

April 12, 2009

## TILMA Update

Attention Library Board Chairs/Liaisons:

In late 2008, BCLTA was approached by the BCLA TILMA Sub-Committee with concerns around the potential implications of the Trade, Investment and Labour Mobility Agreement on British Columbia's public libraries. In conjunction with BCLA, a legal opinion on the issue was commissioned from Don Lidstone, Q.C. of Ratcliff and Company LLP. Don Lidstone was instrumental in analyzing the implications of TILMA on BC local governments and negotiating key amendments to the legislation on behalf of the Union of BC Municipalities (UBCM). (Our thanks to the Vancouver Island Regional Library, the Greater Victoria Public Library, and Public Library InterLINK for funding this legal opinion.)

In his initial analysis of the legislation (see Attachment #1), Mr. Lidstone concludes that TILMA **does** apply to libraries and their boards as defined and classified in the *Library Act*. Under TILMA, public libraries must not operate in a way that restricts or impairs trade, investment and labour mobility between British Columbia and Alberta. Libraries are subject to the provisions of TILMA as of April 1, 2009.

In a subsequent and more detailed analysis of the practical implications of TILMA on BC's public libraries (see Attachment #2), Mr. Lidstone provides a thorough summary of some of the key areas of concern – most notably, lower procurement thresholds and an expanded range of services that must go to tender. To sum up, under the Agreement on Internal Trade (AIT), libraries were required to go to tender for goods above the value of \$100,000; services above the value of \$100,000; and construction above the value of \$250,000. Under TILMA, these thresholds have been lowered to \$75,000; \$75,000; and \$200,000 respectively. Tendering must be done on BC Bid (or any other such electronic system) and the services of licensed professionals such as architects, engineers and accountants, as well as advertising and public relations firms, are now included among services that must be openly tendered.

Although Mr. Lidstone qualifies his analysis with the observation that TILMA procurement rules may not technically apply to libraries, BCLTA is of the opinion that library boards should adhere to the TILMA procurement provisions – as directed by the Ministry of Education in its letter of March 5, 2009 to Library Board Chairs, et al. BCLTA will be monitoring the impact of these new procurement thresholds on public libraries and we invite our members to keep us informed of any issues that arise in relation to these changes.

The only other significant issue of concern raised by Mr. Lidstone is the dispute resolution process under TILMA. The UBCM was successful in achieving a consultation agreement with the Province which provides that both UBCM and a local government accused of restricting trade, investment or labour mobility contrary to TILMA will be notified of the complaint and provided with an opportunity to appear at a hearing to present an *amicus* brief. BCLTA will request a similar consultation agreement for libraries.

BCLTA members are encouraged to review the attached documents from Mr. Lidstone and to contact Executive Director Errin Morrison at [execdirector@bclta.org](mailto:execdirector@bclta.org) with any comments, concerns, or questions about these documents or BCLTA's position on TILMA.