



**Ministry of Economic Development Response
to:**

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Building & Construction Trades Council**

Regarding the TILMA Agreement

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Note: The responses (indented) given to the submission's questions do not represent a legal interpretation of the TILMA or its application.

Part I: Operating Principles

With respect to the following five questions, please note that the Operating Principles are broad statements of intent and may not specifically apply to the construction sector in every case.

1) Under the heading operating principles, the agreement states that it is intended to “increase opportunities and choice for workers, investors, consumers and businesses.” With respect to the construction sector what are the practical “opportunities” and “choices” for workers that are to be provided by the agreement?

The TILMA will make it much easier for all regulated occupations to become certified in both provinces. The Agreement will allow workers to seek the best opportunities regardless of whether the opportunities are in British Columbia or Alberta.

2) The operating principles section also states that the agreement is intended to “provide access to information and programs to facilitate labour mobility and business establishment.” With respect to the construction sector, what kinds of programs to facilitate labour mobility are contemplated by the agreement?

The transparency provisions of Article 7 will ensure that any obstacles or information relating to the free movement of workers are clearly identified. During the two-year transitional period, a range of options to facilitate labour mobility will be considered.

3) It also states that the agreement is intended to “promote sustainable and environmentally sound development, and high levels of consumer protection, health and labour standards.” What does the promotion of high levels of labour standards mean? Can you illustrate some of the policies that you see as likely to be implemented in order to achieve this objective?

The Agreement is designed to seek the highest possible standards through reconciliation or mutual recognition. There is no requirement or intention in TILMA to lower labour standards. A range of options to advance this principle will be considered.

4) The operating principles section also states that the agreement is intended to facilitate co-operation “on matters related to trade, investment and labour mobility” What is meant by facilitating ‘co-operation?’ What role do you see the building trades’ unions playing in this process?

The Operating Principles state that the Governments of B.C. and Alberta are “resolved to cooperate on matters related to trade, investment and labour mobility.” One aspect of this cooperation is reconciling their respective

occupational standards, which regulatory bodies are primarily responsible for. We are open to hearing what role the building trades' unions are interested in playing to promote cooperation between B.C. and Alberta.

5) Finally, the operating principles section states that the agreement is intended to “minimize the impacts of other measures that may adversely affect trade, investment or labour mobility”. Can you provide us with a list of measures that are adversely affecting labour mobility in the construction sector? If we assume, hypothetically, that there are measures that “adversely affect ...labour mobility” what mechanisms or policies does the agreement require of governments to address this issue?

A list of measures adversely affecting labour mobility in the construction sector, as well as many other sectors, can be found in Part VI of the TILMA (Transitional Measures). If there are other measures that act to restrict or impair labour mobility in the construction sector that are not listed, we would appreciate your input. The TILMA does not prescribe how governments must reconcile standards.

Part II: Extent of Obligations

6) Under **Article 1** (Part 2) of TILMA, the BC Government agrees to adopt an approach that is most conducive to liberalizing labour mobility if there is a conflict with the AIT. Can you provide us with an explanation of what the Government means when it uses the term “liberalizing” labour mobility, with particular reference to the construction sector? What changes in current practices would be contemplated in this policy commitment by government?

The AIT recognizes the Red Seal as the vehicle for labour mobility in trades. TILMA will continue to support the Red Seal and will also provide the opportunity to reconcile standards for non-Red Seal trades to ensure mobility.

7) **Article 2** (Scope and Coverage) of TILMA indicates that it applies to “measures”. This seems very wide in its application, presumably including everything in the construction sector unless exempted by other provisions of the agreement. Can you illustrate some of the most important measures in the construction sector?

The definition of measures in the TILMA is consistent with that of the existing AIT, which has governed internal trade in Canada since 1995. The most important measures in the construction industry that can be affected by the TILMA are standards maintained by regulatory bodies that restrict labour mobility. Some construction trades already satisfy the TILMA’s labour mobility provisions as a result of their Red Seal status. The full list of occupations with labour mobility restrictions can be found in Part VI (Transitional Measures) of the TILMA. An updated version of this list can be found [on](http://www.ecdev.gov.bc.ca) the Ministry’s website at www.ecdev.gov.bc.ca.

8) **Article 3** (No Obstacles) indicates that the Government is to “ensure that its measures do not operate to restrict or impair ...labour mobility”. This seems like a very sweeping commitment. Can you explain why such a broad commitment – a commitment which would appear to override many public policy considerations that have, historically, formed the basis of our labour relations system - is now necessary?

The labour mobility goals in the TILMA are neither new, nor overly broad. The 1995 AIT committed Parties, under Article 701, to “enable any worker qualified for an occupation in the territory of a Party to be granted access to employment opportunities in that occupation in the territory of any other Party.” The TILMA establishes the same goal under Article 13(1). In both agreements, social policy objectives, such as labour standards and codes, are specifically protected (see Article 702(2) in the AIT and General Exception 1(f) in the TILMA). The “No obstacles” article does not provide for non-discriminatory domestic measures to be overridden.

9) **Article 4** (Non-Discrimination) seems to obligate the Government to a blanket commitment that it will treat persons from Alberta in a manner that is identical to the way it currently treats persons from BC in all respects (with the minor exception of charges that it may levy that can be justified). This seems like a very broad commitment. Can you clarify what is intended in the context of BC’s construction industry? What are the ‘problems’ that this provision is intended to address?

Governments are not obligated by the TILMA to treat persons from B.C. and Alberta identically. Article 4 is a General Rule designed to apply to all sectors and is based directly on Article 401 of the AIT, which has been in effect since 1995. Article 4 is intended to prevent Parties from, for example, requiring out of province workers to have additional training that it does not require of its own workers in like circumstances.

10) **Article 5** (Standards and Regulations) makes a number of commitments including: “mutually recognizing or otherwise reconciling their existing standards and regulations that ...restrict or impair ...labour mobility.” Does the Government have a list of standards and regulations that would be affected by this provision?

The Parties have compiled a list of standards and regulations that restrict labour mobility (and are thus affected by Article 5) in Part VI of the TILMA (Transitional Measures) and will need to address these measures for those occupations listed in Part VI. See also answer to question 5. An updated version of this list is available on the Ministry’s website.

11a) Article 5 also indicates that the Government shall not “establish new standards or regulations that operate to restrict or impair...labour mobility.” Can you provide illustrations of new standards that would not be permitted under this obligation?

For example, new regulations that would require residence in one province in order to work there. Such a measure would unnecessarily restrict the free movement of workers. Requirements to register in the other province continue to apply.

11b) Article 5 also indicates that the Government will “cooperate to minimize differences in standards or regulations adopted or maintained to achieve legitimate objectives” This appears to indicate that BC will harmonize its labour standards with Alberta. Is this the intention?

No. The onus in Article 5 is on both Parties to reconcile their standards and regulations. There is no requirement for one Party to adopt the standards and regulations of the other Party. Nor is there an obligation to “harmonize” standards and regulations.

12) Would this also include areas such as Trades Qualifications, and apprenticeship requirements?

Yes, this would include these two areas if restrictions there cannot be shown to be required to achieve legitimate objectives (e.g., public safety), or any other identified exclusion.

13) Would it potentially include provisions of the Labour Code, the Human Rights Act and Worker’s Compensation legislation?

B.C. is not required to reconcile or harmonize the provisions of its *Labour Relations Code, Human Rights Code* or *Workers Compensation Act*. These measures are excluded from the Agreement under General Exception 1(f), which allows for differences in social policy.

14) **Article 6** (Legitimate Objectives) indicates that measures that are inconsistent with previous Articles 3, 4 or 5 can only be maintained if the Government can demonstrate that they are to achieve a “legitimate objective”, that they are “not more restrictive to trade, investment or labour mobility than necessary”; and that they are not a “disguised restriction to trade, investment or labour mobility”.

We note that Part VII – General (Definitions) of TILMA provides a definition of legitimate objectives. It identifies a number of practices that are acceptable. By implication this definition excludes any other practices that are not listed. Can you give us examples of current practices or policies that would not be legitimate objectives in the context of existing labour relations or employment practices in the construction industry?

Provisions of labour standards and codes may not be explicitly covered under the definition of legitimate objective. Social policy objectives have been specifically excluded under General Exception 1(f). If there are specific policies or practices that you have questions about, please advise.

15) Can you give us an illustration of any current practices that would be viewed as disguised restrictions on labour mobility in the construction industry?

We are not aware of any.

16) The reference in the definition of Legitimate Objectives to labour matters reads as follows: “g) protection of the health, safety and well-being of workers.” Can you explain why objectives such as those outlined in the current BC Labour Code, Employment Standards Act or our Workers’ Compensation Act are not included as legitimate objectives?

Social policy objectives are excluded from the TILMA under General Exception 1(f).

17) These objectives are much broader in scope than the objectives listed in TILMA. What happens if an interpretation of TILMA conflicts with these objectives?

The TILMA does not apply to social policy objectives (see General Exception 1(f)).

18) Why are the objectives set out in the BC Human Rights Code not listed? This Code provides protection to workers from discrimination at the workplace, yet there is no reference to it either in the definition of legitimate objectives or in the list of organizations in Appendix A which contains the statutory bodies with regulatory or dispute resolving authority. Can you explain this omission?

There is no need to include the *Human Rights Code* in Appendix I because its objectives, and the disputes that may arise pertaining to those objectives, are not affected by the TILMA. Note that the 1995 AIT also does not include such a reference.

19) **Article 7** (Transparency) indicates that BC would have to notify Alberta about any proposed changes in its legislation or regulations that might fall under the scope of this agreement. It also requires BC to consult with Alberta about the proposed changes, including taking comments from Alberta into consideration. What is meant by consultation with Alberta?

The transparency provisions of the TILMA in Article 7 are based on the existing transparency provisions of the AIT in Article 406. The transparency provisions of both agreements allow other Parties to comment on proposed measures. A Party’s comments may help the proposing Party achieve its intended objectives while limiting or eliminating the negative impacts on trade, investment or labour mobility.

20a) How will this be handled and what, if any, Alberta organizations outside government might also be involved in this consultation?

As with the 1995 AIT, B.C.'s obligation is to advise Alberta of the proposed measure, not any other organization. Each Party can use its discretion to consult other organizations on proposed measures as it sees fit. Naturally, the confidentiality of the legislative and other processes must be honoured.

20b) What happens if Alberta does not agree with the proposed change?

If Alberta does not agree with a proposed change that is, or potentially is, inconsistent with the TILMA, B.C. can still implement the measure. As with the AIT, Alberta may initiate dispute resolution proceedings to resolve the matter. All dispute resolution proceedings begin with a consultation period, in which Parties may agree to use mediation or cooperative means to resolve the matter.

21) Does TILMA give Alberta some right of veto?

No.

22a) **Article 8** (Exceptions) appears to deal with measures that are inconsistent with the obligations of TILMA but which the Province wishes to retain. It refers to the list in Part V. How did the Province determine what measures in the construction or labour relations/labour standards area should be 'grand parented' under [exceptions]?

B.C. and Alberta based the exceptions for labour standards on exceptions in the AIT. Specifically, general exception 1(f) in the TILMA, "Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and workers' compensation," is based directly on Article 702(2) in the Labour Mobility chapter of the AIT.

22b) How has the Province ensured that it has included all measures that might be of significance in these areas?

B.C. ensured that the TILMA protects workers by defining exception 1(f) broadly as "social policy." B.C. is a Party to the AIT, which has been operating for more than ten years with this same exception and no deficiency has arisen. Should B.C. and Alberta decide, however, that they would like to provide additional exceptions for workers, either in the construction industry or elsewhere, they can agree to add exceptions under Article 8(2) at any time. Of course, one must bear in mind that the AIT continues to apply to B.C. and Alberta.

23) What happens if important measures, initially overlooked by BC, subsequently come to light and Alberta does not want to list them under Part V? Does this mean they must be eliminated?

B.C. must make sure government measures conform to the TILMA, but does not need to eliminate them. Under Article 13(5), if an important occupation-related measure is identified, a Party may add it to the transitional list.

24) **Article 9** (Transitional Period) is not clear as to the actual time frame of this 'transitional period'. Can you clarify this for us?

The transitional period is defined in Part VII as “the two year period commencing as of the entry into force of this Agreement, or as the Parties otherwise agree.” The two year transitional period will begin April 1, 2007 and end April 1, 2009.

25) What process is contemplated for ensuring that all the measures that may be in conflict with Parts I to IV of the Agreement are dealt with fully in the transitional period?

Many different processes have been considered and are in operation. For example, staff are assisting occupational regulatory bodies to fulfill our labour mobility obligations.

26) How, specifically, will labour and construction sectors be addressed?

With the assistance of government officials, regulatory bodies in both provinces will identify, list and reconcile occupations with different standards that unnecessarily restrict the movement of workers. For example, water well drillers have been identified and listed in the transitional measures section (Part VI) of the TILMA. The Industry Training Authority and the regulatory bodies of B.C. and Alberta are working to reconcile their standards. The process of reconciliation will likely vary, depending on the specific measure(s).

27) Article 9 appears to have a standstill provision. Does this mean no new regulations or legislation will be implemented during this period?

No. New measures that are consistent with the TILMA or unaffected by the TILMA may be implemented during this period. Article 9(4) simply prevents Parties from creating new measures that are inconsistent with the TILMA.

28) **Article 11** (Investment) deals with business registration and reporting requirements, indicating that steps will be taken to harmonize them and also that companies registered in one province will not be required “to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business

activities.” One of the ongoing problems in the construction industry is that firms go bankrupt and fail to pay wages owing to their workers. The above commitment would appear to make this problem worse, as workers would end up dealing with companies whose offices are in Alberta and whose bankruptcy requirements may be more onerous – and certainly more inconvenient – to deal with. In light of this obligation, what protections would BC workers have to ensure their wages were paid in the event of bankruptcy or non-payment of wages by an Alberta registered company?

Measures relating to business registration and reporting are included in Part VI (Transitional Measures) and have to be negotiated. However, officials are aware of this concern and intend to ensure that B.C. workers will retain the rights and protections to effectively deal with situations where a company registered extra-provincially that has no assets in B.C. goes bankrupt or fails to pay wages.

29) **Article 13:** (Labour Mobility) states that “subject to paragraphs 4 and 5, any worker certified for an occupation by a regulatory authority of a Party shall be recognized as qualified to practice that occupation by the other Party.” This is a very comprehensive commitment and raises numerous questions with respect to its implementation in the construction sector. Currently, there are a number of significant differences in the training, apprenticeship and qualifications requirements between BC and Alberta. There are a variety of reasons for these differences, reflecting different views of appropriate standards, different construction practices and different historical factors.

Does the Government have a detailed assessment of the similarities and differences in current practices in BC and Alberta for all the different trades, both certified and non certified that exist in the various sectors and sub-sectors of the construction sector? If so, can we see this list?

The list that B.C. and Alberta maintain for differences in occupational requirements is the Labour Mobility list found in the TILMA – see Part VI: Transitional Measures. Note that the original list of occupations contained in Part VI has been updated considerably and can be found on the Ministry’s website. Occupations that do not have differences that restrict labour mobility are not listed because they already conform to the provisions of the Agreement (See Article 13(3)). Occupations that are not regulated in either province are not listed because they enjoy full labour mobility. Work continues to assess similarities and differences between relevant measures. We would be pleased to receive any input you may have.

30) If it does not, how will the Government determine the appropriate standards that will prevail in the harmonization process that is outlined in this provision?

The respective regulatory bodies in B.C. and Alberta have the lead on reconciling their different standards. B.C. is confident that regulatory bodies have the necessary understanding, experience and professionalism to

reconcile differences in a manner that maintains their high standards. Also see answer to question 44.

31) What safeguards does it contemplate to ensure that standards are not reduced to the lowest common denominator?

Provinces do not have to harmonize their standards, nor settle for the lowest common denominator. The regulatory bodies will work together to find a mutually satisfactory resolution. In fact, Article 5(4) of the TILMA calls on Parties to “work toward the enhancement of sustainable development, consumer and environmental protection, and health, safety and labour standards and the effectiveness of measures relating thereto.” Additionally, as part of the Operating Principles, B.C. and Alberta are resolved to promote sustainable and environmentally sound development, and high levels of consumer protection, health and labour standards.

32) Who will be involved in the decisions about these matters?

Primarily the regulatory bodies, in conjunction with relevant government officials and ministers.

33) The agreement notes that the Red Seal Program will be respected. However, this program has provided a way of addressing anomalies in training requirements and standards across the country through extensive consultations with the various trades affected. Why is it necessary to put in place a new process for dealing with standards, when we already have the Red Seal Program? How will this new process be integrated with the existing Red Seal program?

The TILMA is necessary because it applies to all regulated occupations (including trades), whereas the Red Seal Program is limited to certain trades. Article 13(3) means that both provinces will continue to recognize the other province’s Red Seal workers.

34) What will happen if inconsistencies in standards arise?

If inconsistencies in standards between Parties arise after initial reconciliation, regulatory bodies will have to reconcile them again. Given, however, the transparency provisions under Article 7(2), which require Parties to inform each other when they are proposing to adopt or amend any measure, future inconsistencies should not arise.

35) **Article 14** (Procurement) commits BC to “open and non-discriminatory access to procurements of their government entities” for construction contracts of over \$100,000. (This is not all that much, these days, so it covers virtually all construction procurement.). Can you provide us with a sense of the changes that this policy will make in the way the BC Government and its entities purchase construction services?

B.C. is currently required under the AIT to ensure equal access to procurement for all Canadian suppliers in construction where the value is \$100,000 or greater. The threshold in the TILMA for construction is also \$100,000, so the rules that the B.C. government and its entities must follow in purchasing construction services are largely unchanged from the AIT. More professions and services are covered by the TILMA than the AIT.

36) Historically, BC has used construction procurement to advance a variety of regional development, local employment and equity training and employment objectives. What scope would this obligation provide for the implementation of such policies in BC in the future?

The scope of the procurement provisions in the TILMA are similar to those established under the AIT. See answers to questions 37 and 38 for more.

37) Under this provision, how does the Government anticipate that First Nations and other members of equity groups who are currently under-represented in the construction sector will advance?

The TILMA does not prevent Parties from creating or maintaining programs relating to First Nations; measures relating to Aboriginal peoples are exempt from the TILMA under General Exception 1a.

The TILMA also preserves the right of governments to adopt affirmative action programs for disadvantaged groups under the definition of legitimate objective.

38) Is this provision intended to rule out any program that is intended to ensure that members of local communities are able to obtain employment in government funded construction projects in their communities?

The procurement provisions in the TILMA are intended to do what the procurement chapter in the AIT intended: “The purpose of this Chapter is to establish a framework that will ensure equal access to procurement for all [Parties’] suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy in a context of transparency and efficiency.” Parties to the TILMA must also still abide by Article 504(4) in the AIT.

39) In some collective agreements between government enterprise and the unions representing the workers they employ, the parties have included local employment provisions. How will TILMA affect these negotiated arrangements?

It is not clear what you are asking, but if you mean procurement contracts, the TILMA will have the same effect as the 1995 AIT, which already prohibits

governments from favouring the goods or services of a particular Province or region, including those goods and services included in construction contracts.

40) **Article 16** (Transportation) We are not clear about the implications of “provid(ing) full and free registration reciprocity for temporary inter- and intra-provincial vehicle operations as provided for by the Canadian Agreement on Vehicle Registration (CAVR) without exceptions or additional registration fees for those Category B vehicles described in paragraph 1 (a)(i) of CAVR.” We are concerned that the vehicles used on construction sites meet appropriate safety and maintenance requirements and that there are adequate safeguards to prevent owners from cutting corners and exposing other workers and the public to vehicles that do not meet proper safety standards. What guarantees does the Government have that implementing this provision will not weaken the ability of BC to ensure proper vehicle safety standards?

B.C. reserves the right under the definition of legitimate objective to pursue public security and safety, the protection of human health, and the protection of the health, safety and well-being of workers. Proper vehicle safety standards are a legitimate objective of any government and are not compromised by the TILMA.

41) **Part IV: Dispute Resolution Procedures**

(**Articles 24 – 34**): This part of the agreement allows persons, which we assume includes both individuals and companies (legal persons), to file complaints about government measures that they believe violate the terms of TILMA. It establishes procedures for filing a complaint, for consultation with the Parties affected, for establishing a panel, for the procedures to be followed by the panel and for the implementation of the panel’s decision, including monetary awards of up to \$5 million per complaint.

In reading the provisions dealing with the disputes process, it appears that Parties (i.e. Governments) are free to determine how they will defend their measures, including who they will consult with about the dispute. However, the agreement appears not to include any provision giving persons or organizations that might be affected by the outcome of the disputes process the right to be consulted in this process. To be more specific, it would appear that a complaint against a collective agreement provision or an internal union practice could be sent to a panel and a decision made without the union having any right to participate in the proceedings. Is this correct? If not, can you indicate where in the agreement third parties affected by disputes and subsequent panel decisions are given the right to defend their interests?

Only government measures are subject to TILMA; therefore, internal union practices are not affected by the agreement. Moreover, as specified in Article 25(8), “Consulting parties may include relevant sectoral and trade officials in the consultations, and, by mutual consent, may use mediation or other cooperative means to resolve the matter.” In the event that the consultation process does not resolve the dispute, UNCITRAL rules apply to panel

proceedings and allow the Parties to be represented or assisted by persons of their choice.

42) Financial penalties under the agreement would only have to be paid by governments who lose a dispute. However, if a private party, such as a contractor were to be awarded a substantial financial penalty from the BC Government, this would clearly put pressure on the Government to amend the measure to avoid further penalties. Thus, on the face of it, it could become a ‘back door method’ of forcing governments to amend legislation or regulations that exposed them to TILMA penalties. Is this a correct interpretation of the agreement? If not, please explain why not.

The TILMA does not contain a “back door method” of forcing governments to amend legislation. The TILMA states up front Parties’ obligations and the potential penalty for refusing to meet their obligations. The potential for monetary awards helps ensure that Parties meet their obligations.

43) **Part VI Transitional Measures**

Under Labour Mobility this section lists a number of occupational groups that are – at least for the time being – exempted from the labour mobility obligations. We have a number of questions on this section. We note that the occupations listed include a number of occupations that work on construction sites but are subject to different certification requirements in BC and Alberta. How has the BC Government ensured that it has a full understanding of the differences between current standards in BC and Alberta for each of the trades listed?

The respective regulatory bodies in B.C. and Alberta have the lead on reconciling their different standards. B.C. is confident that regulatory bodies have the necessary understanding, experience and professionalism to identify and reconcile differences in a manner that maintains or enhances their high standards.

44) Presumably, over time, the two governments intend to harmonize the occupational requirements to a common standard. On what basis will the ‘harmonization’ be made: will it be to include the higher standard in each case? Or will it seek the lower or someplace in between, which automatically will result in standards in one province, or the other, being lowered.

Mutual recognition and specifying standards in terms of results, performance or competence are preferred methods of reconciliation. Parties are not required to lower standards (See answer to 31), nor to harmonize.

45) Who is going to be consulted in this process and what guarantees is the Government willing to provide to ensure that if a skilled trade in BC believes that it would be inappropriate to lower standards, that these will not be lowered by the two Governments in any case?

See responses to questions 30 through 32. Naturally, as evidenced by past and present discussions with the B.C. and Yukon Building Trades Council, consultations have been, and will continue to be, extensive.

46) Perhaps more importantly, we note that virtually all the major building trades are currently excluded from the list. Can you explain why this is?

Certain building trades are not listed because they have full labour mobility under the Red Seal Program (See Article 13(3)). Note that the original list of occupations contained in Part VI has been updated considerably and can be found on the Ministry's website.

47) Our reading of the agreement indicates that if a trade is not listed under transitional measures, it is automatically included in the occupations covered by all the labour mobility obligations of the agreement. Is this true?

Yes, unlisted occupations will be subject to the Agreement as of April 1, 2007.

48) Can you explain how the Government came to the conclusion that these trades should be subject to the obligations, presumably from April 1, 2007 and did not even merit inclusion in the transitional list?

Occupations were not listed where there are no impediments to labour mobility. Also see answer to question 46.

Appendix I: Regulatory Bodies With Disputes Procedures

We note that there are only three bodies listed in this Appendix. The Labour Relations Board of BC and Worksafe BC are not listed. Both bodies have processes for resolving disputes, in one case about labour relations or health and safety matters.

49) As noted above, the Human Rights Code (and its related enforcement mechanisms) is also excluded. Can you explain this exclusion?

See answer to question 18.

50) The Consultative Process

There has been virtually no consultation with the building trades unions in the development of TILMA, despite the fact that the agreement clearly applies to the majority of workers we represent. Why was there no consultation with the unions representing many of the skilled trades' workers with respect to the blanket inclusion of the construction trades in TILMA? What plans does the Government have with respect to future consultations with the unions with respect to both the actual elimination of 'barriers' that it thinks exist in BC's construction industry?

The 1995 Agreement on Internal Trade already obligates B.C. to eliminate barriers to labour mobility. We continue to work with regulatory bodies and are always open to further consultations with industry participants. Also see answer to question 45.

51) We note that many other occupations and professions have been listed under “Transitional Measures” meaning that they will not be exposed to the obligations of the Agreement at this juncture, and perhaps for many years into the future. On what basis did the Government decide that it needed to provide this exemption for these groups, but did not need to provide a similar exemption for the major construction trades?

The list is intended to include all occupations (including trades) that currently do not have full labour mobility (Also see answer to question 46).

52) Given that there are a number of provisions of the agreement that will affect building trades workers, on what basis did it decide that the industry had major – and from its view, unjustifiable - ‘barriers’ in the construction sector? Why did it conclude that only a blanket commitment to remove all barriers was the appropriate approach?

The TILMA is a comprehensive agreement that applies equally to all occupations regardless of how many barriers they have; TILMA’s approach creates greater transparency.

53) **The BC Labour Code and Collective Agreements**

Under the BC Labour Code, the building trades unions have the right to negotiate collective agreements on behalf of their members with construction employers. These agreements regulate a wide range of employment issues. On the face of it, some of the provisions of collective agreements may conflict with the obligations of TILMA. We note that there is no clear statement in TILMA that negotiated provisions in collective agreements are exempt from its various obligations. Such a blanket exemption for collective agreements would have been very easy to include in the agreement. But it was not. Can you explain why?

Social policies, such as labour standards and codes, are exempt from the TILMA under General Exception 1(f). Other matters are already subject to the AIT, which addresses many, but not all, occupations.

54) If there is a conflict between provisions of TILMA, such as the labour mobility commitments, and the provisions of collective agreements that may require workers to be a member of a building trades union to be dispatched to an employer party to a collective agreement with the union, how would such a conflict be resolved?

See answer to 55.

55) What assurance can you provide that TILMA will not give employers and non-union workers the opportunity to challenge legal collective agreements that provide for union membership and the allocation of work through union hiring halls?

The TILMA does not affect union membership. As with the AIT, the TILMA only addresses government measures.

56) TILMA appears to provide a new avenue for challenging union rights which will circumvent the normal process at the Labour Board (which employers and non-union workers currently have the right to use) but rather through the TILMA disputes process. Can you give us a clear – and unequivocal - assurance that TILMA will not open the door to challenges to the freely negotiated provisions of our collective agreements?

The TILMA does not apply to social policy, such as labour standards and codes (See General Exception 1(f)). Just as with the AIT, governments may not circumvent their obligations or legal responsibilities.

57) TILMA appears to allow private parties to file complaints – and seek either policy changes or monetary compensation – over what they allege to be violations of the agreement, including, for example, violations of the labour mobility provisions. It is not clear what status such complaints would have if they seek to curtail or eliminate union and worker rights established by the BC Labour Code – rights that currently give unions (and employers) the legal ability to negotiate on these matters. However, as there is no exemption for the BC Labour Code or the regulatory authority of the BC Labour Relations Board, it could be interpreted that complaints filed under TILMA would proceed through an entirely separate process, outside the labour relations system.

Can you explain how potential conflicts between TILMA and the BC Labour Code would be resolved? If there is no exemption from the BC Labour Code, is there any mechanism that would prevent TILMA challenges having the effect of undermining or abolishing rights that have been established for workers in the BC Labour Code?

See answer to question 56.

58) **Employment Standards**

The BC Employment Standards Act provides various protections for workers in the province. As noted above, this legislation is not explicitly noted as being exempt from the obligations of TILMA. Can you explain why?

As previously explained, labour standards and codes are exempt from the TILMA. Protection of workers is also a legitimate objective.

59) As with the above questions concerning the relationship between the jurisdiction of the BC Labour Code and TILMA, can you explain how conflicts between the employment rights of workers and TILMA would be resolved?

Labour standards and codes are excluded from the Agreement under General Exception 1(f).