



Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers
autorisés de l'Ontario

Honourable Dalton McGuinty,
Premier of Ontario
Main Legislative Building
Room 281
Toronto, ON M7A 1A1

February 21, 2008

Dear Premier,

Re: Open letter regarding the Agreement on Internal Trade and Ontario-Quebec negotiations

We are writing in regards to your joint declaration with Quebec Premier Jean Charest to begin negotiating an expanded accord to eliminate trade barriers and improve labour mobility between the two provinces [1], as well as the ongoing work at the Council of the Federation to expand the Agreement on Internal Trade (AIT) [2]. Eliminating trade barriers and enhancing labour mobility between Canada's two largest provincial economies, as well as across the federation, presents opportunities as well as serious concerns and challenges.

We can see the benefits of ironing out specific inter-provincial problems across Canada. Some of the issues mentioned in the press are: lack of national agreement on the weights that trucks can carry; meat inspection issues preventing shipping certain types of meat across provincial borders; professional designations requiring distinct provincial certifications; provincial residence is required for many types of businesses to be able to win work in another province; and Quebec will still not allow the import from elsewhere in Canada of margarine that has the same colour as butter [3]. Although for the people affected these may be serious issues, we doubt they are of such magnitude that they need a comprehensive agreement instead of focused efforts to address them by the respective provincial governments in cooperation with other stakeholders (such as nursing regulatory bodies in the case of nursing certification).

Murray Campbell, writing in the Globe and Mail [4], cautions that the magnitude of inter-provincial barriers has been exaggerated. "Despite the premiers' rhetoric about trade barriers, there is scant evidence that there are any meaningful impediments to interprovincial trade," he says. Campbell recalls that even the business-oriented C.D. Howe Institute has acknowledged that the research – and rhetoric – of business groups overstates the impact of inter-provincial measures that increase inefficiency, raise consumer prices and restrict consumer choice. According to the Institute, barriers impose only a small cost on the overall economy, estimating that removal of barriers would increase Canada's gross domestic product by less than 0.5 per cent [5]. However, even this estimate appears to be exaggerated, as the best evidence on current inter-provincial barriers is that they cost less than one-twentieth of one percent of GDP;

furthermore, it can be shown that the widely cited and vastly overstated estimates of the Conference Board of Canada [6] are the result of both methodological and arithmetical errors [7].

These exaggerated claims about inter-provincial barriers feed economic interests that are promoting an all-encompassing deal like the Trade, Investment and Labour Mobility Agreement (TILMA) signed by B.C. and Alberta in 2006, the costs of which would almost certainly exceed its benefits [8]. Detailed analysis of TILMA shows that it is likely to water down health, safety and employment standards to the lowest common denominator and will support further privatization and deregulation [9]. TILMA also represents a serious threat to the viability of Medicare, other social programs and institutions, as well as local governments – all of which are central to Canadian public policy [9].

TILMA's investor-state dispute resolution mechanism exemplifies the imperative of the private interests over the public interest [10]. This mechanism, as demonstrated by the experience of Chapter 11 of NAFTA, pressures democratically elected, responsible governments to favour corporate interests over the protection of the public good. TILMA allows private investors to challenge governments in front of a trade dispute panel with financial penalties up to \$5 million. Any governmental measure that impacts on profits, such as legislation or programs favourable to the environment, public health, social services, or labour standards – could be challenged in this way. This will force governments to weigh the need to pay punitive damages when considering such initiatives. There is little doubt that this undermines the democratic process by restricting the legitimate objectives that governments can pursue and limits the means that can be used to achieve those objectives [10].

We are relieved to hear your recent remarks about TILMA. Last September you stated that “We will not sign an agreement that would lower or would allow for the lowering of environmental, labour, health and safety standards for Ontario workers” [11]. In your November press conference with Premier Charest you said that “We can eliminate barriers to trade and labour mobility while maintaining the capacity of each government to respond to circumstances in their respective provinces” [1]. If you are to remain faithful to these last statements, which we fully support, then you will need to reject the TILMA approach to eliminating inter-provincial barriers and adopt a fundamentally different one, which does not threaten the government's capacity to intervene for the public good.

At the same time, we read with tremendous concern that in the last meeting of the Council of the Federation you have endorsed “a dispute resolution system, including a tiered approach to monetary awards for failure to comply with a trade panel's ruling, which will ensure full compliance and enforceability of Panel rulings under the Agreement on Internal Trade” [2]. We understand that the intention of the Council is to first apply fines in government-to-government disputes, but this would certainly be understood as a first step leading to the application of fines in person-to-government disputes at a later date. On the face of it, this appears to contradict your commitments to the citizens of Ontario, as any dispute settlement mechanism that allows businesses to sue governments would transform the AIT into a home-grown version of NAFTA's notorious investor-state dispute mechanism [12].

Premier, your government has shown the good judgement and leadership to make changes in policy when new information emerges. We are calling on you to evaluate the considerable evidence that the TILMA approach, as well as any effort to establish binding enforcement within the AIT, is part of a deregulatory and downward harmonization agenda that conflicts with core commitments of your government to advance democratic governance and the public good. We are furthermore calling on you to take action to assure Ontario's organized civil society, of which we are part, that you intend to defend the best interests of the public.

We are asking that you:

- Declare that Ontario will not enter into an Ontario-Quebec agreement, or any changes to the 1995 Agreement on Internal Trade, that is based on the TILMA template; that will promote deregulation and downward harmonization; and will not fully respect the policy space of governments at all levels to pursue the public good.
- State that under no circumstances will Ontario enter into an agreement, inter-provincial, pan-Canadian, or international, that includes an investor-state lawsuit mechanism, or any other mechanism that empowers profits to overcome the pursuit of public interest. In particular, state that you reject the TILMA mechanism that allows business to sue governments up to a stipulated amount for measures that harm them.
- Confirm that Ontario's support for potential changes to the AIT would be contingent on the preservation of the principles just stated, and provide a clarification to the January 28 endorsement [2] you gave to the strengthening of the AIT's dispute settlement mechanism.
- Ensure that the negotiations with Quebec, as well as any other current or future inter-provincial and pan-Canadian negotiations, be managed in an open and transparent way. Establish mechanisms that allow for meaningful participation of all interested sectors of the Ontario public.
- Declare that any new inter-provincial or pan-Canadian agreement will be brought for deliberation and a ratification vote in the Ontario legislature.

Premier, the issues we raise in this letter touch on the core of the social fabric of our society. For us, they are of central importance to evaluating the role of our provincial government. We look forward to discussing these important matters further.

Warmest regards,



Mary Ferguson-Paré, RN, PhD, CHE
President, RNAO



Doris Grinspun, RN, MSN, PhD(c), O.ONT.
Executive Director, RNAO

cc:

Sandra Pupatello, Minister of Economic Development and Trade

Dwight Duncan, Minister of Finance

Brad Duguid, Minister of Labour

George Smitherman, Minister of Health and Long-Term Care

John Gerretsen, Minister of Environment

Jim Watson, Minister of Municipal Affairs and Housing

Notes:

1. Ontario, *Ontario and Quebec announce trade talks, press release, November 26, 2007*, Government of Ontario: Toronto.
2. Council of the Federation, *Press Release: Premiers Move to Strengthen Trade*. 2008, January 28: Vancouver.
3. Cash, M., *Doer wants national trade deal: Interprovincial barriers drag economy down*, in *Winnipeg Free Press*. 2007.
4. Campbell, M., *Premiers try to fix something that isn't really broken*, in *Globe and Mail*. 2007. p. A16.
5. The C.D. Howe report says: "The general perception is that interprovincial trade barriers cause businesses significant harm... Empirical studies conducted during the 1980s and 1990s found, however, that these barriers impose only a small cost on the overall economy and that removing them would increase Canada's gross domestic product by less than 0.5 percent. Indeed, since many of the barriers these studies examined — notably preferential procurement measures — have been substantially reduced over the past 10 years, earlier economic research probably overstates the cost of internal trade impediments". In: Macmillan, K.E. and P. Grady, *A New Prescription: Can the BC-Alberta TILMA Resuscitate Internal Trade in Canada?* 2007, C.D. Howe Institute: Toronto.
6. CBoC, *An Impact Assessment of the BC/Alberta Trade, Investment and Labour Mobility Agreement*. 2005, Conference Board of Canada: Ottawa.
7. Lee, M. and E. Weir, *Behind the Numbers: The Myth of Interprovincial Trade Barriers and TILMA's Alleged Economic Benefits*. 2007, Canadian Centre for Policy Alternatives - BC Office: Vancouver.
8. Weir, E., *The Ontario-Quebec Deal: TILMA 2.0?*, in *Progressive Economics Forum*. 2007.
9. Gould, E., *Asking for trouble: The Trade, Investment and Labour Mobility Agreement*. 2007, Canadian Centre for Policy Alternatives - BC Office: Vancouver.
10. RDLC, *Presentation by Terry Zahorski to the Standing Committee on the Economy, Legislative Assembly of Saskatchewan, Hansard Verbatim Report, No. 54, June 13, 2007*, Regina & District Labour Council: Regina. p. 1156-7.
11. McGuinty, D., *Letter to Warren Thomas, OPSEU President*. 2007, Ontario Public Service Employees Union: Toronto.
12. Sinclair, S., *Transforming the Agreement on Internal Trade through binding enforcement*, in *Briefing Paper - Trade and Investment Series*. 2007, Canadian Centre for Policy Alternatives: Ottawa.