UBCM request:**

- a briefing from the Province of BC on the scope and content of trade negotiations with the European Union;
- the Federation of Canadian Municipalities to provide sector-by-sector analysis of the potential impacts on local government functions and powers of the procurement regime that the European Union is seeking; and
- the Federation of Canadian Municipalities to urge the government of Canada not to provide the European Union with access to sub national government procurement; and
- that the provincial government negotiate a clear, permanent exemption for local governments from the CETA.

**ON MOTION, with amendment as recommended, was ENDORSED and REFERRED to FCM**

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<sup>9</sup> See page 41 of 61:

<http://www.ubcm.ca/assets/Resolutions~and~Policy/Resolutions/2010%20Resolutions%20from%20Minutes.pdf>