

Report to the BCLTA from the BCLA TILMA Task Force

January 17, 2009

A. TILMA Overview

The Trade, Investment and Labour Mobility Agreement (TILMA) is a trade agreement under Article 1800 of the Agreement on Internal Trade (AIT). While all provinces and territories are party to the AIT, only British Columbia and Alberta have signed on to TILMA. Other provinces have been invited to join, but none have done so to date. TILMA came into force on April 1, 2007 and we are nearing the end of a two-year transitional period in which exclusions and other provisions are to be negotiated. It may not be too late to negotiate an exclusion for public libraries.

The structure of TILMA is such that everything is included unless expressly excluded. TILMA applies to any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practise or other procedure of provincial governments or their “government entities”.

Municipalities are subject to TILMA though they themselves are not party to it. In her study prepared for the BCLA, Ellen Gould identifies a lack of clarity about whether public libraries in BC are under provincial or local jurisdiction when it comes to TILMA. While the majority of funding for public libraries is local, they are all governed by provincial legislation. Because there is no TILMA precedent, it is difficult to determine if the procurement thresholds for the province or municipalities will apply to libraries. Provincial governments found in violation of TILMA rules could be fined up to \$5 million.

The provincial and federal governments made significant changes to the AIT in 2008, including the ability for fines to be charged for agreement violations and expansion of the agreement's labour mobility provisions. These changes may result in attention being directed away from TILMA and toward expanding TILMA-like provisions in the AIT.

Procurement Thresholds for:	TILMA		AIT
	Provincial Bodies	Municipalities and MASH Sector	
Goods	\$10,000.00	\$75,000.00	\$100,000.00
Services	\$75,000.00	\$75,000.00	\$100,000.00
Construction	\$100,000.00	\$200,000.00	\$250,000.00

References:

City of Regina. (2007.) “Implications of TILMA on City Operations: Legal Opinion of TILMA. Regina, Saskatchewan, May 23, 2007.” Retrieved Jan. 14, 2009 from http://www.canadians.org/DI/documents/TILMA_Regina_Legal_May2307.pdf

Gould, Ellen. (2008.) “TILMA – Key Implications for BC Libraries.” Prepared for the British Columbia Library Association.

Lidstone, Donald. (2007.) “Trade, Investment and Labour Mobility Agreement: Overview of Immediate Implications for Local Government.” Prepared for the Union of British Columbia Municipalities. Retrieved Jan. 14, 2009 from http://www.civicinfo.bc.ca/weekly/LidstoneYoungAnderson_Legal_Analysis_April2007.pdf

B. Risks for BC Public Libraries

Core Service: Libraries are, and have been for a long time, in direct competition with bookstores, Internet cafes, and video rental outlets. While libraries have not yet received challenges from the private sector for their loan of library materials, there are no precedents to determine if libraries might win or lose such a challenge.

Contracted Services: All services that a library contracts out could require a formal bid process. These include cataloguing, binding, book selection, library management, security, janitorial, or any other services for which there is a precedent for contracting out.

Procurement: It is possible that the provincial goods and services threshold of \$10,000 would apply to public libraries, in which case boards would have to put to tender any planned purchase worth \$10,000 or more. This low threshold would place an enormous administrative burden on public libraries. Even smaller libraries would be prevented from making decisions based on supporting local economies, favouring quality over price, or other non-economic factors. Furthermore, smaller libraries could not base their purchasing decisions on those made by larger libraries and would have to go through the tendering process themselves.

Labour Mobility: Many libraries in British Columbia require that library staff have a Community Librarian Training Program (CLTP) certificate. Alberta has no equivalent program and BC library requirements that people have CLTP training could be seen as a barrier to labour mobility. On the other hand, Alberta's Library Act & Library Regulation stipulate that communities with a population of 10,000 people or more must employ a professional librarian. This regulation could be determined a barrier to labour mobility since it sets a higher standard than any in British Columbia.

Open-Source Software: Using free, open-source software in public libraries generally may be viewed as a barrier to investment, but the development and implementation of the provincial ILS project (SITKA) has to date been funded almost entirely by the provincial government.

Library Policies: Perhaps library policies restricting advertising or commercial opportunities in libraries or on library websites could be seen as a barrier to investment.

Fee for Service: At least one public library in British Columbia provides specialized reference services at a fee. Such services could be challenged by private research or database firms which provide competing services.

C. Suggested Actions

That public libraries obtain an exemption for “Measures adopted or maintained relating to libraries, and services and investments pertaining to libraries,” and to do so:

- That BCLTA communicate with library boards in British Columbia about the implications of TILMA;
- That BCLTA draft a letter for library boards to send to their municipal and regional district councils encouraging them to lobby the UBCM for an exclusion for public libraries;
- That BCLTA draft a letter to be sent to Ida Chong, Minister Technology, Trade and Economic Development, with copies to the Shirley Bond, Minister of Education, Premier Gordon Campbell, and local MLAs, requesting an exclusion for public libraries.

That the BCLTA work closely with the BCLA to monitor carefully AIT developments and discuss possibilities for collaboration with other sectors to obtain exemptions for public libraries.