



STANDING COMMITTEE ON THE ECONOMY

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**STANDING COMMITTEE ON THE ECONOMY
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Mr. Lyle Stewart
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Hon. Kevin Yates
Regina Dewdney

[The committee met at 09:01.]

Enquiry into the State of Internal Trade in Saskatchewan

The Chair: — Good morning, everyone. We did tell our first presenters this morning that we would begin at 9 o'clock and I'm thankful that all our members are able to be here promptly.

This is day number two of the historic hearings on Saskatchewan and the positions on internal trade and trade agreements. We've had a good first day with the minister presenting and hearing from Ms. Macmillan. Today we have a full lineup to go forward and a break around, oh probably 11:45 to return at 1:30. There are people who have to leave the building for the lunch hour so we'll try and adhere to that schedule.

And this morning we would begin with the Canadian Union of Public Employees, Local No. 7 and No. 21. Presenters as groups have been advised that they would have about 15 to 20 minutes to present and then leave about that amount of time for questions and answers. And as a Chair with a very full agenda before us, I'll try to stick to that schedule if that meets the approval of presenter and committee.

I'd like to ask you to introduce yourselves to committee and then we'll begin with your overview presentation and the questions and answers by committee. So welcome to our committee hearings.

Mr. Meickel: — Well thank you very much, Madam Chair. And it's certainly a pleasure to be here and to be able to present to this legislative committee. My name is Marvin Meickel and I am the president of the Canadian Union of Public Employees Local 7, that represents the inside workers of the city of Regina.

To my left is Tracey Gramchuk. Tracey Gramchuk will also be presenting this morning so we have our presentation split up amongst the three of us. Tracey's current position is the recording secretary with CUPE [Canadian Union of Public Employees] Local 7 as well. I should also add that she has been with the city of Regina since 1993 so we are also long-term or long-service employees. My tenure goes back to 1975 with the city of Regina.

And to my right is Tim Anderson, who is the president of CUPE Local 21. And he has been with the city of Regina, a long-service employee as well, since 1992.

I would hope that there are copies of our presentation available to you. Hopefully those are in front of you, and of course would ask that our written submissions become part of public record as is the case with this type of process. And at this point in time I'd like to turn over the presentation to the person on my left, Tracey Gramchuk, to start off the presentation. Thank you.

Ms. Gramchuk: — We would qualify our presentation by stating that we are not trade experts. We have had little to do with trade-related matters. As union leaders we represent constituents from the labour community who provide services to municipal government. In addition we speak on behalf of all citizens who believe in the principles of democracy and the

rights of citizens as contained in the Canadian Charter of Rights and Freedoms versus corporate interests.

Thanks to the Government of Saskatchewan for establishing this legislative committee, and to the Saskatchewan Party members for participating in a discussion on the subject of interprovincial trade, and to a greater degree, trade in general. This discussion is framed under a particular bilateral trade agreement called the Trade, Investment and Labour Mobility Agreement, TILMA. This agreement came into effect on April 1, 2007 in the provinces of British Columbia and Alberta with full implementation on April 1, 2009.

The Canadian Union of Public Employees, CUPE, is the largest public sector union in Canada with membership exceeding one-half million Canadians. We are the dominant provider of services at the local or sub-government level. With the MASH [municipalities, academic institutions, schools, hospitals] sector, such as municipal, academia, schools, and health, CUPE is on the front line.

In Saskatchewan we are the largest representative of public service providers with membership in excess of 26,000 individuals who work in support of both rural and urban economies. In fact CUPE and unionized jobs must be acknowledged as providing a significant impact to the Saskatchewan rural economy through secondary jobs which provide off-farm income. Today we speak on behalf of a segment of our provincial membership involving approximately 200 inside workers and 1,300 outside workers of the city of Regina.

CUPE has continued to state that we are not opposed to trade, investment, or labour mobility. In fact the fruits of our prosperity involve those various factors. Workers in Canada have continued to pursue opportunities throughout Canada, and we are pleased that labour mobility issues have been effectively addressed by the Agreement on Internal Trade.

According to information obtained from the website, by July 1, 2001, 42 of the 51 professional regulatory bodies have achieved full or substantial compliance with the labour mobility chapter requirements. These 42 regulatory bodies accounted for approximately 97 per cent of persons working in the professions. In the government-regulated trades, the existing Red Seal program already provides for mobility for a majority of tradespersons, and most provinces have made recent commitments to extend some form of recognition for tradespersons who are not covered by the Red Seal program.

In addition, we support trade as it applies both between provinces and internationally. Unfortunately, trade agreements like the North American Free Trade Agreement, NAFTA, have not served Canadians fairly. And regarding jobs, it is estimated that Canada lost 276,000 jobs as a result of NAFTA. The softwood lumber issue is one which still resonates with Canadians as an issue with which the United States chose to disregard the rules of trade under NAFTA.

Regarding investment, like many individuals the labour community has been fortunate to be able to participate in pension plans. These pensions plans continue to be an economic

driver in the Canadian economy, owning real estate, bonds, guaranteed income certificates, and significant cash holdings. As working people, trade unionists form a part of the economy as we work, live, and support our communities — your communities.

TILMA and the AIT [Agreement on Internal Trade]. Although similarities can be drawn between the AIT and TILMA, the language of TILMA has serious consequences with respect to the functions of union organizations and the legislation which supports those functions. In addition, the impact of such trade schemes on public sector workers must also be addressed in relation to a local government's ability to provide publicly funded, publicly administered services.

TILMA. The coverage and scope of TILMA is very broad and is considered to be top-down. Only specified legitimate objectives, expected measures, and traditional measures are allowed. TILMA includes all measures as defined as, by definition, a “measure includes any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure.”

Labour legislation such as The Trade Union Act would be defined as a measure, and is neither expected nor considered a legitimate objective under TILMA. Legislation such as The Trade Union Act and other worker legislation would be a violation of TILMA and subject to a challenge by a party, individual, or investor.

In fact, anti-union groups who state that workers should be allowed freedom of choice in the workplace or workers should be entitled to democratic unionism would be allowed to launch challenges under TILMA as an effort to carve up union membership and/or break unions. In addition, other challenges would occur, citing labour laws which support union organizing drives, collective bargaining, the right to strike, and the prohibition of replacement workers — would be considered a restriction or impairment to trade investment and labour mobility. Even the legal processes which we rely upon for the resolution of grievance arbitrations contained within The Trade Union Act would be subject to TILMA. Individuals and employers could use TILMA to launch challenges against arbitrators and arbitration boards with respect to decisions which impair or restrict trade, investment, and labour mobility.

Mr. Meickel: — Thank you, Tracey. TILMA and government entities. And I've provided the definition of the agreement and the entities that are covered, and certainly it covers all government entities. The definition of government entity would also include the provincial Labour Relations Board. The LRB [Labour Relations Board] would be challenged under TILMA with respect to its legislative authority and with regards to the decision which it renders. It is our view that TILMA would be used by transnational corporations who maintain a non-union policy in their workplaces to challenge the authority of the LRB and its decisions. Criticism continues with regards to the alleged bias of the LRB, but we must remember that the LRB is balanced with representatives from both labour and business.

As stated earlier, CUPE members would be impacted by TILMA, as a definition of government entities includes the MASH sector along with other non-governmental sectors. If

sub-governments are limited in their legislative authority through TILMA, there may be a reduction in public services provided to residents as a result of successful challenge or challenges to existing measures or bylaws. With a limited capacity to deliver services, the potential for staff reductions and the loss of jobs for our members is a genuine concern.

At the very top of the next page. TILMA includes exceptions to the agreement and they are provided as shown. As you will note, few of the exceptions pertain to social policy which affects working people. As neither the AIT nor TILMA provides a definition of social policy, it is difficult to determine what the author of TILMA felt was an appropriate definition.

The protection that part V may provide for working people under the wording of social policy is open to broad interpretation in terms of its application. When reviewing the AIT it is clear that social policy only applies to the labour mobility chapter, whereas under TILMA it is a general exception to the complete agreement. Considering that the agreements work in tandem, it is plausible that the narrow AIT social policy exception would prevail.

With no clear definition, it is unclear as to what protections or safeguards would exist for such concerns as human rights, occupational health and safety, and employment equity. It is unclear whether the provinces — that being British Columbia and Alberta — will provide a clear definition or allow the term to remain with the ultimate responsibility for the interpretation of the definition being left to the TILMA dispute panel.

Regardless, part V exceptions will continue to be reviewed on an annual basis. Article 17 provides to ensure that they continue to be maintained on a basis the least restrictive to trade, investment, or labour mobility, a direct quote from article 17.

With respect to measures, if there's not a specific exemption as contained under part V, a measure can be maintained provided it can be considered as a legitimate objective. TILMA actually sets the standard now for objective-based measures. Under general definitions, part VII, TILMA allows legitimate objectives as follows and they're provided for your information. So everything that TILMA does basically uses the screen of what is considered legitimate.

I'm going to skip over to page 9 continued with some of the definitions. In order for an objective to be deemed legitimate it must satisfy a three-part test and that is the ultimate screen of TILMA — the article 6 legitimate objective test. Three parts:

- the purpose of the measure is to achieve a legitimate objective;
- the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and
- the measure is not a disguised restriction to trade, investment or labour mobility.

The concern with respect to labour legislation is that it is neither covered as a part V exempted measure nor as a part of article 6 legitimate objective or the respective definition. As there appears to be no mechanism included to protect labour legislation, it would be argued that such legislation could be

seen as a restriction to trade, investment, and subject to a challenge.

One of the questions or comments often made is regarding harmonization of existing regulations and whether standards would continue to be maintained. TILMA is designed to reconcile existing and future standards and regulations.

Article 5:1. In fact regulatory differences would be seen as barriers to trade and investment. The agreement continues its scrutiny for regulations, for once they are reconciled no new regulations can be established if they restrict or impair investment.

I've also provided the definition of what harmonization is and this is according to the Agreement on Internal Trade. As I said earlier, you can actually use both agreements when it comes to establishing definitions. The AIT does provide a definition of making identical or minimizing the difference between standards or related measures with similar scope.

For the sake of time I'm going to skip to the next page. Basically any labour standard or law would be vulnerable to change under the broadly framed prohibition of article 3 of TILMA insofar as it impairs or restricts trade and investments. It is our view that to reconcile and harmonization carry similar meanings and the definition contained within the AIT not only reinforces our position but would indicate making identical or minimizing would be a reduction to the lowest standard or regulation between the provinces.

Now I'd like to turn the presentation over to Tim Anderson.

Mr. Anderson: — Thanks, Marv. Private-public partnerships or P3s. This type of economic arrangement has been in existence within the public sector for many years. In fact there currently exists an organization called The Canadian Council for Public-Private Partnerships, which promotes and encourages such arrangements. Although P3s may take many forms, a typical arrangement would involve the construction of a public facility by a private enterprise with the facility being leased back to the government entity for a fixed number of years. P3s have occurred in water delivery, waste water treatment, schools, recreation facilities, and numerous other areas.

Organizations such as the Canadian Union of Public Employees have been opposed to such ventures because they shrink public space and ultimately prove more costly than publicly owned, publicly administered facilities. A similar arrangement may include the management of a public facility by a private management company similar to what currently exists at city of Regina municipal golf courses. Under TILMA, such arrangements may be difficult to sever due to an established practice as the best treatment, for example municipal golf courses that would include private sector management.

Trade schemes like TILMA would support and enhance the P3 arrangements because of provisions contained in the agreement relating to non-discrimination or best treatment, referenced in article 4. If a municipal council establishes a public-private partnership with extraordinary lenient provisions that it lives to regret, subsequent councils may be obligated under TILMA to provide the same standard of treatment to contractors from

other provinces when the projects come up.

The dispute mechanism contained within TILMA under part IV mirrors that of NAFTA and goes beyond the mechanism contained within the AIT. To understand NAFTA, you must understand the rights which corporations have been provided in the United States, and their status as persons as granted by the US [United States] Supreme Court. This has given corporations a profound advantage. As persons, they are qualified to take advantage of the regulatory takings law which provides compensation to any person when government takes away their implied right to use their property for any purpose or in any manner they wish.

As Canadians we know this as expropriation. But this type of expropriation is a concept of law foreign to the Canadian experience. It is also the basis for chapter 11 of NAFTA under which we have continued to face challenges like the current unresolved challenge by United Parcel Service against Canada Post. UPS [United Parcel Service] is claiming expropriation of investment against the federal government and is asking for \$160 million in damages.

The dispute mechanism of TILMA allows individuals and corporations the legal rights to challenge government measures and, if successful, be awarded monetary damages for each successful challenge unless the measure is eliminated or otherwise amended to conform to TILMA. TILMA's dispute mechanism, unlike NAFTA, sets a new high-water mark by allowing private investors to sue under TILMA's unqualified requirement that government measures cannot restrict or impair investment. Existing investment agreements only prohibit government measures if they unduly or arbitrarily restrict investment beyond even NAFTA's expropriation clause.

TILMA directly targets measures and only permits them to exist if they can be demonstrated to be least restrictive. The private dispute mechanism of TILMA provides for awards up to \$5 million with the allowance of more than one challenge occurring for the offending measure. In addition, several challenges from numerous individuals are permitted against any single measure. It should be noted that the rulings of the tribunal are binding and enforceable through international trade law.

One of the concerns raised by the city of Regina was with respect to the ability of local governments to appear before the dispute panel. There are presently no provisions within the agreement which allows intervenor status except with the exception of the parties and those individuals or corporations which are directly involved in the dispute. If a municipal bylaw is being challenged, it would be the province which would have to defend the measure and, if unsuccessful, pay the penalty as provided under TILMA as set out in article 30.

One concern would be the diligence which the province would consider in defending a sub-government measure. Depending upon the number of challenges which may be occurring on any given measure, the province may agree to abandon the measure before it's even heard by the panel. Regardless if a measure is to be defended and as a result penalties awarded, the ultimate payer would be the people like you and I who support the provincial government through our tax system.

As stated earlier in this brief, TILMA provides for non-discrimination or best treatment provisions — this is contained in article 4 — non-discrimination which requires a province to give the best treatment it accords in like circumstances to its own or those of any non-party. This language is similar to NAFTA's national treatment provision and as a result will allow US and Mexican investors to challenge provincial measures in BC and Alberta. Unfortunately counter-challenges cannot be undertaken against foreign investors by Canadian government entities.

As employees in the municipal sector, we believe one of the more significant reviews of TILMA was done by the city of Saskatoon and we acknowledge their efforts and resolution. The proviso of local choice continues to be echoed by other local government entities in other provinces. We also acknowledge the Saskatchewan Urban Municipalities Association for their analysis and motion in opposition to the agreement.

The city of Regina has also conducted an analysis and has raised concerns over TILMA with respect to thresholds of procurement and the elimination of the ability to provide subsidies to encourage residential and commercial development. We understand that other local government sectors will be conducting their own analysis of the agreement such as the Saskatchewan School Boards Association and the Saskatchewan Association of Health Organizations.

We are optimistic that they too will conclude that TILMA will have a negative impact on their sectors. The BC equivalent to our SSBA [Saskatchewan School Boards Association] has also rejected the agreement, indicating that they wanted exempt status from TILMA and have asked the government of BC to withdraw from the agreement.

Momentum appears to be building against TILMA from sub-governments based on the premise that local governance and local choice are important.

Thank you.

Mr. Meickel: — Thank you, Tim. So in conclusion, as working people and members of the labour community, we are concerned with respect to the so-called new Saskatchewan or new West which apparently would be formed if our province signed on to TILMA. Our province continues to grow and prosper as we continue to see the overall Canadian economy record surpluses.

Families are returning to Saskatchewan and we are experiencing an in-migration which has not been seen for many years. We support the democratic process of elected governments and expect them to provide protection and safeguards for the common good through full legislative capacity unfettered by corporate interests. We wonder why any government would consider an agreement such as TILMA that would have such a negative impact on all levels of the public domain, including public policy and legislation.

On behalf of the people of Saskatchewan and our 26,000 brothers and sisters who contribute to the public services and economy of Saskatchewan, we would ask the Government of Saskatchewan and the opposition Saskatchewan Party to say, no

TILMA. And no to any further expansion of the AIT which undermines and diminishes the authority of elected and accountable governments at all levels.

We thank you for this opportunity, for this time and opportunity and would respond to your questions. Thank you.

The Chair: — As you mentioned at the beginning of your presentation, Mr. Meickel, being on public record, your presentation has been provided to the committee members. For purposes of recording committee hearings, what you read into the record becomes the part of *Hansard* and becomes the published part of your presentation. And I know that you were fairly diligent in quoting the sections if you didn't read those, but I would want you to know that when you're looking at the *Hansard* as it appears after committee. To that I'm going to now open up to the committee for questions, and I have Ms. Crofford first.

Ms. Crofford: — Yes. One thing that I guess the minister's asked us to do is to look at what are the barriers to trade. How real are they? And is this the best solution? And one of the things really interested me that the first speaker mentioned, and that was on the labour mobility, because you know we do know that that labour mobility work has been going on for a while. And I was surprised at the number that you stated for the progress on the completion of the labour mobility. Can you just say that over again so I'm clear? I'm sure it's in your thing, but it was 42 of 51?

Mr. Meickel: — Well that was based on the information from the Agreement on Internal Trade website. And it says by July 1, 2001, 42 of 51.

Ms. Crofford: — Okay.

Mr. Meickel: — So it's a fairly high percentage.

Ms. Crofford: — That have already gone . . .

Mr. Meickel: — That have already, have already addressed any sort of labour mobility issues through the AIT as well. And if I may, one of the concerns, or one of the . . . with respect to the proponents of TILMA, is that labour mobility in Canada is a huge problem. That continues to be, that argument continues to be countered by the fact that many labour mobility issues have continued to be addressed by the AIT through mutual recognition agreements by the professional associations. If it indeed is the professional organizations that are clamouring for labour mobility justification, it would seem that they are doing a lot of work through the AIT already and by and large most of those would probably have been addressed. And with respect to the Red Seal program for the blue-collar workers, that program continues to be the standard for tradespersons throughout Canada and has provided them a mobility. Tradespeople continue to leave this province or come back, and we don't see any . . .

Ms. Crofford: — So there's no problem on the tradesperson front with mobility?

Mr. Meickel: — The only concern with respect to, again if I may, Madam Chair, the only concern that I have with respect to

the Red Seal program would be the maintenance of the Red Seal program, whether TILMA would allow for challenges. And in some provinces . . . I believe it is across Canada, recognized across Canada. But one of the concerns is that the Red Seal program might be in itself challenged as a restriction or impairment to trade, investment, and labour mobility — perhaps more of the investment portion of those three categories.

Ms. Crofford: — The next thing I was wondering, you are part of a large Canadian organization, and do you know if your counterparts in BC [British Columbia] or Alberta are involved in this discussion with their respective . . . Like are they invited to take part in discussions or . . .

Mr. Meickel: — Madam Chair, with respect to the process in the other two provinces, I don't believe, and I'm fairly confident in saying this, that there are no legislative committees occurring at this level in British Columbia and Alberta. There are ongoing discussions because currently in those two provinces they're in what's called a transitional period. So April 1, 2007 is when the agreement came into effect, and I understand that with respect to the sectors, the MASH sectors, there would be ongoing negotiations.

There has been some, obviously some resistance by various organizations. There's been analysis done as well by fairly large significant urban sectors such as the city of Vancouver. In many cases what their opposition to the agreement is again local choice and local governance. But back to your original question, I believe there is little or no debate even with respect to the debate in the respective legislatures.

Ms. Crofford: — I'll leave that for now and let somebody else have a chance to ask questions.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — Yes, I'd just like to follow up a little bit on this labour mobility and some of the numbers that were quoted. It was my understanding that initially Alberta and BC identified just over 60 different occupations that needed to be sorted out. Shortly after that I think they came up with another 30 or something. As a result of people talking about it, there was some more added to it. And the last I saw, they had satisfied somewhere in the neighbourhood of 7 to 10 of those initial 60 occupations as now being complete, free, labour mobility. So if Alberta and BC still have some 50 outstanding at least that haven't been satisfied, I don't know where these numbers are coming from through the AIT that say there's only a very few right across the whole country that have perfect mobility.

Mr. Meickel: — Madam Chair, I mean you raise a valid comment. Of the professions that are cited within the agreement itself — and there's a fairly extensive list — I cannot say definitively what professions were addressed with respect to the AIT and whether there is a whole new group of professions that are having difficulty or challenges in labour mobility.

What I find interesting about the differences though — and I have the agreement in front of me as I'm just scanning it — in most cases the occupations that are cited, and many of them are professional occupations, the differences between them are

minimal — may have to write an additional examination, additional study and examination. So what we see is that the prohibitions that are currently in place seem to be somewhat minimal.

Whether you would need a trade agreement like TILMA to address the new batch of white-collar professions as opposed to allowing the AIT to continue to function and address those — which I understand it was going to do through, I believe, the province of Manitoba; I believe they had that portion of the AIT file — we can continue to say, do we need an agreement like TILMA to address labour mobility issues or would the AIT not continue to satisfy those requirements as it seems to have already been doing?

Mr. Chisholm: — Thank you.

Mr. Meickel: — Thank you.

The Chair: — Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. A couple of questions before I get into some specifics. There are trade agreements and always will be trade agreements between jurisdictions, and they have been for many, many years.

I just want to be clear. It's not your position that you're against trade agreements. It's this particular agreement that you have some difficulty with.

Would you have . . . Today we have the AIT. As you know, it's continuing under review. It's been in place for now about 12 years, I believe, approximately 12 years and it continues to evolve. Do you think that the approach of trade agreements should be pan-Canadian, should be national versus regional? And do those approaches, do regional approaches contain additional problems for provinces and jurisdictions if you look at simply on a regional basis?

Mr. Meickel: — Well certainly we do have a pan-Canadian agreement and that is the Agreement on Internal Trade that is in existence. I believe that the AIT has functioned fairly well in terms of eliminating of that, certainly those barriers that had existed in the past.

There are only a few barriers that currently exist and one example that continues to be brought forward is the issue with respect to Quebec and their requirement for colouration of margarine. That is Quebec's choice, by the way, and that is a result of support for their significant dairy, agricultural dairy operations in that province.

Some would argue that the jurisdiction of provinces should remain that way and that indeed if there are barriers for that particular reason, that they should be sustained. Again, I may get some challenges from farmers who say well they'd like to be able to market their oilseed products throughout Canada and that Quebec is actually putting up a barrier as a result of that. But with respect to this particular trade agreement, we believe it's not necessary.

The AIT currently exists and has functioned fairly well with respect to issues of trade, investment, and labour mobility. And

if there was, I guess, a continuation or a need to amend provisions of the AIT, which has been ongoing, then with public consultation — which I understand we have participated in the past on — we would accept expansion of the AIT, again with a caution that the dispute mechanism of TILMA goes beyond anything that anyone would have expected to have seen, certainly more serious than any trade agreement provision even in an international front.

So if there has been a problem with resolving disputes between provinces, then perhaps a modification of the AIT dispute mechanism would be warranted. But we would caution those people or those government individuals and say, be careful what you strive for.

Hon. Mr. Yates: — Thank you very much. You have raised concerns in your paper about the absence of a formal position for sub-governments, levels of administration such as the Saskatchewan School Boards Association, municipal governments. When you look at those particular issues, do you see an erosion of the ability of municipalities or sub-governments to control their own destinies, I guess? And to some degree . . . Let's use an example of economic development. For the city of Regina to have the opportunity to put forward incentives to bring economic development to the city, is that a real threat if TILMA were put in place?

Mr. Meickel: — Well, Madam Chair, there are certainly some concerns that have been raised by the city of Saskatoon with respect to a local choice. The Saskatchewan Urban Municipalities Association has also indicated or taken a similar position. The city of Regina too feels that, for example, the procurement thresholds of TILMA are extremely low.

I know from our own experience as municipal workers and our experience with the city of Regina, that there isn't a city council meeting that occurs where there isn't some group or organization asking for a tax abatement. In a sense that is a form of subsidization. It may be to ensure that a specific commercial project be built in a certain part of Regina. It may be to support local housing initiatives in terms of the inner-city housing stimulation program. It may be to attract a business to Regina, in other words competition between urban centres to poach jobs. And that's the term that is used, but it's termed in a positive spin.

So all of those things would be affected with respect to the sub-government or local government levels. And as in the case of British Columbia and Alberta, only during this transitional period — the two years — are those particular governments not covered. But by and large you have to remember that they will not be allowed to bring forward any new measures or any laws within the two-year transition period as well. Effective April 1, 2009, in the provinces of British Columbia and Alberta, all government entities will be covered, including Crown corporations, under the agreement.

Hon. Mr. Yates: — Thank you, Madam Chair, that's my questions.

The Chair: — Mr. Weekes.

Mr. Weekes: — Thank you, Madam Chair. As you know,

we're meeting with various delegations and at the end of the process we're going to meet with the BC and Alberta officials. So it's going to be . . . I appreciate you raising concerns and other groups who have raised concerns, and I hope to answer many of those questions or ask those questions of the officials. But I just want to raise one item and ask your opinion on it. In the TILMA agreement, part V, exceptions to the agreement, under general exceptions, (f), and I'll just read it:

Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation [are exempted.]

Do you have no comfort from that being in the agreement as far as your concerns?

Mr. Meickel: — Madam Chair, I do not have comfort in that although I find it interesting that if the authors were to take the time to provide some reference to some of the labour legislation, for example, why didn't they do it all? And as I said in our brief as was provided, the definition of social policy, indeed if that is a term that captures everything that we would be concerned about, we would be quite content then that social policy would include various forms of labour legislation. But there really is no definition and there's nothing within the Agreement on Internal Trade either. As we said earlier, the social policy context contained within the AIT purely deals with labour mobility, the labour mobility chapter.

So indeed if you are launching a challenge, if there was a challenge launched against a government with respect to an issue involving social policy without a clear definition, unless the parties, unless the two governments of British Columbia and Alberta have . . . currently are in the process of coming up with a definition that's clear and would help to identify that, then it's going to be up to the dispute panel, and my concern and my fear is the dispute panel aren't elected officials like you. They are individuals who are appointed to a panel and they function and operate under international trade law. They don't use case law as our own court system would use. There is no precedents for them to use, so they would have to look at it and come up with a definition. And my fear is that, would they have the full capabilities of doing that?

Mr. Weekes: — No, I appreciate that. I guess you pointed out social policy as being somewhat vague. I guess we'll ask that question about what their definition of social policy is. But you know, it's pretty specific including labour standards and codes. That seems to be a pretty specific exemption. I don't know where there'd be any doubt about what is meant by that type of wording as well as minimum wage, employment insurance, and those types of things. But thank you for your presentation and we will ask those questions of the officials when we get to meet with them.

Mr. Meickel: — Thank you for your question.

The Chair: — Mr. Iwanchuk.

Mr. Iwanchuk: — Just a statement first of all. I guess in listening to some of the comments from Mr. Weekes on social policy, I would think that we've all heard of Saskatchewan being, some people taking the position that Saskatchewan has

too many labour laws and in fact that that prevents people from investing in Saskatchewan. And I think that I guess that could be just a personal or a group position on that, but I would think that with something like TILMA to then trying to find a common base, there would be at least a lot of pressure outside of that to perhaps lower those standards.

My question that I wanted to ask is just to maybe further under the exceptions of b) water and services, because I know you connected that, Mr. Anderson connected that to the P3s, and I was wondering maybe if you expand on that a bit in terms of what you see those exceptions are. In terms, how broad is that or is it broad at all? And I guess I say that because under the P3s or under waste water and water, which is so central or so important to us all, what do you think they are talking about? What are the exceptions? It was interesting to note that if you did find some new level that somebody was providing a service and then someone new having to come in after that would have to, even though perhaps it didn't work, that they would have to, you know, do it in that same way. So I just wonder if you could further maybe comment on that.

Mr. Meickel: — Thank you. Madam Chair, with respect to the part V exceptions, I mean, within the agreement itself there are actual exceptions to the agreement as provided. They are actually stated in that part V section. There are other exceptions. I guess those would be the transitional measures, those temporary measures that will be in place for a couple of years. And of course there are the legitimate objectives, so everything that you can objectify by a province can be maintained.

But I would caution individuals when they consider that part V is this blanket exception where the world is good and we don't have to worry any more because all of the portions of part V are there and subject to an annual review. Article 17 under the ministerial committee says that each party shall "review annually the exceptions listed in Part V with a view to reducing their scope." So even though as we read part V and we struggle with definitions of social policy and so on, the two provinces will have to reconcile their differences, reconcile those differences even as they apply to part V and come up with something that they think will be, that they can agree upon first of all as parties, let alone whether there's an opportunity for those particular exceptions to remain. Because again, the ultimate screen of the agreement is that: do you have measures that continue? And are they in any way a restriction or impairment to trade, investment, and labour mobility?

So the annual screen of course to the part V exceptions will be always to again, to test them and allow them to continue.

Water is defined . . . It says "services and investments pertaining to water." Water makes reference to the type of water. I believe bottled water is allowed, is defined, but my concern is that bulk sales of water perhaps aren't referenced here. Does that mean that water can be shipped to the United States, for example, through an agreement like this? The reference to public-private or private-public partnerships, P3s, that is something that is always a concern and TILMA because, through the definition of measures, even includes practices and policies. So for example a P3 arrangement which would include a private entity building a facility and then leasing it back to the government entity, that would be considered a practice, and

may be difficult if not impossible for that government entity to bring that private facility back into the public domain without some sort of a challenge under the agreement.

Mr. Iwanchuk: — Okay, thank you. Just a follow-up. Now you mentioned article 17.

Mr. Meickel: — Under 17 . . .

Mr. Iwanchuk: — Is a continuous review of the exceptions?

Mr. Meickel: — Madam Chair, that's correct.

Mr. Iwanchuk: — Okay, so that . . . And I guess that was really the point I was trying to make is if you, depending if there was this sort of certain sectors believe that we would continually want to push and review and that we now have too many laws or whatever, then that would be sort of under constant pressure to review, you know. So even though the exceptions are stated here they are not as . . . To you I guess is what you're saying, that you're not certain that those would remain once the agreement is signed.

Well thank you. If you want to comment on that . . .

Mr. Meickel: — Well, Madam Chair, I mean ultimately you have to consider that with respect to measures — and the list is provided in our presentation — that what measures wouldn't be considered a restriction or impairment to trade, investment, and labour mobility? Our position is that all of them would.

The opportunities for the parties — in this case the governments — would be is that they would have to defend the positions that they take even though it may indeed be written in the agreement. There is nothing stopping, of course, the challenges that will still occur against the positions that they've taken, even if positions are to provide certain protections and safeguards. The agreement has too many opportunities for those protections and safeguards to be eliminated or diluted under the TILMA screen.

Mr. Iwanchuk: — Thank you.

The Chair: — Ms. Crofford.

Ms. Crofford: — Yes, there's one more thing I want to explore here. I was looking for the quote from yesterday. One of the presenters yesterday said that Saskatchewan is the second most open to external trade in Canada and that our productivity growth has exceeded national and Western rates. So my question is, do you think there's productivity problems in terms of the need to increase productivity? And if so, what would be some solutions that would be different than TILMA?

Now that's kind of unfair to ask you a great, big question like that and, you know, you can always get back to us too. But do you have a view of that?

Mr. Meickel: — Madam Chair, with respect to productivity, I mean the agreement basically deals with three issues: trade, investment, and labour mobility. And as we've cited in our presentation with respect to the issues of labour mobility and trade, those issues are minimal. I would put forth the position

that if you are, if you have provinces that allow for the free flow of trade and if you have the ability for labour to move freely and hopefully to come to this province, that the issue of productivity should also follow as well as a logical course. But again, I'm not an economist. And I believe the next speaker probably . . .

Ms. Crofford: — I'm sure we'll hear from them next. Okay, thank you.

The Chair: — Good. Well we thank you very much for your presentation and for your response to questions. If there is additional information you wanted to have in the hands of the committee, you could get to Mr. Kaczkowski and he would make sure that committee members receive that. Again thank you for your presentation.

Mr. Meickel: — Madam Chair, if I could say one final comment and that is a bouquet in appreciation to the staff in terms of coordinating these hearings. They are very, very respectful and very quick to return phone calls, and it certainly made that process much more palatable, I guess. So again thank you very much to both of you.

The Chair: — Thank you.

Mr. Meickel: — Thank you.

The Chair: — Well we welcome our next presenter from the Canadian Labour Congress national office. If you would do the introductions. We know you're not a stranger to Saskatchewan and we welcome you home, and would ask again that as a presenter we have a time frame and a number of presenters so we'll try and stick to our schedule as much as possible. Thank you.

Mr. Weir: — Okay. Well thank you very much for giving me the opportunity to come to Saskatchewan and come before this committee on a very important issue. As I'm sure all of you know, the Canadian Labour Congress position that I'm going to be presenting today is that the province of Saskatchewan should not sign the BC-Alberta TILMA. I think that the previous presentation provided a very good overview of some of the costs, risks, and pitfalls of signing on to this agreement.

And what I find particularly compelling is that even supporters of TILMA acknowledge that fact. For example the Conference Board of Canada in its written document for the Government of Saskatchewan speaks of reduced legislative independence. Dr. Eric Howe, who reviewed that document and was even more favourable to TILMA than the Conference Board, wrote that, quote, "signing TILMA would reduce our sovereignty." So it seems to me even the people promoting this agreement acknowledge a lot of its downsides, but what they seem to argue is that the agreement's purportedly huge economic benefits would outweigh those costs.

So in this presentation I'd really like to focus in on the supposed economic benefits of TILMA. And in particular I'd like to focus on the work done by the Conference Board, which was the centrepiece of the research unveiled by the Government of Saskatchewan in taking off this public consultation process.

So in looking at the purported economic benefits of TILMA, I'd really like to examine three themes. The first is this whole mythology that's been built up around the notion of internal trade barriers. The second is to look at the economic benefits that the Conference Board has projected for Saskatchewan. And the third is to look very specifically at the Conference Board's methodology.

So on the first point, this myth of interprovincial trade barriers that's out there, I think it's just important to step back and emphasize the fact that in Canada we have no customs stations along provincial borders. We have no sorts of tariffs on interprovincial trade. The constitution clearly assigns interprovincial trade to federal jurisdiction. And indeed Canadian courts have been quite consistent in striking down attempts by provincial governments to restrict interprovincial trade.

So despite all of this rhetoric about interprovincial trade barriers, there's actually very few specific examples of barriers. And my plea to this committee is that if witnesses come before you and talk about all of these interprovincial barriers, that you really ask them and require them to be quite specific in identifying exactly what measures they're talking about and exactly what barriers they think exist between Saskatchewan, Alberta, and British Columbia.

And my suspicion is that the answer you'll get to that question is that what people talk about as being barriers are in fact not trade barriers at all, they're just differences in regulation among different provinces. And indeed to quote again from that Conference Board study, page 34, it says, quote:

the most cited existing trade impediment was lack of inter-provincial harmonization of government standards and regulation. Most commonly, this barrier takes the form of occupational certification requirements, registration fees and standards and different inter-provincial freight load and dimension requirements.

So the Conference Board acknowledges quite clearly, what we're really talking about is differences in provincial regulation.

And I would suggest to this committee that the reason we have a federal system in Canada is in fact to allow different provincial governments to implement different regulations in response to different provincial circumstances.

To look at a specific example of this, one supposed trade barrier is these differences in trucking regulations. But I mean there's different conditions in different provinces. In British Columbia you have the Rocky Mountains on one side of the provincial border with Alberta. So it strikes me it might be reasonable that you would have to, you know, stack hay differently on the BC side of that border than on the Alberta side.

Similarly Saskatchewan, as you all are well aware of, has less than a third of the population of Alberta but maintains many thousand more kilometres of highway. So when we're talking about regulating these large, heavy trucks that erode the highway, it seems reasonable to me that Saskatchewan might want to regulate them more strictly than Alberta does. So it just

strikes me that a lot of these regulatory differences are quite justified. But even if they're not justified, there's no economic evidence that they impair interprovincial trade.

All the economic research indicates that relative to distance and market size, trade is just as likely between provinces — in other words across provincial borders — as it is within a province. So there's no sense that provincial boundaries are obstructing trade.

Another way of looking at it is through Statistics Canada data. And in the past several years, since the year 2000, interprovincial trade has grown faster than international trade. That's true for Canada as a whole. It's true for Saskatchewan specifically. So we always talk in this era of globalization about how there's no international trade barriers. Well the evidence seems to be that whatever interprovincial trade barriers there are, are, you know, far less significant even than that.

Now this problem, this notion of internal trade isn't new to Canadian political discourse. Back in the 1980s we had a Royal Commission on the Economic Union and Development Prospects for Canada. It was famously chaired by Donald Macdonald. It recommended Canada-US free trade, so it was obviously inclined to words, free trade. But what it concluded with respect to interprovincial trade, and I'm going to quote from its 1985 report is, quote:

The direct costs of existing interprovincial trade barriers appear to be small . . . their quantitative effect on the level of economic activity in Canada is not sufficient to justify a call for major reform.

And since then, of course, we've had this Agreement on Internal Trade which did deal with a few of the bona fide barriers that may have existed at that time. And the Macdonald Commission's basis for that statement was the fact that economic research that it commissioned indicated that the total cost of all barriers among all provinces was .05 per cent of GDP [gross domestic product] — in other words, one-twentieth of one percentage point of gross domestic product. So I think we'd have to agree that that's quite small. And it must be even lower today, given the effects that the Agreement on Internal Trade has had.

So moving on to the second point I want to talk about, these alleged economic benefits of TILMA for Saskatchewan. As you all know, the Conference Board estimated that TILMA would add .92 per cent to Saskatchewan's GDP and would create 4,400 jobs in the province. And I think that these projections are excessively optimistic for a number of reasons. So optimistic in fact I think we have to conclude that they're not even plausible.

So the first thing I'd just note again is that the Macdonald Commission suggested that removing all barriers among all provinces might add something like .05 per cent to Saskatchewan's GDP. The Conference Board appears to be saying that just removing barriers between Saskatchewan, Alberta, and BC is going to increase our economy by about 20 times that amount. So the Conference Board is totally out of step with the academic research that has been done on this subject.

The second reason for which I think these benefits are implausible is that they would very likely hobble Saskatchewan's economic development policies. We all know that because of Alberta's huge natural resources, taxes in that province are inevitably lower than they are here. Public spending levels overall are almost inevitably higher than they are here and this provides a ubiquitous subsidy to all businesses located in Alberta. They pay lower taxes; they get more public spending. And TILMA wouldn't do anything to stop that subsidy and Saskatchewan I think is going to have a very hard time competing with Alberta on those terms.

What Saskatchewan can and does do though is compete with Alberta in particular sectors, using targeted measures. And those are exactly the sorts of things that would be banned as business subsidies under TILMA. So the kind of omnipresent subsidy that all Alberta businesses get wouldn't be affected by the agreement. The specific measures that Saskatchewan can afford and use would be banned. So that would certainly hurt the provincial economy.

And the final reason why I think that these Conference Board estimates are just over the top and unbelievable is that Saskatchewan runs trade deficits currently with its prospective TILMA partners. So I'd bring your attention to page 5 of the written submission that I've provided, and what you see there of course is that Saskatchewan has these big trade deficits with BC and Alberta, and a big international trade surplus that more or less balances that out.

So because there aren't any interprovincial trade barriers, or at least they're not economically significant, I don't think that TILMA would significantly change this pattern of trade flows. But let's assume that it did achieve its promised objective of increasing trade flows between Saskatchewan, Alberta, and BC. Well what would happen? If you turn to page 6 of the document you see, you know, estimates saying that, you know, we had exactly the same trade pattern but our exports to BC and Alberta were 10 per cent higher. Our imports from BC and Alberta are also 10 per cent higher. And of course what you see is that Saskatchewan would have even larger trade deficits with those provinces. Of course TILMA wouldn't affect Saskatchewan's trade with the rest of Canada or the rest of the world. So at the end of the day we go from a total trade deficit of \$43 million to \$288 million.

Now of course the general view among economists is always that more trade is a good thing, but I suppose I would suggest that the goal of the Government of Saskatchewan's trade policy probably shouldn't be to increase the size of Saskatchewan's trade deficit or to reduce the size of Saskatchewan's trade surplus because, other things being equal, a larger deficit or a smaller surplus would imply a smaller GDP for the province of Saskatchewan and less employment in the province of Saskatchewan.

Now one could argue that, well even though our trade deficit would be bigger, there'd be productivity gains from these increased trade flows and that would increase Saskatchewan's GDP, that that's a hypothetical argument that could be made. But of course productivity doesn't create jobs. What productivity means is generating, you know, more GDP with fewer employees or with a given number of employees. So even

if one accepts that on the basis of productivity TILMA could increase GDP, it's totally unclear how it could create 4,400 jobs in the province of Saskatchewan.

Now moving onto my third point which is to look a little bit more specifically at the methodology by which the Conference Board came up with its estimates. And I think this is important because the Government of Saskatchewan got two independent academics to review that work — Dr. John Helliwell, Dr. Eric Howe — and they came to opposing conclusions. Dr. Helliwell basically suggested what I'm suggesting, which is that the Conference Board numbers aren't believable and weren't based on any evidence or methodology. Dr. Howe said that the Conference Board estimates were in fact too low and the benefits of TILMA would be even greater.

And I think that there's a possibility that what people will say is, okay well you have one academic over there, another one over here, and the Conference Board represents some kind of reasonable compromise in the middle. And I guess I'd like to dispel that view. I think a close examination of what the Conference Board actually did clearly supports Dr. Helliwell's interpretation.

An important piece of background to all this is the fact that the Conference Board was commissioned to do a similar type of analysis for the Government of BC where it projected that TILMA would add 3.8 per cent to provincial GDP. The Canadian Labour Congress put forward a critique of that number. Our critique was subsequently endorsed by a wide variety of other organizations, and I think it's thoroughly been discredited. The Conference Board itself doesn't seem to put a lot of stock in that estimate. It recently forecast that BC's economy would grow at the same moderate pace as the national economy — 2.2 per cent per year — which I find hard to square with an expectation that TILMA's going to add 3.8 per cent to that economy.

And the other thing the Conference . . . So I guess in response to this criticism, the Conference Board has backed off a bit and in doing the study for Saskatchewan projected .92 per cent of GDP rather than 3.8 per cent of GDP. But the Conference Board hasn't, you know, sort of explained the difference between those numbers. They haven't provided any explanation as to why, you know, free trade between Alberta and BC would add 3.8 per cent to BC's economy, yet free trade between Saskatchewan, Alberta, and BC would add about a quarter of that percentage to Saskatchewan's economy.

And I think the reason there's no consistency between these numbers is they're just based on sort of qualitative surveys of businesses and government organizations in the affected provinces. And here again I'd like to quote from page 5 of the Conference Board report for Saskatchewan. It says that the survey, quote, "was sent to a total of 118 persons: 17 representing the public sector and 111 from the private sector." Now unfortunately 17 added to 111 does not equal 118. The Conference Board goes on to explain, quote, "we received a total of 34 responses, 9 from the public sector and 23 from the private sector." Now again unfortunately 9 added to 23 does not equal 34. So I guess it raises some questions in my mind as to, you know, how carefully the Conference Board really scrutinized those survey results.

But putting that aside it's clear that about three-quarters of Saskatchewan business organizations couldn't even be bothered to respond to the Conference Board study, which I think says something about how seriously Saskatchewan business actually take this supposed problem of interprovincial trade barriers. And as I have in my written submission, there's other surveys of business that confirm that this is quite a low priority for actual businesses out there.

Now Dr. Howe's point was that the survey would understate the benefits of TILMA, because businesses in Saskatchewan that received the benefits of these unnamed trade protections would kind of lowball the benefits of TILMA. But of course the problem with that analysis is if there are actually those protections out there that favour certain businesses, there'd be an analogous incentive for all the other businesses to overstate the benefits of TILMA. And in fact the survey wasn't mainly sent to actual businesses which may or may not benefit from particular regulations; it was sent to business organizations, chambers of commerce which are quite committed to this agenda of deregulation. So if anything the bias in this survey would be in favour of TILMA.

The Conference Board goes on to take these results and just sort of translate them into scores for industries and regions in the province of Saskatchewan and then kind of treats the final score as a percentage of GDP. And there's just no, you know, there's no basis for that. It's not clear how they went from these surveys of what businesses thought of TILMA to a percentage of GDP. And again Dr. Howe's only defence of this is to say that there's some arbitrary elements in any economic analysis, so therefore any amount of arbitrariness is acceptable. I don't really buy that.

But then the final thing, even if we take these scores at face value, we see on page 9 of my written submission that most of the benefits projected are in fact for industries that either don't engage in interprovincial trade or that are largely exempted from TILMA. So we see wholesale and retail trade. It's kind of a locally oriented part of the economy. It serves local consumers. The Conference Board gave these huge, positive scores for that industry.

We see commercial services where the Conference Board acknowledged that Saskatchewan business would be at a disadvantage compared to more mature firms in Alberta and BC. Yet the Conference Board gave positive scores to commercial services in different regions. We see that, you know, things like fishing, energy, forestry have a lot of exemptions from TILMA. Yet the Conference Board assigned high, positive scores in all of those areas.

So when we factor out all of these industries that either are exempt from TILMA or don't engage in interprovincial trade, it actually lowers the Conference Board's benefit scores by half outside of Regina and Saskatoon and by three-quarters within those two cities. So most of these supposed benefits are actually for industries that TILMA couldn't possibly benefit.

So in conclusion, I think that TILMA's costs clearly outweigh its supposed benefits. I'm not saying that there's absolutely no frictions out there between provinces. What I am saying is they're small enough we don't need a comprehensive agreement

like TILMA that purports to apply to the whole economy to deal with them.

What we need is a transparent, incremental approach that identifies particular problems that may exist and addresses those particular problems. I think a more sensible approach would be rather than asking business whether or not it supports TILMA, to actually ask it to identify particular trade barriers. Then, let citizens come forward and talk about some of the economic, social, and environmental purposes of those alleged barriers. And then sure, the Government of Saskatchewan, in conjunction with other provincial governments, could certainly try to reform measures that have an economic cost but that maybe don't achieve important public purposes.

So I think, given the scale of the issue we're dealing with, there's a far more sensible approach with TILMA. With that, I'll end it and open things up to some questions.

The Chair: — Thank you, Mr. Weir, for your presentation. Let's start the questioning with Ms. Crofford.

Ms. Crofford: — Well first of all, thank you very much for your brief. I like numbers and I like evidence. So I like the information, the solid information you've given us here. I think it does cause you to think a little more deeply.

And maybe this is a bit of an unfair question, but I'm going ask it. If in fact Saskatchewan is a very open trading province, if in fact Canada is a very open trading country and if three-quarters of Saskatchewan businesses didn't respond, if the problem that we are proposing to solve with TILMA isn't significant, and if the problem is regulatory, then what is TILMA intended to achieve?

I presume that these are intelligent people, so they haven't constructed this just to solve imaginary problems. So it's either a public relations exercise, or it has some other purpose. And have you delved into anything that would suggest to you what any other purpose might be for TILMA?

Mr. Weir: — Yes. Absolutely. I mean, what I've suggested is that TILMA is not really about interprovincial trade. It's not really about labour mobility. I think though it is about investment, and it's about investment in the sense of creating a very, strong, enforceable set of investor rights.

It's also about deregulation. And there's no question at all that the governments of BC and Alberta and indeed that the business community in general is in favour of, you know, getting rid of regulation and lowering standards as much as possible. So certainly TILMA does achieve objectives that certain people do want it to achieve.

I just don't think that it really does anything useful in terms of internal trade. And I'm not suggesting that all regulation is a good thing. Like I think we should be able to have a debate about whether particular regulations are worthwhile, like whether the policy objectives they achieve outweigh the inconveniences that they might create for business. But let's have that debate on its own merits, rather than having it through some kind of fog of concern about internal trade.

Ms. Crofford: — I would have to say that just in my experience in government, sometimes there's programs that have developed over the years in response to an issue in the community or something else. And then someone will come along and say well we don't need that. And then we find out, about a year or two later, that we did need that, but not understanding the history of why and how it developed. So you would favour a more incremental approach than the top-down framework.

The thing I wanted to ask you particularly is there's a comment about buy-local policies. And is it speculation that they wouldn't hold under TILMA, or is there any fact to support that from any trade disagreements there's been or whatnot?

Mr. Weir: — Well the Conference Board itself was quite explicit in saying that buy-local policies wouldn't hold under TILMA. I mean it's trying to promote TILMA, so I think the fact that it acknowledges it is pretty clear evidence. But yes, I mean certainly the way TILMA is currently written it would, you know, ban buy-local policies.

Now I mean I suppose it's conceivable that Saskatchewan would, you know, negotiate some kind of different version of TILMA if it chose to join it. But the way the agreement is structured right now, it is no question that it would ban those types of policies.

Ms. Crofford: — I guess my last question for now is, is there any part of the proposed agreement that you think could be useful to the interprovincial trade or international trade?

Mr. Weir: — Not particularly. I think that there are some good things being done such as the Red Seal program in the skilled trades and, you know, a little bit more harmonization for some of the regulated professions. But I just don't see how TILMA really moves the ball on those issues. I mean it acknowledges, you know, the Red Seal program. Then it takes all the skilled trades that aren't covered by Red Seal, sort of puts them off in a separate category, doesn't do anything to improve their labour mobility. You know it's not clear how this agreement among provincial governments would really compel these arm's-length professional associations to do anything more differently than they're doing now.

So no, I mean I think TILMA would have a lot of effects, and I think the previous presentation talked about those, but I really think it's about deregulation. It's about investor rights, and I don't think it would do much positive on the internal trade front.

Ms. Crofford: — Okay, thank you.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — Thank you. Just a question. I'm sure you've made similar presentations to Alberta and BC as this process has developed over the last number of years. And I'm just wondering, what was the take in those provinces as to your interpretation of the work done by the Conference Board of Canada which you're, I would suggest, pretty much negating, and their position on the importance of reducing barriers within their two provinces?

Mr. Weir: — Well unfortunately I haven't had the opportunity to give these kind of presentations in Alberta and BC because those governments really haven't done any public consultations on this issue. So certainly I salute Saskatchewan for, you know, going into this with open eyes and having a public process.

In terms though of reaction to the kind of critique I've presented of the Conference Board numbers, Patrick Grady, a former senior federal Finance official and, you know, eminently mainstream economist, has endorsed the CLC's [Canadian Labour Congress] critique of the Conference Board, and that reference is in the written submission I've provided. I believe that you heard from Kathleen Macmillan yesterday, and I think she's fairly skeptical of the Conference Board numbers. I was at the Canadian Economics Association meetings this past weekend speaking with the president of the C.D. Howe Institute. He was pretty frank in saying he thought the Conference Board had kind of embarrassed itself on this one.

So I think, you know, it's not just the labour movement that's making this critique of the Conference Board. In terms of, you know, the concern I guess that Alberta and BC have about internal trade barriers, I mean, they just haven't been very clear or very forthcoming about what barriers they think exist or how they think TILMA's going to solve those barriers. I mean other than sort of regulatory differences, the only specific barrier I've ever heard about between those provinces is this thing about stacking hay — which I'm not convinced is all that big a deal economically. And even if it is, I mean, you know there's pretty different terrain and pretty different road conditions on each side of that provincial border. So I mean I'm not convinced that it's any kind of unnecessary barrier.

But I would really encourage you to ask the Alberta and BC officials fairly specifically like what they perceive the barriers as being, because it's not clear to me.

Mr. Chisholm: — Just on the stacking hay thing, I think my understanding of that situation was the barrier between Alberta and BC was different than the barrier between Alberta and the United States, United States and back into BC. The silliness of the situation was the load could go from Alberta south to the US, over, cross back into BC at the border crossing there, and be fine. The silly regulations were simply between Alberta and BC. So that's typical, I think, of some of the regulations that do need to be addressed and that I think TILMA certainly is attempting to address.

Mr. Weir: — Well I guess the only point I made, at the risk of stating the obvious, I mean the Rocky Mountains are on the border between Alberta and BC. They're not on the border between Alberta and the United States so much or BC and the United States. So I mean it does strike me that the difference in road conditions and terrain that might justify that regulation is really more an Alberta-BC issue than it is an Alberta-US issue or BC-US issue.

But I guess all I would say is, okay, even if it's true that this regulation is totally unnecessary, why not just get rid of that regulation? Why have an agreement that applies to every single sector of the economy and empowers these commercial tribunals to, you know, award fines of up to \$5 million based on challenges from private interests? I mean it just seems like

we're going after, you know, a fly with a sledge hammer here. You know, like there may be some things that need to be ironed out between different provincial governments, but what's not clear to me is why TILMA is an appropriate way of doing that.

The Chair: — Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. I have a number of questions that go to more or less the issue of the greater economy in Canada and cost of business and cost to communities and provinces.

In your view, would a series of regional economic agreements such as TILMA . . . There's been talk or speculation of an economic agreement between Quebec and Ontario. Would those add costs to Saskatchewan or Alberta, Manitoba, British Columbia businesses as you had to deal with various sets of rules and regulations around investment in various areas of Canada? Would that in fact result in increased cost to business?

Mr. Weir: — Well it's hard to say whether it would result in increased costs. Certainly it's not clear that it would result in reduced costs. And I mean I think you're right that fundamentally it does seem kind of strange to have different Canadian provinces signing, you know, preferential free trade agreements with one another. I think your skepticism of that is well founded.

And the more economic point I'd make about it is that the existing barriers out there, by any kind of credible academic measure, are so small that in order to achieve any measurable gain by reducing them, you'd have to reduce them on a multilateral basis among all Canadian provinces. Like there just aren't enough barriers out there to really achieve anything by pretending to reduce them between 3 out of 10 provinces. I think it's really such a small thing that to, you know, to get anything out of it, it would have to be done on a national scale or else it really wouldn't be worth doing at all.

Hon. Mr. Yates: — My second question goes to the issue of investment and the investment climate in Canada and the view perhaps of foreign investment, investors in Canada. Would the current securities regulation process in Canada be seen as a greater impediment to investment than the current — what's perceived as current — barriers in trade? And as I understand it the securities regulations process is not looked at in this process at all.

Mr. Weir: — Yes, I think that's right. I mean I'm quite supportive of a national securities regulator and that is an issue that many of these organizations will bring forward in talking about internal trade. But we do need to be crystal clear that TILMA certainly wouldn't create a common securities regulator. It doesn't deal with that at all.

And even on the securities side, I mean I do think it would be good to have a national regulator but I have a hard time seeing the absence of a national regulator as some kind of huge barrier to investment. But yes, you're right. I mean in terms of this committee the key point is that, you know, TILMA doesn't address that and that is one of the few specific real examples that's out there.

Hon. Mr. Yates: — Thank you very much.

The Chair: — Mr. Iwanchuk.

Mr. Iwanchuk: — Just a comment. I know you touched briefly on the taxation systems. And I'm just wondering in terms of tax credits or anything that a government might want to do in its industry or resources in potash, uranium, and maybe if you'd just comment on something like that and how this might impact on it.

Mr. Weir: — Well part of the challenge with TILMA certainly is that the language is fairly broad. I mean if you look at something like the North American Free Trade Agreement, it's hundreds of pages. You know, TILMA I think is 30-some pages. So it's very vague language and much will depend on how these commercial tribunals interpret it.

But the basic principle in TILMA is that you're not allowed to subsidize particular businesses or particular sectors. So what Alberta does, which is . . . you know, it has lots of resource money, it has low taxes, high spending across the board, is okay because it's not differential between sectors.

But what Saskatchewan often tries to do by having particular incentives in particular sectors or, you know, targeted measures tied to new investment or whatever which are, you know, more modest, more affordable kinds of things, those would be prohibited as business subsidies under TILMA, which I think would be bad on its own terms but I think, you know, given the fact that Alberta is so much more prosperous really would put Saskatchewan at a competitive disadvantage in terms of economic development.

Mr. Iwanchuk: — Thank you.

The Chair: — Mr. Duncan.

Mr. Duncan: — Thank you, Madam Chair. Good morning, Mr. Weir. It's nice to see you again. One of the things that piqued my interest and one of the questions that you are recommending that committee members ask is about such barriers to trade for other people that appear before this committee. And I had the chance to read an earlier paper that you had written for the Canadian Centre for Policy Alternatives and in that paper you referenced the 1985 Macdonald Commission that talks about interprovincial trade barriers and that they appear to be small.

But at the end of a comment . . . And I don't know, maybe you don't have your own paper in front of you so I won't ask you to reference it, but the thing that I find interesting is that you suggest that there really aren't very many — in your presentation and in your paper that you submitted — there aren't many barriers to trade. But at the end of a paragraph in the other paper that you had produced, you say that since then as a result of AIT such barriers have declined further.

So I'm wondering, you question of other people what barriers they are talking about. And I'm just wondering, in your earlier paper what barriers were you referring to? If there really are no barriers between provinces then what barriers are you presuming have declined under AIT?

Mr. Weir: — Well an excellent question and, you know, thanks very much for having read that paper. It's always good to know that legislatures are paying attention to the work that we do.

I guess what I would say is that interprovincial trade barriers have always been small but that there were some bona fide barriers at the time of the Macdonald Commission. For example, there was this rule that if you wanted to sell beer in a given province, you had to brew it in that province. I think that was actually a trade barrier but it's been done away with by the AIT. So I suppose what I'm really trying to say is that the Macdonald Commission looked at the barriers that were out there at that time, concluded they were almost insignificant economically, but there were a few real barriers out there. The AIT got rid of, you know, most of what may have been there so whatever's left might be pretty small.

So I mean I'm not trying to say that there's absolutely no barriers ever. I guess what I'm trying to say is that there's very few, and there really isn't much economic evidence that they have any kind of measurable effect on trade or investment flows between provinces.

Mr. Duncan: — So in your opinion is AIT doing the job in terms of interprovincial trade?

Mr. Weir: — Well I suppose the short answer would be yes. I mean I would emphasize I'm not convinced that there was even much of a problem before the AIT. But to the extent that there was, I think that it has dealt with, you know, those few clear examples that existed. And certainly post-AIT, I don't see the need for anything like TILMA — which again is not to say that we should be complacent. It's just to say if we're dealing with a very few minor frictions, let's just deal with them on a case-by-case basis rather than thinking we need a treaty that's comprehensive of the whole provincial economy.

Mr. Duncan: — But I suppose at the time that AIT came about in the mid-'90s, it would have been seen by perhaps your organization and others as a fairly comprehensive agreement that provinces really didn't need to undertake because they could have done these agreements one by one whereas the need would have arisen. So I'm wondering if that — and maybe that's presumptuous of me to say what opinions of an organization like your organization would have been on AIT — but I'm wondering then what is the difference then between doing a comprehensive agreement like AIT and then going further with TILMA?

Mr. Weir: — Well I think a key difference between the AIT and TILMA is that the AIT applies to certain specific areas and not everything else, whereas TILMA purports to apply to everything except a few exceptions. So I mean I think there is a real difference there in terms of how comprehensive they are. And certainly TILMA has this quite aggressive enforcement mechanism that the AIT didn't have.

So I would say, you know, first of all you're right that we were skeptical of the AIT because even at that time it wasn't clear that there was much in the way of interprovincial barriers. It wasn't clear that they had much economic effect. But now the problem is even smaller than it may have been then and the proposed solution is even worse than it was then.

I mean it seems quite funny because, you know, we had very small provincial barriers at that point in time and we had kind of a, you know, a certain type of agreement to deal with them. Now we concede that we have almost no interprovincial barriers yet we're proposing this far more aggressive, far more sweeping, far more comprehensive agreement. So we may have been skeptical of the AIT, but I think with extremely good reason we're far more opposed to TILMA and I think, you know, kind of more or less willing to accept the AIT.

Mr. Duncan: — But that's not to say that 10 years from now you might be sitting in front of this committee on another trade agreement and saying, well TILMA wasn't so bad but this one's even worse.

Mr. Weir: — Well hopefully Saskatchewan will stop this thing at the Alberta border and I won't have to be in that position 10 years from now. But I mean on a more serious note, like I do think that, you know, TILMA really is qualitatively different than the AIT.

Like it's not . . . I guess suppose the AIT does allow for things like TILMA, but it's not just a slight extension of the AIT. Like it really does apply to a lot more areas. It really does give private interests sweeping powers to challenge public policy which they didn't have under the AIT. It has these big financial penalties that didn't exist under the AIT. It applies to municipalities and school boards and Crown corporations which weren't covered by the AIT. So you know, I mean it's a totally different, totally different kettle of fish, I would suggest.

Mr. Duncan: — Thanks for that.

Mr. Weir: — You're welcome.

The Chair: — Mr. Cheveldayoff.

Mr. Cheveldayoff: — Thank you, Madam Chair. Thank you for your presentation this morning. I guess I wanted to challenge you a little bit on your characterization of the Alberta economy and the Saskatchewan economy. You talk about due to Alberta's vast resource wealth, businesses located there enjoy lower tax rates, higher level of public spending. Well I would suggest that Saskatchewan has, you know, vast amounts of resource wealth as well.

And for a long time I think, what you have said here is true to a certain extent. For 15 years we have had the highest tax rates in the country and the decision at that time by governments of those times were to look at business subsidies provided by certain areas.

But what has happened in the last 18 months, say, is that the government has taken a different direction. They've decided to lower taxes for everyone in the province, and we're already seeing some of the benefits from that. And I would suggest that any increase in economic activity, no matter how small, you know could be used to lower those taxes for everyone and increase economic activity.

And I would suggest that Saskatchewan businesses, Saskatchewan people can compete with Alberta, that we do have some inherent advantages, you know. There is some give

and take, but I . . . And this isn't just my own opinion, it's based on conversations with businesses here in the province and also people that are outside the province that are looking to do business here.

So just on that competition factor and, you know, the economic status of Saskatchewan, I would say that we may be behind Alberta. It may be because we didn't focus on some of the things that Alberta focused on, but I would say that we can compete. Any comments to that?

Mr. Weir: — Well certainly I take your point that Saskatchewan's doing extremely well economically. And I mean I certainly didn't want to characterize it as a poor province, but I mean if you look at the numbers, it is still pretty clear that Alberta does have a lot more resource wealth and a lot more resource wealth per capita than Saskatchewan does.

Also Alberta doesn't have a provincial debt. Saskatchewan, you know, unfortunately still is saddled with a significant provincial debt and the interest payments associated with that. So at the end of the day, I mean, yes Saskatchewan can try to change its tax levels or its provincial spending, but Alberta is going to be able to have lower overall taxes and higher overall spending than Saskatchewan because of, you know, more resource wealth and no debt. And just mathematically I don't see much way around that.

Now your suggestion that any gains from TILMA could in turn be used by Saskatchewan to lower taxes. I mean, that's an interesting point. But I suppose my take on that is I just don't see a lot of evidence that there will be economic gains by, you know, by signing TILMA. And I suppose that's really the crux of the issue. That's really what we're talking about here.

Mr. Cheveldayoff: — Thank you. I guess my point back to you would be just on the amount of resources and the development that I would again say that we are probably behind that of Alberta, but when I look at one-third of the world's uranium — and I believe it's at \$138 a pound or something like that now — that there could be a time in the future where we do rival Alberta. And I'm sure everyone in this room would like to see that, but that remains to be seen. But again, thank you for your presentation this morning.

The Chair: — Ms. Crofford.

Ms. Crofford: — Yes. The thing I'm having the hardest time wrapping my head around here is agriculture. Because I think some years ago governments moved away from considering agriculture food policy and moved into considering it just business. Would these provisions affect the ability to subsidize the farm sector, thereby leading to more and more large corporate farms?

Mr. Weir: — Well I'm not an expert on this area. What I might suggest is that a lot of farm subsidies come from the federal government and those presumably wouldn't be affected by TILMA. But I think it's true that TILMA could reduce the capacity of provincial governments to have active policy in that area.

Ms. Crofford: — For example the reduction in the cost of gas

or property tax or whatever.

Mr. Weir: — Yes. I mean again I haven't looked at those specific examples and I do note that in terms of areas where TILMA has exemptions, there are a number in agriculture. But I mean I do think that overall, yes, the thrust of the agreement would be to prohibit provincial governments from offering any kind of incentives or special treatment to that or any other sector of the economy.

Ms. Crofford: — I know this isn't your particular area of expertise but do you know of anyone who's done research on that particular area?

Mr. Weir: — I think that there was a paper by Ellen Gould through the Canadian Centre for Policy Alternatives which looked at a whole wide range of areas and I believe may have addressed that point a little bit more.

Ms. Crofford: — I'll check into it. Thanks.

The Chair: — Thank you very much. Our time has elapsed for this presenter and, because we do have a full agenda ahead of us, I'm going to be quite strict about time frames. So we thank you very much for your presentation. You've stood up very well under questions and challenges from both sides of our committee, and we appreciate the added information you were able to provide through that avenue. Safe travel.

Mr. Weir: — Well thanks very much for having me.

The Chair: — Our next presentation is from the Saskatchewan Construction Association, and I welcome Michael Fougere, who is the president of the association.

Mr. Fougere: — Good morning, everyone.

The Chair: — Good morning. We've been operating under the guideline of about 15 to 20 minutes for presentation and then open up for questions from the committee. And we would try and stick to the guidelines of about 45 minutes. We thank you for coming forward to be a presenter this morning.

Mr. Fougere: — Thank you, Madam Chair, and members of the committee. I thank you for allowing me to be here today. My name is Michael Fougere. I'm president of the Saskatchewan Construction Association. I did submit a brief to you. I'm not going to read it verbatim; I'm just going to talk in terms of some of the main themes that our association wants to bring forward.

Just by way of background I want just to suggest to you that the SCA [Saskatchewan Construction Association] of course represents 1,200 companies across the province, 24,000 employees in the industrial, commercial, institutional, and road building and heavy construction association across the province, and our association brings about \$1.7 billion to the provincial economy.

Our association has looked at this agreement in a little bit of detail. And certainly I'm not a trade expert. I did have either the fortune or misfortune of working for the province a number of years ago on the investment chapter of the AIT, so I have some

knowledge of that, which might make me a bit of a dangerous person to talk to. But certainly from my perspective we believe that any agreement that seeks to eliminate barriers to trade, investment, and labour mobility in all sectors of the economy is, at a high level, a very good thing to be done. Of course the devil is in the details and I'll get to some of those points in a moment.

What is key here, I think, is that we have an agreement in place between BC and Alberta, but there's a two-year transition period before full implementation. And that I think allows this government, if it decides to move forward, to enter the negotiations to talk about the way in which and under what circumstances the province may sign that agreement.

The issues that are of particular concern that you hear over the coming days and weeks as you do your deliberations with unique situations and concerns of different sectors of the economy, you can raise with the signatories of the agreement to ensure that those issues, insofar as you understand them and want them covered or exempted, can be the case. So I think it's an important element of going forward. But certainly there is mounting pressure for this government to make a decision on whether it does or does not want to enter TILMA.

We did ask a number of our association members their opinions. And we have a varied association. We represent our general contractors to all the subtrades: electricians, plumbers, carpenters, bricklayers, roofers, drywallers, heavy construction and road building across our province. They all have different interests and different concerns and questions about the agreement, so I'll try to be as high level as I can to put, also have their concerns involved.

The SCA certainly believes that Saskatchewan companies and employees are world class and we see this all the time over the last few years. A very confident economy. Businesses are doing very well. They're competitive regionally, nationally, internationally. And there's no way that we should take a second seat to anybody in terms of what we can do in terms of our economy.

We believe there should be more investment, not less, because trade helps grow our economy. It helps create jobs and opportunities across the province. We're the most trade-dependent province in Canada, and I think Saskatchewan should embrace competition. It should embrace new trade and investment.

The total exports that I understand in terms of internationally and interprovincially are equal to about 65 per cent of our gross domestic product, and those numbers I have from 2003 from STEP [Saskatchewan Trade & Export Partnership] on their website. And about 26 per cent of all jobs are directly or indirectly linked to export of goods and services. So we are a trade- and investment-dependent province, and we shouldn't shirk away from that and be afraid to step into what could be a very good deal for us, I think.

Now again TILMA does seek to eliminate these barriers between the signing provinces that hinder investment and trade, labour mobility in all economic sectors. It is an extension of the AIT but there are some significant differences. And I was listening to your last delegation as I came in. He has talked a lot

about that and I'm sure you know what those are where everything is in TILMA; with AIT it's out unless you include it in. And so it's very much a philosophically different approach to take. Neither one is good or bad but certainly they have different approaches.

Streamline business regulations. And I do believe that there are impediments to investment. I just believe that you wouldn't be having this agreement signed by two large economies if there wasn't impediments to trade and investment. This is to make the lines clear, understandable, and predictable with results if you don't play the game by the rules of the game that are set out. So for me there clearly are impediments and hindrances to investment and trade.

But certainly having one company registered in one province automatically allows that company to be registered in the other provinces, makes it easier to move forward. You don't have to have a presence in the province where you're going in to investment. That's an impediment now. Clearly this is an issue that addresses, you know, on the street, the practical problems in terms of business development.

The difference between TILMA of course and AIT is — and I think a huge one — is the dispute settlement process. And the problem with AIT is that it doesn't have an effective dispute settlement mechanism. TILMA does and there's lots of interpretations of how that works and I'm not an expert in it, but my understanding of how it works is that individuals or companies cannot proceed with this. They must get the consent of the signatory province to go forward. And if there is a penalty to be paid, it is not paid to the company; it is paid to the province. It's an incentive for the province itself to change the regulations to ensure transparency.

So if company X has a problem with what happens in Saskatoon, if they can convince their province — which in this case may be Alberta — if there's a problem, they must first, there's a threshold that the province would have to say, well I agree there is an issue here, and they will take it up on behalf of the company. The company does not necessarily have direct say in the dispute settlement process. They can appeal that though. Certainly they could do that. But in terms of the process itself, there is a threshold. There is a screening, if you will. And as I understand it, as I read the agreement itself, frivolous complaints will be screened out. So that's my interpretation. I may be wrong, but that's how I see that.

But that is a major separation between the AIT and this agreement, is that there is a dispute settlement with teeth. And that makes it much more important, more significant to everyone who is signing it or thinking of looking at it.

Certainly the agreement does prohibit governments from offering business subsidies, and in principle my association agrees that there should not be business subsidies as long as we all play by the same rules of the game. I think it's fair and reasonable. I think we're competitive enough as we are. Our costs of doing business are lower than other provinces. And you can make the argument of many input costs in terms of land and labour costs, those kinds of things, are lower than other provinces. And that may in fact give us some competitive advantage in some sectors.

But we do note that labour standards, social policy, occupational health and safety, water, taxation, natural resource royalties, and policies as they apply to Aboriginal peoples are exempt from the agreement. So there are significant agreement elements that are exempt. And this allows the signatory province to continue with autonomy in their areas while expanding opportunities without risking workplace standards, which I think is critical in terms of labour mobility. But we look at other areas — and again this is a matter of interpretation — the legitimate public policy objective is a very wide term within the agreement that does give some leverage to act in unique circumstances for the provinces.

TILMA has been noted by several people as being vague and open to interpretation, and I think that that's a legitimate statement to make. There are a number of published opinions that I have read and seen that do speak of it being, because it's vague and open-ended, it's a problem because it's open to interpretation. But the principles and statements of TILMA I think are significant and I think are worth going forward on. The idea of removing barriers to trade and investment and labour mobility, those I think are legitimate objectives.

What comes into this one is a two-year period that we have an opportunity to seize the moment and speak to the issues that are of concern to Saskatchewan residents and the Government of Saskatchewan and those speaking to you today and through the days ahead that talk about unique circumstances to ensure that things are kept where they are or exempted from it or we may find it's fine the way it is.

But the window of opportunity is here. And to enter negotiations without saying you're going to sign it and see what you get out of it, I think is an important step to go forward.

There's no doubt that signing TILMA itself is not going to be nearly as traumatic as some of the commentators have said. And the dire predictions made on the basis of how the Canada-US Free Trade Agreement and the North American Free Trade Agreement where the sky was falling didn't come to pass. In fact, our economy's matured and we've grown as an economy in Canada, and provincially we're going very strong.

Nor is it going to be the panacea that people talk about either. There's going to be difficulties because there are in relationships, period. Economic, political, social — these are all, they're all different issues that are going to come to the fore.

What we have to do is get away from the extreme rhetoric that talks about it being the perfect agreement or the sky is falling, because we lose the essence of what we're talking about here which is to try to promote economic growth, job creation, and investment in Saskatchewan and across Western Canada.

This idea of a corporate bill of rights, I think is just — I don't get it. I don't understand that concept of that's what this agreement really is. It doesn't say that in the document. It doesn't refer to that in the document. It talks about, you know, transparency, predictability, and open markets. That to me is the way we should be going.

Do we lower standards? It doesn't say it in the agreement either. In some of the legal opinions I've seen, they say either

way. Are we harmonizing? That term's not used either. And the term harmonization, I think, is a key word for those who are concerned about lowering standards, the lowest common denominator. What I see in the agreement is that that won't be the case.

And I'll give you an example of it, and certainly in the report you talk about Red Seal as being a standard. Red Seal for the trades is critical and if that was not in the agreement, then we would be absolutely against that because that would not allow us to begin to deal with the construction trade shortages in this province, if Red Seal was not accepted around Western Canada, around . . . nationally, basically. So that's not a lowering of standards. That's maintaining the high standard. That's the high-water mark. So that's one example where I see necessarily we're not always going to this lower common denominator.

Again I would just suggest that this two-year period is a key opportunity for the province to state its case, enter negotiations and the terms under which it would sign that agreement to make sure that we have the right deal for us. I reference again, labour mobility is a key issue, the Red Seal being very important to us.

A couple of members of our association, the Consulting Engineers of Saskatchewan, do make a comment about, about what they speak of, of the best practices for selecting a professional consultant. And they're on record, both Saskatchewan, British Columbia, Alberta, and the national consulting engineers' associations, of being concerned about the principle of qualifications-based solution. They don't want to have necessarily the lowest cost, but it is those who are the best able to do the work. I won't speak in more detail other than to say that I want to convey the views that their concerns are legitimate because they are part of our association.

There's one concern I have that I reference that — we've talked about it at our board of directors level and in our advisory council — is the treatment of provincial sales tax and how that might affect the cost of services and goods that are done in construction in Saskatchewan. Where Alberta does not have sales tax, we do. And we just would want to be firm that a company that would not buy its produce and products, materials at a better competitive number than in Saskatchewan, do the work in Saskatchewan.

So there has to be some discussion, and maybe that there is a solution and maybe that's thought of by those who have signed the agreement. But I raise as a flag of a question — not so much a concern — a question. But I think ultimately we are competitive, our companies are competitive, our pricing is competitive, and we can withstand that. So this is a flag as opposed to an opposition — to just a point of clarification.

So my last points, Madam Chair, just simply to say once again that we support any agreement that addresses internal barriers to trade, investment, and labour mobility. And we recommend that the province move forward with the agreement, not so much to sign it, but to begin negotiations to see whether you want to do it or not. But to make a decision — yes or no — in advance of negotiating, I think is premature. I think it does not do justice to either side of the argument, those for or against. Because when you enter negotiations and you begin to get the . . . you know, to pull away the fallacies from the facts, I think it's important

for everyone that we do that, that process first.

We think that signing the agreement with the second largest trading region and economic region in Canada would help us much more than hurt us. In fact being isolated so close to those markets could in fact be detrimental to us over the long term. So we enter this discussion in a positive way, that we are confident in our abilities and our companies and in our employees to be competitive. And to have a transparent investment attraction for our province would do nothing but help us in the future.

So that's my presentation, Madam Chair, and I certainly can answer any questions you may have.

The Chair: — Thank you very much. We will begin with Mr. Weekes.

Mr. Weekes: — Well thank you very much for your presentation. It certainly is, I would have to say, a presentation that kind of swings the pendulum back to more of a realistic point of view. I just want to highlight a couple of things that you said. Some of the presentations and some of the comments in the media that, you know, it seems to be the fearmongering out there and the concerns about every possible negative thing that could possibly happen about an agreement, as you said, that is being negotiated, still in the process of being negotiated.

And I just want to highlight the fact your point about trade agreements — NAFTA and so on — the same fearmongering and debates went on, and for the most part they are unfounded. And the economies of all the members that have signed on to these international trade agreements have benefit greatly, and there's been an increase in trade and GDP and in the number of jobs created.

I'm assuming — and from your comments I assume you agree — that any agreement that would reduce barriers would have, whether we can agree on or predict the future, any agreement that we reduce barriers on what TILMA is attempting to do would, on a net effect, would have a positive net effect on the economy of all of its members.

And I guess I would like you to speak to more of some of the fearmongering and the fears that individual groups have about the possible negatives. I don't see the negatives in an agreement and, like you say, maybe not necessarily signing on the dotted line today but being involved in negotiations with the possible intent of signing on. How important that would be for Saskatchewan to be at the table to raise our concerns and make sure anything that is specific to Saskatchewan would be in the agreement so that it would be a positive not a negative to Saskatchewan?

Mr. Fougere: — Good question. I'll see if I can take some bits at a time here. When I speak of fearmongering certainly with respect to the AIT and NAFTA, those discussions, we had obviously a very emotional and protracted discussion on both those agreements and elections nationally fought over that. Some of the comments that were made about . . . that it would just be a disaster for Canada if we signed it. Council for Canadians has certainly had their comments as being — I thought, you know — is one example of being extreme.

In the discussion here, when I hear terms of like a corporate Bill of rights, this has nothing to do with trade, investment, and labour mobility. It's a corporate Bill of rights. I just, I don't understand that discussion. And I think it engenders fear, concern about, you know, that corporations are out there just to make money at the cost of everything.

You know, I represent some very big companies and very small companies, and I've said this when I've been before members of ministers' cabinet and others, that I'm concerned when I hear issues that assume that the corporations will not take care of their employees, that they don't care about the province that they live in. They don't care about the city they live in. They don't care about their employees. They do. The ones I've talked to are very concerned about that, and they are citizens like everyone else is. So the supposition that, you know, these are bad people, that they're going to do something if we don't watch them — to me I just find unnecessary, and it doesn't move the debate along.

For me it's, these individuals who invest and create jobs here are here because they want to be here. They want to grow the province. They're altruistic. They believe in the province. They believe in Regina, Saskatchewan, and Saskatoon — all our cities and towns and villages across the province. But the concern of having a statement made is that what's left unsaid is that you really can't trust these people because they're going to do the wrong thing unless they're held in regard . . . you know, held accountable.

That's the concern I have, one of the biggest concerns I have of that kind of debate that took place during NAFTA and now with TILMA. Not everyone says that. Just I raise that as a particular concern to my association because they say, look here; we do lots of things we don't have to do as our companies. They invest. They do lots of donations, and their public consciousness is as good as anyone else's.

So I'm not sure that answers your question, but you know, I think we need on both sides. Those who say it's a panacea, it's going to be the perfect nirvana here for TILMA — we have to be careful what they say as well because there are issues. There will be bumps in the road. There always are in new relationships. I mean, we have to be practical and realistic here. So we just need to get the rhetoric away from both sides and get down to what I think is really the central issues of whether we want to join an agreement and I think help our province prosper.

Mr. Weekes: — Thank you. Just another point. You'd stated earlier that Saskatchewan should be at the table negotiating their position within TILMA. Would you share the view that there's also risks in not taking part, not being at the table; that would be negative to Saskatchewan if we just ignored this or stayed out of the process?

Mr. Fougere: — Well this a philosophical answer if you will, and again I don't know all the details of what would happen if we didn't sign this. But as a starting point, I strongly believe that we have all the tools here to be a very, very large significant player in the economy of this country. And we see a lot of economic momentum over the last few years. Our economy is booming. Western Canada is booming. A lot of the

shift of economic weight has moved to Western Canada and not so much in Eastern Canada now, particularly with manufacturing and the troubles they're having. And we'll see with the high dollar, will continue to hurt them.

But I believe that we should go in confidence because we know we have world-class companies here and very good employees that work very well. And my mind, I go positive. You say, what's the downside of going in and talking to the signatories of the agreement to say we're interested in joining this, but we want to talk to you about the terms of entering it? Here are a list of our questions and concerns and whatever. If we don't do that, we'll never know. And what are we saying? Are we saying that we're not prepared to participate in a regional economy; we're not prepared to look at ways to protect and enhance our quality of life — for more investment, for job creation?

We send all the wrong message. We're insulated. We're turning insular, into ourselves to say we don't need this; we can prosper ourselves. Well frankly I think we can't. We're a world economy here. We're very much in a world economy, And if we don't respond to this, I think we hurt ourselves more than help us. I'm not sure if that answers your question. but that's my perspective.

Mr. Weekes: — Well thank you very much.

The Chair: — Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. My questions have to deal primarily with I guess whether your organization that you represent and the industries you represent . . . What we're faced with really is the issue of a regional economic agreement versus should this be more of a pan-Canadian approach, a Canada-wide approach. And where you may prosper on one end from regional agreements . . . There's been talk of unity between now Quebec and Ontario. Does that also exclude you, if you're in one particular agreement? And would you prefer or would your organization prefer the regional agreement that we're now faced with or a pan-Canadian, Canada-wide new agreement that deals with the issues facing all the Canadian jurisdictions?

Mr. Fougere: — This is my perspective. If we had a national agreement that had teeth, it was enforceable and included a lot more than what the AIT purports to do, we wouldn't need TILMA. TILMA wouldn't be here.

TILMA's here because two provinces believe that the AIT does not go far enough. It doesn't actually have a dispute settlement mechanism as an example. They want to go a bit further than what the AIT would allow. I would say that I would be personally concerned of TILMA in Western Canada and Ontario-Quebec one and there's no discussion between the two of them. We balkanize the country; that would be my concern.

I would certainly want to have a national agreement, one that does obviously . . . I mean, I go back to my days of helping on the investment chapter of AIT, how incredibly complex that is. But the goal, if we keep our eyes on the goal here of prosperity and economic growth and investment, and clear and fair rules of engagement, we can get there. But it took many, many years to get just that far.

So obviously BC and Alberta believe that AIT did not go far enough, and they want to do it on their own, and under AIT of course they can do that. So there are regional agreements. So I prefer to see a national one.

Hon. Mr. Yates: — Thanks very much. My next question . . . And I appreciate the comment that there should be no decision made until you know the outcomes of negotiations.

Part of the process is and some of the challenges are it's to accept, to accept it before you negotiate, before you get the ability to negotiate what your own provisions would be. And that's quite risky in the sense that if you accept that you're in, you get into negotiations. Opting out is not necessarily the easiest process, and that doesn't necessarily then advance the overall objectives. So could you comment on that?

And I'd like a little further clarification on the sales tax on products issue. I think I understand that. What you're basically saying, if you're doing work in Saskatchewan, everybody would have to pay. There'd have to be a level playing field, either no tax on the products for everybody or everybody who was bringing products in would have to pay tax. So that in fact whether you're an Alberta contractor or a Saskatchewan contractor, you'd be on an equal playing field to bid those jobs in each jurisdiction.

Mr. Fougere: — Okay. To the first point, it's important that the Government of Saskatchewan not prejudice what that agreement means until it has all the facts. But to say that you're in or you're out before you deliberate is intellectually dishonest to everybody. Either you have a predisposed notion that you're not going to sign, that you're going to find a reason why you shouldn't sign it, or if you have a predisposed notion I'm going to sign no matter what. You're not doing a service to those who were here before you and your constituents to say this is why you should be here or not be here.

Entering into a discussion, a negotiation to say the intent is to determine whether we can sign the agreement, we want to talk to you about that, is not prejudging the situation. But you come armed, hopefully by that time, with your perspective of what you think should or shouldn't be done.

But it's really important . . . And this is my experience in government — I know this happens quite often — that it's important that we not state the position without getting the facts first. Trying to find a solution without diagnosing the patient, you know, if you're going to prescribe a drug, make sure you know what the illness is first. And it's really important we do that.

So I don't think there's anything wrong with the process of saying we want to enter into discussions to see whether we can address the concern raised by various interest groups, by the review that this committee and others are doing, and providing for you to say yes, we're going to go forward. And then it may be that you say, on balance, we can't sign it because of these reasons. Or you can say the agreement can be altered, amended or we understand the interpretation now to address our issues, so we'll sign it.

As my association, nothing that I've seen in this agreement,

insofar as I'm able to understand what's there and reread other opinions, would preclude us from signing it. I think it's a great agreement. I think it would do very well for us. But you have to answer the question, not me. I'm telling you a perspective from the construction association side and some other areas I know about. I think it's not intellectually a problem at all to say we go on with no decision yet, just to find out what's going on and if we believe it's in our interests, we'll sign it. If it isn't, we won't sign it.

Hon. Mr. Yates: — Thank you very much . . . Pardon me, yes.

Mr. Fougere: — Do you want me to answer the other question on the . . . The other one is a question, and it's sort of, you know, that in Alberta, no sales tax. We have many companies from the construction trades that bid on contracts and work in Saskatchewan, and do they have an unfair competitive advantage? What does the agreement say about that? Does it say that's . . . you know, is that under legitimate public policy objective that you can have, you know, your taxation at one level and someone else here? And what does that do for our companies?

So it's a question of clarification as opposed to criticism. It's just something that came up from our members. Like what does that mean for us? Is there, you know, a 6 per cent advantage built into all costs for construction materials and labour or whatever else? So I just raise a question. That's a question that we have, and maybe there's an answer already. I don't know.

Hon. Mr. Yates: — Well thank you very much. We are going to have the opportunity to meet with officials, with Alberta and British Columbia later and ask many of the questions and concerns including the issue is, is it even open for negotiation or do we accept it as it is right now? And so we won't have that opportunity until later on in these discussions, but those are important points.

The Chair: — Ms. Crofford and then Mr. Chisholm.

Ms. Crofford: — Okay thank you very much. The process for us is one of listening to people so that we can ask even better questions.

One of the challenges that the minister put in front of us is what real impediments are there currently and what are the most practical solutions to those impediments? Now I'm having trouble just getting some fix on what the organization believes are real impediments. Business regulation so that businesses registered in one province are automatically registered in another — is that the main one?

Mr. Fougere: — That's one of them.

Ms. Crofford: — Yes. We're looking for again in the interests of not dealing in rhetoric but dealing in facts. What are the other factual areas that your organization feels are problematic?

Mr. Fougere: — Okay. I don't think that's rhetorical when I say that business registration . . .

Ms. Crofford: — Yes.

Mr. Fougere: — That's a real thing; that is substantial. I think that there are . . . And I can't give you more details. I certainly can provide them for you. My members didn't talk to me in terms of other barriers . . .

Ms. Crofford: — Yes. You see I think for us what would be very helpful is to have the real examples.

Mr. Fougere: — Well one of them could be the PST [provincial sales tax] differential. That's a concern. That's an impediment. That's a concern — how we are competitive — because you look at the other way . . .

Ms. Crofford: — Is that a trade barrier though, or is that a budgetary issue just like city council?

Mr. Fougere: — I would say it's a trade barrier. I can make the argument it's a trade or investment barrier. It's a barrier to conducting business, and maybe it makes us less competitive. Otherwise if our companies wanted to go to bid on work done in Alberta or British Columbia, there's a difference there.

Ms. Crofford: — Well let's pursue that a little bit. Alberta has a public health premium. In order for the interest of competitiveness, would our companies now have to pay a health premium, or would Alberta not be allowed to charge one to make companies more competitive? Because most companies pay that for their employees in Alberta.

Mr. Fougere: — I'm not sure that that's part of the agreement — health care.

Ms. Crofford: — Well but it's a subsidy in the sense that if it's a business cost, it's no different than a tax. Essentially it's a cost.

Mr. Fougere: — Oh it is, but I'm not sure that that's part of the agreement. And my understanding is it may not be. And I think that's part of the question you have when you speak with Alberta and BC officials — how do they view that?

Ms. Crofford: — Yes. See these are the kind of practical things I'm trying to get my head around. Training dollars, is that considered a subsidy? Because sometimes training dollars are part of an incentive package to attract someone. Well if you bring your 500 jobs here, we'll give you 5,000 a job to train those folks. And is that training dollars, or is that an incentive?

The other one I wonder about is, do any of your members benefit from the manufacturing and processing tax credit?

Mr. Fougere: — On the training subsidies? I mean the agreement does speak of subsidies and how those are treated.

Ms. Crofford: — Yes.

Mr. Fougere: — And again I mean, this is part of the issue of this agreement. The agreement is open-ended and is not clear on these issues. And it doesn't mean we should walk away and, say, be afraid of it. We should just simply ask the question, what does it mean? What does it mean if we offer training subsidies? What if the government invests more in training seats through SIAST [Saskatchewan Institute of Applied

Science and Technology]? Is that subsidy? I mean I would argue . . .

Ms. Crofford: — The workplace-based training program.

Mr. Fougere: — It's a legitimate public policy objective under that definition that you can do that. It's not subsidizing a business; it's an industry. It's not related to a company; it's related to everyone.

Ms. Crofford: — Well sometimes it is.

Mr. Fougere: — Everyone's treated the same way no matter what. And I would argue that that would not be treated as a subsidy. So many of the things the government does in terms of its investment may not be treated as a subsidy or unfair practice. And there are exemptions in the agreement that are very clear as to what can or can't be done.

Ms. Crofford: — Now it suggests here that the labour mobility isn't really an issue for your industry, that that's pretty much sorted out.

Mr. Fougere: — Well we're pleased that . . . Again this is only speaking for the construction trades. The comments of many other professions over the two-year period will be looked at. That is an issue because it has to be sorted out. But in terms of the construction trades, my understanding is that the Red Seal will be considered as a standard. And if that can be confirmed, then in terms of my association that's not a problem.

Ms. Crofford: — I've got to give my colleague five minutes for his questions, so I'll just ask one last question. If AIT had better enforcement provisions, and considering that it is a negotiated process that is pan-Canadian whereas TILMA is a little more of an imposed process that's really so far between two provinces, do you think there is merit in — rather than jumping to a whole new agreement — in strengthening the AIT process which has been a negotiated process?

Mr. Fougere: — Well as I said earlier to Mr. Yates that I think a national agreement's much better than a regional. I don't think that under the AIT they were able to get to a dispute settlement mechanism to make it more effective. That's why they stopped where they did. I think it's just not possible to get there. There was just too many things involved, too many exceptions, and there's too many holes in the agreement itself.

Ms. Crofford: — Or concerns. Yes.

Mr. Fougere: — Concerns. Vested interests. Regional, local interests that are there. Certainly on the investment chapter it was extremely difficult to get any agreement with any teeth in it at all, let alone the other side. So that's a preference is to have a national agreement, but I don't think we're going to get there — at least not right now anyway.

Ms. Crofford: — Maybe I'll just close by saying, in the interests of a practical response to this, if your organization has more specific information on what are considered to be barriers, that would be very helpful. Because we're kind of dealing with how many angels dance on a head of a pin right now. We need to be as . . . And apparently there was a low response rate from

Saskatchewan businesses to commenting on TILMA. So rather than this be something that's the architecture is up here, we'd like to hear from real businesses on the ground.

Mr. Fougere: — Yes, and I can provide that to you. But I would say just as part of that is that, you know, the issue of skilled trades, the potential that Red Seal would not be there could be an impediment. Business registration is not rhetorical. It is real and substantive. There are a number of issues on investment that can be either transparent or seen or unseen problems with investment. I'll give you some more of those.

My members wanted me to emphasize a different tact than that. It was to ensure that there was transparency, to ensure that there are no impediments, that we don't have those pop up after a while or doing the course of negotiations; that we go forward positively. And we don't have a lot of issues. Our industry is doing very well.

Ms. Crofford: — Yes.

Mr. Fougere: — Overcapacity. We're looking for more people, and we believe this agreement is one way to ensure we get those skilled trades back here. It's a greater pool for us. It's very important for us to see that. So we didn't look at it in terms of what are all those impediments right now, because we're not involved with manufacturing, as an example, and it's not a sector that we're involved with. So from our perspective it's one of opportunity to really bring in investment and ensure we have transparency and rules that apply to everybody.

Ms. Crofford: — Okay. We'd better let our other question in or we're getting, skating close to the edge here.

The Deputy Chair: — Mr. Chisholm.

Mr. Chisholm: — Thank you, Madam Chair. I had a question regarding the whole idea of subsidies and how it affects your industry in particular, and I guess more particularly what your industry has seen in the last number of years and how this agreement will address that whole area of subsidies. I guess what I'm getting at is, we've heard that because the Alberta and BC economies are stronger than our economy at this present time, they are able to offer a more attractive tax system. And so that when we come back with specific subsidies that may be eliminated or curtailed in this agreement . . . I guess I'd just like your comments on that as to what's been happening in the past.

Are Saskatchewan, are we being held back with subsidies that do happen in BC and Alberta? Like I see that we have some certain advantages that with the elimination of some of those kinds of subsidies we would actually be in a more competitive position.

Mr. Fougere: — Now I'm not sure I can answer the question in detail. I can give you a philosophical answer to tell you that I think as long as we don't have subsidies that pertain to particular companies and we have subsidies for industries or, you know, for a whole area. And I could argue that reducing corporate capital taxes and other taxes apply to everyone and therefore they're not seen as a subsidy. If you're thinking about an individual company then, yes, that's a problem.

We're very competitive in our personal income taxes and corporate income taxes, small-business tax. We're moving in the right direction on there. I don't see those as subsidies at all. My members do not speak in terms of unfair subsidies that affect our industry. It doesn't affect us. So I can't give more comment because I'll represent only the interests of SCA and my members. They do not talk about subsidies affecting their ability to compete at all. That's not what they asked me to talk about.

Mr. Chisholm: — Okay.

Mr. Fougere: — So I'm not sure that answers your question. But we are very competitive. I think we don't understand just how competitive we are in so many ways.

Mr. Chisholm: — Thank you.

The Chair: — Thank you. The time for this presentation has now elapsed. And we thank you, Mr. Fougere, for your presentation and answering of questions of committee members.

Mr. Fougere: — Thank you, Madam Chair .

The Chair: — Next on our list would be Saskatchewan Seniors Mechanism. And I do have one representative named Beverly MacLeod. I see others of your group. If you would like for anyone to join you or if you would just like to introduce your members and . . .

Ms. MacLeod: — Hi. Actually I'm Beverly MacLeod but we have opted for our president, Joanne McDonald, to do the presentation which we were told before we entered that it would be Joanne.

The Chair: — Good. All right, that's not a problem. Thank you, Ms. MacLeod and Ms. McDonald. We welcome your presentation. Would you like to introduce the other members that are here with you? I believe there's a few at the back.

Ms. McDonald: — Yes. We have Beverly MacLeod who just was at the mike here. She is the executive director of the Saskatchewan Seniors Mechanism. And we have Verda Petry, who is past, past president of SSM [Saskatchewan Seniors Mechanism], and Les Lye, the current treasurer.

The Chair: — Thank you. As I mentioned to other presenters, you have about, oh, 10, 15 minutes for presentation and 10, 15 minutes for questions and answers. And we're trying to be true, fairly true to our agenda as members have other events and we've got a full afternoon ahead. We thank you very much for being here. We'll let you begin your presentation.

Ms. McDonald: — I speak for Saskatchewan seniors through the Saskatchewan Seniors Mechanism. The Saskatchewan Seniors Mechanism is a non-profit, volunteer organization that was formed in 1989 as an umbrella to represent seniors' organizations in Saskatchewan. The SSM represents about 150,000 seniors, a sizeable group with a keen interest in the economic and political sustainability of the province.

SSM promotes the following: a unified voice for seniors in the

province; research and action on issues affecting seniors; awareness and coordination of resources and services for seniors; and all aspects of healthy living — intellectual, physical, emotional, social, and spiritual.

The SSM is experienced in managing complex projects, developing productive partnerships with groups and organizations throughout the province, and in developing and implementing community-based solutions to problems. While the focus of SSM is the well-being of seniors, we are always concerned about the welfare of all citizens.

What is TILMA? The Trade, Investment and Labour Mobility Agreement was signed by the premiers of Alberta and British Columbia in April 2006 with implementation beginning in April of this year. There is pressure on Saskatchewan and other provinces to join the agreement. TILMA creates a legally binding process for parties to the agreement, as well as private individuals, to challenge the following: government programs and regulations if they, quote, “restrict or impair” investment, from article 3; regulations in one province that are different from those in another, from article 5:1; to challenge the establishment of new, stricter regulations, article 5:3; or initiatives by one province that the other does not agree with, article 7:2.

TILMA disputes will be arbitrated by independent panels with the power to penalize governments — that is the taxpayers — with fines as high as \$5 million for violating the agreement, and governments can be hit with repeated complaints against the same program or regulation. Gary Mar, the cabinet minister responsible for negotiating TILMA for Alberta, says that its dispute resolution process is, quote, “everything Canadian business asked for” and that it means TILMA, quote, “is backed by some very big teeth.”

Why is there pressure on other provinces to sign on to TILMA? Policy harmonization and investor rights are the goals of all free trade agreements. Massive deregulation is also a goal. They were a main component of NAFTA and are acquiring new urgency with the Security and Prosperity Partnership of North America, the SPP. This far-reaching continental agreement signed by George W. Bush, Paul Martin, and Vicente Fox in March 2005 contains over 300 provisions for the harmonization of national agricultural, security, immigration, environmental, and Aboriginal policies in all three countries.

It opens the way for privatization of sectors of the economy that Canadians generally recognize as being in the public domain such as fresh water, medicare, non-polluted earth and atmosphere, and nutritious food. Once privatized, NAFTA does not allow a return to public ownership and control.

Like TILMA, the process is being driven by big-business lobby groups like the Canadian Council of Chief Executives. Their essential goal for the SPP is an erasing of the borders between Canada, Mexico, and the US in as many ways as possible. It's called deep integration, which is a good way to describe what TILMA does to the border between Alberta and BC. So it is not surprising that business lobbies in the US are showing a keen interest in the agreement. But the big question is, why would provinces have such an interest?

The basic consequence of an expansion of TILMA would be the bargaining away of provincial rights as defined in the Canadian Constitution. It is clear that in order to fully implement SPP, it is necessary to break down interprovincial barriers in Canada because the Canadian Constitution gives provinces jurisdiction over a number of areas that NAFTA and its successor SPP cannot currently privatize without provincial agreement.

Provincial powers now include the following: the administration of health care and hospitals. Provincial governments administer hospital and medical care although the federal government provides for nationwide systems of hospital insurance and medical care by making grants to the provinces on condition that their plans meet the standards of the Canada Health Act. They include direct taxation for provincial purposes and all labour legislation. Maximum hours, minimum wages, safety, workers' compensation, industrial relations, they all come under provincial law except for certain industries such as banking, broadcasting, and defence.

Provincial powers include: social security, except for employment insurance which isn't purely national, and a shared power over pensions; natural resources; education; charitable institutions; municipal institutions; licences for provincial and municipal revenue purposes; local works and undertakings with certain exceptions; incorporation of provincial companies; the creation of courts and the administration of justice; solemnization of marriage; property and civil rights in the province; prisons, except penitentiaries; and fines and penalties for breaking provincial laws, matters of a merely local or private nature in the province.

It is clear that democratically elected provincial governments have a great deal of authority to act in the public interest. Why would they give these powers away to investors whose entities are not democratically controlled and whose goals have much more to do with return on investment than the public interest? The consequences to our public health system, the environment, and the danger that TILMA will lead us quickly toward economic integration with the United States are all too severe to allow this agreement to include Saskatchewan.

Consider the privatization of institutions and services that we own in Saskatchewan and what the consequences will mean not only for seniors but for all citizens. Among the likely consequences for seniors — the privatization of health care. American companies have been eagerly awaiting investment opportunities in this major sector of our economy which in this province uses up about 45 per cent of the budget. Investors regard health and education as commodities to be privately owned for profit. The majority of Canadians and certainly seniors view health and education as public services.

TILMA massively deregulates. In fact most seniors would argue for increased government regulation in such areas as pharmaceuticals and home care. Only through public regulation can costs and quality be controlled. The majority of seniors live on fixed incomes and they cannot afford the high costs due to profiteering that would ensue from increased privatization.

Americans spend more than double the amount per person on health care that Canadians do, and yet almost 46 million Americans have no medical coverage at all. This is not the

direction Saskatchewan seniors wish to go.

There will be increased costs of services such as automobile insurance. TILMA covers all government entities — Crown corporations, school boards, universities, and private agencies on contract to government. All provinces that sign on must agree to the same regulations regarding competition. We now pay the lowest rate of auto insurance in Canada. Do we want to lose this advantage? Absolutely not.

Energy costs would increase because signatories agree to cross-border transfers of energy between provinces. SaskPower would probably be privatized with an inevitable loss of provincial control and loss of quality of service.

Other major consequences include the requirement that all municipal, Crown, and provincial purchasing must be tendered throughout the regions who have signed on, and that local municipalities, school boards, universities, and hospitals cannot make a decision to support a local supplier of goods and services. This would have serious consequences for the health of local economies.

Provincial governments would no longer be able to support rural development, small business, nor economically depressed regions because this would be seen as, quote, “distorting investors’ rights,” a violation of the agreement. Under TILMA even measures designed to protect the environment and public health are vulnerable to attack from corporate lawsuits, with compensation penalties as high as \$5 million for violation of the agreement. These funds for the fines would come out of taxpayers’ pockets.

The most serious consequence of TILMA would be the irrevocable loss of public control of and the right to intervene in the provincial economy. Seniors have worked all their lives for the protection of democratic rights for all citizens. We urge you not to bargain away these rights.

The Chair: — Begin the order of questioning with Mr. Weekes.

Mr. Weekes: — Well thank you for your presentation. Certainly you’ve laid out a considerable list of things that you and your group think that are at risk with this agreement. I have to take an exception to most if not all of your concerns. And I think if you look at part V of the TILMA agreement, it lays out the exemptions that covers, I believe, just about everything that is in your report that you would have concerns with.

But in general terms the way trade agreements have worked in the past — both internally and with United States and Mexico with the free trade agreements — the essence of the agreements was to create more economic activity and more jobs and more wealth for the individual companies, individual countries, individual provinces, and the workers of each jurisdiction, and ultimately, at the end of the day, to produce more tax revenue for Saskatchewan, for Canada so we can continue to pay for the excellent social programs that we have which are really number one in the world. And the main one would be our medicare system. And the whole health concerns that you laid out are exempt within this agreement. There’s no discussion about, there’s no possibility of that having a negative effect because of

a trade agreement between or among provinces in the country.

I mean in your presentation you laid out things that are enshrined in our constitution. These things aren’t going to change by a trade agreement which is quite frankly restricted to trade, investment, and labour mobility. That’s the areas that this concerns. It certainly has no effect on other social programs, which is laid out part V, general exceptions, item (f), “Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker’s compensation.” Also there is protection of Crowns also in the agreement.

So I don’t see where you have the evidence. I guess that the question to you is, where is the evidence that substantiate your concerns about a possible trade agreement that is still being negotiated and obviously being negotiated for the stated goal of opening trade, investment, and labour mobility among provinces to create more economic activity and ultimately more taxes for the government to spend on social programs?

Ms. McDonald: — I take issue with trade agreements providing increased income and better standard of living, as that implies, for the common, everyday sort of population. And I take issue with that on the basis of what I heard very recently — just a couple of days ago — from a delegation who had gone to Mexico. Not to the glossed-up resort areas where tourists go, but to the rural areas where they met the real population of Mexico and saw what a disaster NAFTA has been. They do not have any access to better jobs. The people that the delegation talked to and lived with — they live, many of them, in cardboard and tin shacks — they have no access to hospital care because the roads that have been washed out or the bridges that have collapsed two years ago have not been replaced. The government doesn’t have money for that. They have no protection under the policing system.

There are a good many hardships that have not been bettered by NAFTA for the general population. And in fact, the gap between the rich and the poor in Mexico is getting wider all the time. And certainly trade agreements bring in a lot of income for the investors, but it’s the public we’re interested in.

Mr. Weekes: — Well I thank you for your response. I’m not sure why you’re saying . . . You’re leaving the impression that NAFTA has caused these problems in Mexico. I don’t know where your evidence is to substantiate that.

I mean, trade agreements in Canada has done nothing but improve our standard of living, created more economic activity. Is it fair? Is it even across every sector? No. But I mean, it has improved, grown the Canadian economy by dramatic leaps and bounds.

And it also has grown the Mexican economy in leaps and bounds. Is it even? Is it across the, is it, has affected everyone in their country positively? Well I suspect you’re right. It hasn’t. That’s not a fault of NAFTA or a trade agreement at all.

Ms. McDonald: — Well I see government as having as its first priority protection of the rights and welfare of its citizens, not making sure that investors and large corporations are able to gather up an economic windfall. I think we need to keep in

mind what the priorities of a government are. And they're not, in my view, not to increase returns for investors. They're primarily to look after the rights of the individual.

Mr. Weekes: — I don't disagree with that. I don't see what that comment has got to do with TILMA, quite frankly.

Ms. McDonald: — Well I tried to find out what's in TILMA. I've been out of the city and got back into the city just last week. I was given a website to find out about TILMA. And I don't know if the agreement was blocked, but I could not access it. Finally last night, by putting in a number of different topics for Google to search, I finally got a look at the agreement between Alberta and BC. And I grant you I did not have time to look at it in detail, but what I did see — and I don't recall too many of the details because I had to just skim over 36 pages very quickly — I didn't see much that gave me very much confidence that the ... only the on-the-ground population would benefit.

And I do have concerns about our health system because I'm afraid — and I think a lot of us are — that there'll be more privatization. And that is not good for the large majority of our population. Look at the US that has privatization; 46 million of their population has no medical coverage whatsoever.

Mr. Weekes: — Well with all due respect, the agreement's been public for quite some time and I mean we can supply you with a copy of the agreement. But I think you've laid out concerns without looking at the agreement and you've raised so many concerns that are unfounded and most of them are actually recognized and looked after in part V of page 18 of the exceptions and general exceptions. And I just don't think your concerns are well founded or real in any sense. But thank you for your presentation.

Ms. McDonald: — I would like to have copies of the TILMA agreement. And also I should point out that this presentation was put together by Verda Petry. I am delivering it. She put it together and she has gone in meticulous detail through the TILMA agreement and a number of other commentaries in order to put this together, and I don't think it was done without due consideration and careful looking at all of the clauses in TILMA and what it would possibly mean for us. So I don't think it has been put together without a good deal of consideration and care.

Ms. MacLeod: — Can I also address something? I do recognize that the various clauses stipulate significant exceptions; we're certainly not arguing that point. I think another way to approach this in terms of the mechanism's view is that, while those exceptions appear to be very clear-cut as they are written right now, I think that it's been demonstrated by many things, including certain Crown corporations here within this province, that while the intent is very obvious at the outset and you go in with certain concepts and believe that things will follow through, as things start to unfold on the other side, new exceptions that are not clearly defined in there come to light, and then is there a mechanism in place whereby those things can be addressed?

No matter how much you research, no matter how much you do think you've given due diligence and consideration to possible

or potential consequences going forward, invariably things arise that have not been addressed in writing in terms of those exceptions.

And I do know for a fact, for instance, with Information Services Corporation as an example, they have or had a mandate through Justice prior to the land titles system becoming electronic and there was a view to deliver that. What happened is there were considerable stakeholder meetings prior to the process and they thought they had it nailed. And then, as the thing started to unfold, they went, oh wait a minute. Then they started having considerable more stakeholder meetings with secondary and tertiary users of that information and went, wait a minute, we've got to change course a little bit here. We do have a primary consideration still to deliver the land titles but there are considerable other things in place that had not been considered.

And I would urge this committee to at least be open-minded to the fact that there are considerable consequences that could potentially happen in terms of privatization that have not been clearly wordsmithed in those exceptions that would provide people with, investors as an example, a back door to use the wording to their advantage. So while those exceptions may appear to be very clear and clean right now, going forward as the reality comes into place, I would be very surprised if those investors did not find a way to use the words to their advantage. I would really, really caution you to consider that as a possibility.

Mr. Weekes: — Well thank you for that.

The Chair: — Is this a question to the presenter, Mr. Weekes?

Mr. Weekes: — Yes. I guess one of the two questions I have is your example of ISC [Information Services Corporation of Saskatchewan]. As a critic for the opposition, we certainly had issues with ISC. Not what they were trying to attempt to do to basically to make it, modernize it and put it on line, but the cost of ISC at the end of the day. It is a very much more efficient way of doing land titles, so I'm not quite ... I guess my question to you is, what is the problem with ISC?

But on the whole TILMA and your group's concerns, again I have to ask the question. Given the exceptions in there and given the process, the process is to enter into negotiations whether Saskatchewan would sign on. This isn't signing on and having somebody else dictate to us. This is a negotiation like many trade agreements. Like many agreements, there's negotiations before you sign on. So I guess my question to you is, do you do not want a government to discuss any issues along lowering barriers at all? Or is it just your concerns about TILMA — even though no one's obligated to sign on at the end of the day — if certain things like the exceptions, like concerns about Crowns, like health care, like social policy aren't affected?

Ms. McDonald: — Well I now have a copy of TILMA agreement in front of me, and B on page 2, "B. General Rules" looks as if those general rules override all the exceptions. And non-discrimination, well, "Each Party shall accord to" like so on. Part (c) and ... 1 part (c), article 4, "services," that includes health, should be non-discrimination. What does that mean?

That everybody's got a free run at it? So the general rules overriding the exceptions looks to me like a pretty powerful, pretty powerful scope for TILMA.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — Yes. I guess I'd just like to reiterate a little bit of what my colleague has said in that I think it's important to know what TILMA is about and what it is not about. And as I go through your perceived consequences of TILMA if it was to come into effect . . . privatization of health care, increased costs of services such as automobile insurance. SaskPower would probably be privatized. School boards and universities would not be able to support local suppliers — other than the last item — may be affected by TILMA. In fact school boards, universities already have procurement policies that require that their large purchases are tendered so . . . But on these, the other items are simply not affected by TILMA. It's not what the agreement is about. And I just, I'd like to thank you for your concerns, but I really, I don't think that a lot of the items that you have brought up are relevant to the discussion.

Ms. McDonald: — Well I do have one question that hasn't really been dealt with yet, and that is there are many references to barriers, and no specified listing of what the barriers are. It's my understanding that there has never been a problem with workers moving from one province to another in Canada. There are no customs set ups at the border. Trade has, as far as I'm concerned, never had any serious barriers between one province and the next. Now there may be, but I can't find them. I can't find a listing of what these barriers are.

I'd like to know what the current barriers are to free movement of investment, labour, and trade across provincial boundaries.

The Chair: — Thank you. Ms. Crofford.

Ms. Crofford: — Yes, I'll be quick because we're reaching the end of our time. I want to thank you for your very concise brief. I've looked at some of your newsletters before. What I think is very helpful is . . . I don't know the answer to all these questions, but what I think we're trying to do in this committee is make sure we're asking the right questions. And the task that the minister set out for us, aside from our own interests, are what impediments are real today and is this the best solution? Because some people are arguing for example that regulatory things can be dealt with without jumping off the cliff so to speak.

So that's what we're really after today is really . . . So I think you lay out some excellent questions that when we have the officials in front of us again, we can ask these questions and try to get some clarity on whether people think there is any risk or there isn't any risk. I can't tell you that today because I think these things are tricky when a program becomes a subsidy.

And one of the things I think that I would want to look into further is the degree to which governments are liable for these payments for violation because that sounds to me a little bit like the taxpayers backstopping someone's right to a profit. And I'm not sure if that's true, but it's one of the things I want to find out. So I just thank you for provoking the questions today, and we'll see if we can dig a little more into the answers.

There was one thing that maybe quickly someone in your group could offer an opinion on. I'm so mad at myself I didn't keep this article. But there was an announcement a few weeks back about the standards in Canada being lowered for how much pesticide you could spray on food because we wanted to be at the same level as the US. There was plant growers that were complaining. And given the huge issue that contaminated food is for health today — cancer, other issues like that — I was really concerned about that one. So if anybody has any information they can add to my poorly kept files . . . I don't know if you know whether that's directly to do with this agreement that was signed between George Bush, Paul Martin, and Vicente Fox in March 2005.

Okay. I will keep digging for that one. Maybe our researcher will be able to find that article.

Ms. McDonald: — In the meantime I would certainly like to know what the barriers are, what the current barriers are.

Ms. Crofford: — Yes, that is part of our task here, so thanks very much.

The Chair: — Thank you for your presentation and for attending today, and your delegation that's with you.

As has been mentioned, the agreement we now know you have a copy of, but I know Verda's had a copy to rely on for her presentation. And if any additional information comes forward, that this will be available through our Hansard processes as well. And the kinds of questions you're asking are the questions we're also wanting to find by the end of our process to be able to present to the minister. Thank you.

We're going to now recess. I would encourage members to know that the first group after lunch is Local No. 299 and No. 336. And we did mention to them 1:30 starting time. So we'll adjourn until 1:30 p.m.

[The committee recessed for a period of time.]

The Chair: — I understand you have the revised agenda in front of you. This afternoon we did have the cancellation, so we've moved up Jessica Sinclair, Hillary Aitken, and Kathleen Wilson to the 2:15 slot.

I will try and give you a recess this afternoon. That wasn't possible this morning. Everyone had been chomping at the bit to make their presentations.

And tomorrow's agenda, I believe, is also before you with some of the changes from your original agenda. So know that upon adjournment today, we would want to be back again bright and early for the 9 o'clock starting time. That's when we told the presenter they would be able to make their presentation, and so that would be good. To the agenda revised, is there any questions?

If not, moving right along this afternoon we have the Service Employees International Union Locals No. 299 and No. 336 with Barbara Cape, president; Connie Jattansingh, executive board member; and Janice Platzke as president of Local No. 336. So Barb is No. 299. If you can let committee members

know which name belongs to which face this afternoon, and what we've been doing is giving 15 to 20 minutes for presentation and opening up to committee members for questions. And we thank you for your time that you've set aside with us today.

Ms. Jattansingh: — My name is Connie Jattansingh. I'm the executive member from Local 299.

Ms. Cape: — I'm Barbara Cape, and I'm the president of Service Employees International Union Local 299.

Ms. Platzke: — Janice Platzke, president of Local 336.

The Chair: — Good. If you'd like to begin your overview then.

Ms. Jattansingh: — Okay. I'd like to thank you for the opportunity to present our views regarding the proposed trade, investment, and labour mobility Act this afternoon.

SEIU [Service Employees International Union] Local 299's 2,000 members and Local 336's 1,500 members come from across a wide spectrum of sectors and job classifications. Our members work in health care, education, municipalities, community-based organizations, retirement homes, daycares, and light industrial sectors. They are employed in both the public and private sectors. In short, we provide services from the cradle to the grave and everything in-between.

Saskatchewan has been the birthplace of many things — medicare, human rights, to name but a few. Indeed SEIU in Canada started in Saskatchewan. Our belief in a fair and just society where no one is left behind has taken root here, and we have exported these values across North America. Our members are citizens of this province and, as such, have a stake in how our province is governed.

In 2006 the governments of British Columbia and Alberta created a trade agreement to address what had seemingly been outstanding issues between the provinces in the areas of trade, investment, and labour mobility. In order to promote this agreement, politicians from the two provinces used the figure of 1 per cent as being the current national cost of trade barriers. However no one seems willing to admit to where that figure come from. In fact Paul Darby, the deputy chief economist for the Conference Board of Canada, an institution who is promoting TILMA, stated that the figures don't exist; no one knows. Currently there is the agreement on international trade which already addresses those issues across the whole country, providing a level playing field for government, citizens, and corporations.

But TILMA goes much further in both formalizing and penalizing non-compliance. TILMA is based on the same sort of premises as NAFTA and trade agreements alike. It is an integrate and broad-sweeping agreement that eliminates not only the differences between provinces but also eliminates the ability to democratically elected governments to enact legislation that is in the best interests of the province, towns, rural and urban municipalities, school divisions, or their citizens.

The issues of trade, investment, and labour permeate all facets

of our government and our society. And as such, this agreement would favour corporate interests over citizens' interests. As a labour organization, it is not just our members who should be concerned. It is every town, city, rural municipality, school division, and indeed our provincial government who will see their ability to govern and legislate either eliminated or severely limited.

Labour, the greatest producer of wealth — in the Saskatchewan experience we have prided ourselves on the groundbreaking legislation that has been introduced in the past. We have higher standards than British Columbia or Alberta in place for worker-related legislation — The Trade Union Act, The Labour Standards Act, and the occupational health and safety legislation and regulations. On the face of it, it would appear that these things are to be exempted. However under TILMA part II, article 1:2, an inconsistency is to be resolved in favour of a provision "that is more conducive to liberalized trade, investment and labour mobility." Further to that, the parties to this agreement have specifically stated that they will review annually the exceptions listed in part V with a view to reducing their scope.

While the supporters of TILMA may point to part V, exceptions to the agreement, and say that our Saskatchewan way of life is protected, there is a requirement that these will be eroded in favour of lower standards and rights for working men and women. The pressure on the parties is to level the playing field to the lowest common denominator. TILMA states that the "Parties shall mutually recognize or . . . reconcile their existing standards and regulations that operate to restrict . . . trade, investment or labour mobility" as in TILMA article 5:1. In the race to the bottom, it is the workers, unionized and not unionized, who are the engine that produces wealth and profits who will eventually pay the price.

In terms of labour mobility, this is already provided for and recognized under the Red Seal program for the trades. In a time where the demand for quality trained workers is at an all-time high, TILMA seeks to reduce those standards workers are to meet, thus weakening not strengthening such measures as training, certification and apprenticeship. As an alternative, provinces should be strengthening the Red Seal program and the standards of the various regulatory agencies.

SEIU Local 299 and Local 336 remain unconvinced that such outstanding impediments to labour mobility between the provinces exist. Indeed the Forum of Labour Market Ministers in their report of May 2005 on interprovincial labour mobility has indicated that important progress was being made in the eliminating of labour mobility barriers such as mutual recognition agreements between regulatory bodies. With only an 80 per cent buy-in to the MRA [Mutual Recognition Agreement], there is already a 65 per cent rate of recognition of qualified workers. By April 2009, there is proposed to be full labour mobility by the provinces as announced at the annual meeting of the federal-provincial-territorial committee of ministers on internal trade.

Ms. Platzke: — Five dollars for a cotton swab anyone? TILMA does not specify health and education services under the exceptions list in part V. It references the procurement of health services and social services. This is a cause for alarm and

concern for all citizens of this province because, while they are specifically listed elsewhere in the agreement, they aren't mentioned under the exemptions list. In fact part II, article 2 covers government entities which under the general definitions section includes:

(c) regional, local, district or other forms of municipal government; [and]

(d) school boards, publicly-funded academic, health and social . . . [services agencies].

This would lead to what we see as the inevitable challenge to the Saskatchewan restrictions on private, profit-based use of public health facilities and our regulatory standards for long-term care facilities. By signing onto TILMA, we are opening the door to corporate health care's assertion of investors' rights. With the introduction of private providers of emergency services and surgeries in British Columbia and Alberta, Saskatchewan would be obliged by the terms of TILMA to allow for the same two-tier health care. If rebuked each corporate giant in health care would be able to sue for loss of profits. There is no limit on the number of challenges because if successful the penalty is 5 million to each challenge. That's 5 million to maintain ownership and control of what we already own and control.

The law of the land — while many, if not all, of the provisions of TILMA take away democratic rights of governments and the citizens who elected them, the dispute resolutions panel is in effect the star chamber of the whole agreement. The enforcement and dispute resolutions mechanism is managed by an independent, unelected panel with no level of accountability to the citizens of this province. This panel has the ability to impose binding resolutions on the parties. Just as with the North American Free Trade Agreement, private corporations have the right to sue governments for holding up their province's interests as a reasonable justification for stepping outside of the boundaries of TILMA. There would be a price to pay from the public purse in order to assert a level of provincial interest or independence.

This enforcement provision on its own is as broad sweeping as TILMA itself. For each measure that is outlined in TILMA, a corporation can sue for 5 million for each measure. Combine that with the potential for more than one entity to make a challenge on a measure and the possibility for bankrupting the province is immense. However if a party to the agreement lowers its standards and provides other parties to the agreement the opportunity to comment on the proposed measure and take those comments into consideration, there will be no disputes.

Ms. Cape: — In article 6 of TILMA, it sets out the hurdles that legislators such as yourself must consider outside of the interests of the citizens of this province. To quote TILMA the legitimate objectives would include:

1. A Party may adopt or maintain a measure that is inconsistent with Articles 3, 4, or 5, or Part II(C) provided that the Party can demonstrate that:

a) the purpose of the measure is to achieve a legitimate objective;

b) the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and

c) the measure is not a disguised restriction to trade, investment, or labour mobility.

I want to ask this esteemed committee these questions. When did the citizens of this province become secondary in the consideration of laws and legislation deemed necessary for our province? When did the interests of the Government of British Columbia and Alberta supersede our interests? And when did we determine that we needed to justify the laws of our province to outside interests?

In addition to the virtually uninhibited interpretation of TILMA, the dispute resolution panel isn't encumbered by any jurisprudence on same or similar trade issues. As a result of this tribunal free-for-all, the resulting confusion from inconsistent and at times contradictory rulings will undermine and contradict any policy or legislation that our governments rely upon. While this circumvents laws, legislation, and regulation, TILMA itself further reduces governments to a cap-in-hand role to corporate interests.

So in conclusion, we submit to you, in an era where we are living in the residual aftermath of Enron and World Com scandals, TILMA would in fact eliminate government regulations that would act as an oversight for private investment and a watchdog for corporate conduct. This is deregulation on a massive and unaccountable scale.

TILMA will bind our hands as a province and then subsequently tighten the ropes with the enforcement and dispute resolution panel. In the end, we would become the same as British Columbia and Alberta but without our Saskatchewan rights and privileges. We would cease to be unique in our views, our beliefs, and our values because we have minimized our lofty ideals of a better world — a new Jerusalem if you will — to the lowest, cheapest, and least restrictive to corporate rights denominator. That is not our Saskatchewan.

Our Saskatchewan includes a democratically elected and accountable government at all levels; a publicly-funded and publicly-administered health care system; thriving Crown corporations that give back and re-invest in this province; accessible, affordable education; and a sustainable green economy; and a place for families to live and to prosper.

On behalf of the members of SEIU, Local 299 and 336, I strongly urge all of you to recommend not signing on to TILMA to the Government of Saskatchewan.

We would like to take this opportunity to thank you all once again for taking the time to hear from the citizens of this province and especially the minister responsible for convening these public consultations. We believe that we must involve ourselves in this process, and we hope that you will make the right decision. Thank you very much.

The Chair: — Ms. Crofford.

Ms. Crofford: — Okay. One of the tasks that the minister set

for us is, one, to determine are there real barriers to trade that make a real difference to economic growth that could be solved either by TILMA or by some other measures? For example, if it's a regulatory problem or something else. Like is TILMA a necessary solution to whatever problems we can identify?

And so the first question I'm going to ask you is about labour mobility. Have you experienced, in your professions, any difficulties with the progress on labour mobility across Canada?

Ms. Cape — From our experience, predominately in the health care sector but also in the allied sectors that we represent, we have not seen nor have we heard from any of our members that there has been problems in moving their qualifications or their skills and abilities to BC, Alberta, Manitoba, any of the provinces. And in the last six, eight months we have seen quite the influx of people from BC and Alberta. And those were some pretty specific questions: are you having problems being recognized here? And the answer consistently is no. In my particular circumstance, I am a Red Seal chef, and the folks that I've talked to in the cooking trade have not seen any problems in transferring qualifications.

Ms. Crofford — Gee the first thing I thought of was, can you come over and teach me how to cook? But no, that's . . . My granddaughter would support that notion.

What we're also looking at is, I think you raise some interesting questions here about citizens and democratic processes becoming secondary to what we'd call economic governance. Is there anything that you could see that could occur within this agreement or with the structuring of an agreement to give a higher comfort level that the ability of governments to determine what are essential public services or programs would not be at risk?

Ms. Cape — The way that the current language sits in the BC-Alberta experience, I don't see anything in the current language or in any potential interpretations that is going to give a level of comfort that the citizens' interests are going to be considered over and above the economic piece of it. I just don't see it in there. And you know, granted, I don't have huge amounts of experience in interpreting, you know, legislative framework laws or any of that.

But what I see there with my experience with contracts, I don't see anything that's going to set my mind at ease or, you know, the members who live in Assiniboia, Saskatchewan at ease, or the members who live in Gravelbourg, Saskatchewan. There is, especially for our rural communities, there's a high level of concern that they should be feeling because what I see in that agreement is the ability for a rural municipality or a small town . . . currently they have preferential bidding processes for local companies. That will be circumvented by TILMA. And we're already seeing our small towns and our rural communities disappearing, and this is going to expedite it from what I see.

Ms. Crofford — And this last question you may not be able to answer. But I think your presentation and one we had earlier today causes me to wonder that if there was a situation where the constitution of Canada, in terms of its granting of rights to provinces and jurisdiction, was to come into conflict with TILMA, which would take precedence? And I don't know the

answer to that. I'm going to ask it to the next lawyer that we have in front of us. But I think the kind of questions you're raising, that's really the question. What takes precedence — the Canadian Constitution or a trade agreement? So thank you very much for your presentation.

The Chair: — Mr. Chisholm.

Mr. Chisholm — I have a question. On page 1 of your submission, you make reference to the Conference Board of Canada and specifically, Paul Darby. The report that Mr. Darby presented for the province of Saskatchewan in December 2006 indicates that his best guess is that this agreement, Saskatchewan's participation in this agreement, would produce 4,400 new jobs and \$291 million addition to the GDP. Now you're stating that from your point of view there would be no new jobs created. So I'm wondering where are you getting your information and based on what studies you have done or how you're coming up with your number of no jobs.

Ms. Cape — Well let me clarify. I'm not saying nor am I trying to lead you in any way to believe that I'm saying that no new jobs will be created. Currently we have a shortage of . . . I'll give you health care for an example. We are suffering a shortage of workers. So you're going to create all these jobs theoretically. Who are you going to get to fill them?

People are not applying. People are not coming to work in the sectors that we represent right now. So while there may be new jobs created, there are still people that are needed to fill these jobs, and we're not getting the people to fill the jobs.

Mr. Chisholm — In all due respect, I think that may be a little short-sighted view. We are in the position right now in Saskatchewan where there are perhaps work for everyone that's willing to work. That's not always been the case.

This agreement, this agreement between the Western provinces is intended to create more employment in Western Canada, and from my point of view that's a positive fit. And I see that your report suggests that's not the case, and I'd just like to know where you're coming up with your numbers, that there would be no increase. That Mr. Darby's report was in fact unfounded is basically what I'm reading into your report.

Ms. Cape — The comments that I've quoted in on page 1 that you're referring to, I'm sorry I don't have the exact document with me where he said that. It was in an interview that I quoted for the purposes of this presentation. If you like I can get it, and I can have it sent to the committee so you can see where I got the information from if that's sufficient.

Mr. Chisholm — Okay thank you.

Ms. Platzke — If I could make a comment. Swift Current is not located that far from the Alberta border, and you can drive north along the Alberta-Saskatchewan border and consistently see Alberta plates already in the oil sector, where there are already Albertans working in Saskatchewan and paying their tax to the province of Alberta, not Saskatchewan. So I will see the TILMA expand that, that we will have more Albertans working in Saskatchewan and paying their taxes back in Alberta than we already do now.

Mr. Chisholm: — Madam Chairman, I live very close to the Alberta border, just close to Lloydminster, and I can assure you that the vice versa is also true. There's many people working in Alberta that reside in Saskatchewan which is to Saskatchewan's benefit. So that, I think, has always gone both ways and will continue to do so. And I think Saskatchewan can be the beneficiary of a more open agreement with Alberta because of some advantages that we do have in the cost of land, for one, where people, young people, young couples would choose to settle in Saskatchewan and keep their Alberta job and then contribute to the province of Saskatchewan. So I think that goes both ways.

Ms. Platzke: — I have a comment I wanted to make. In the city of Swift Current, we're not a large city, and there is an attraction for people to move to Medicine Hat. And the program that the city has undertaken to get new business to come to the city of Swift Current is they will offer a five-year, city tax reduction to new business. Under TILMA, that'll be gone. They'll no longer be allowed to offer incentives like that to try and encourage new business to come to a city like the city of Swift Current that wants to grow.

The Chair: — Mr. Weekes.

Mr. Weekes: — Thank you, Madam Chair. Thank you for your presentation. I would have to take exception to a number of your points. It seems that you've just taken the absolute worst case scenario under conditions that no one has ever dreamt that to have any of these things would become part of our country or province or Western Canada. I mean you pointed out the exemptions which basically covers off most of your concerns.

Besides actually having the exemptions written into the agreement, the TILMA process is something that much of it is going to be negotiated over the next two years before it's finally enacted in 2009. And I guess if you have no faith in any government, in the governments or the legislators that are working towards an agreement, I suppose you can carry that view.

It just seems to me that this agreement isn't all that big of a thing if it's enacted. I mean it's about trade, investment, and labour mobility. It doesn't speak about changing labour laws or lowering workplace standards as far as occupational health standards. You talk about rights of working men and women — the lowest common denominator, the race to the bottom. Where? Where do you . . . I can't imagine anywhere in here that any of that is likely to take place.

And looking at the history of NAFTA, we had the same arguments about NAFTA. The world was going to end. We were going to lose our sovereignty, so on and so forth, and none of that has happened. What has happened is a dramatic increase in productivity, a dramatic increase in GDP, a dramatic increase in jobs that have been created by NAFTA and the other rules that have come into effect.

So I'd like to make the point that when you say it takes away democratic rights of governments and citizens who elected them, it's just so off the wall that it's not something that is anywhere in the agenda of anybody that I have ever heard of in any political party or group. It seems to be a common theme

from a number of locals that, you know, corporations are bad. Well corporations and small-business people, they are the creator of wealth in the economy, and anything we can do to make them, help them to become more efficient, I think is going to help everybody in the province.

We look at the example in Ireland when they made their changes. And at the end of the day what they had was a growing, booming economy which had more jobs created, more workers, and more unionized workers. There's no disputing the fact that unions aren't going to just have a very important part to play in any economy, so I'd just like to make that point. And I quite frankly do not see where in this agreement that, what would make you have the views about the worst case scenario of this agreement being enacted.

Ms. Cape: — Well in fact that is why we're here is because we are not in favour of TILMA. So you bring up a number of very interesting points. And I'd like to point out in TILMA part III, article 17:1(b) where they talk about the scope of the exemptions listed. The exemptions are to be reviewed annually with an eye to reducing their scope. So that is where I do see, quite frankly, not only the possibility but the likelihood that our higher standards are going to be brought to a common denominator.

My experience in living in Alberta in the past, my experience with the labour legislation, and the differences with BC and Saskatchewan, lead me to believe that the common denominator is not going to be the high standard that Saskatchewan has consistently set. The common denominator is going to be the lower standard which is either BC or Alberta. And in fact I have a great deal of faith in legislators not only in this room but the legislators that represent Saskatchewan as a whole. And this is a cautionary tale simply because we want the legislators who are duly elected by the people of this province to have the ability to govern the province on our behalf. That's why you're elected.

You referenced NAFTA jobs bringing great wealth and creating all sorts of great wealth and jobs and prosperity. But I'd like to point out that a great deal of those jobs and wealth and prosperity have either been seen by overseas competitors and nations or south of the border in Mexico.

In NAFTA I guess the best example of the challenges that we're facing is the United Postal Service's challenge to Canada Post's supposed monopoly on postal services. I think you would agree with me — at least I hope you would — that our Canada Post system is something that we treasure and that, you know, I don't think that is a monopoly. I think that's a service Canadians should demand and expect.

So while it may seem like a very negative presentation, I'm here, we are here because we think this is not in the best interests of the people of Saskatchewan. And it does take away your ability as duly elected representative of this province to enact laws on your constituents' behalf.

Mr. Weekes: — Well thank you for that. Again I don't agree with what you're saying, and I don't see your point at all . . .

The Chair: — I'm going to interrupt at this point. As Chair of a committee that's charged with hearing presentations and asking

questions of where the information is from and/or information to clarify what the presenters have given us, but this is not a forum that I would allow for to have members of committee either denigrate the proposals that have come before us and/or to debate the proposals. There will be other forums and times.

So I'm going to become fairly strict now because I see this becoming a forum where people are injecting their own views and/or trying to debate with witnesses, and this isn't the forum for that. Thank you.

Mr. Weekes. You have a question?

Mr. Weekes: — Yes, my question's concerning democratic rights of governments and citizens who elected them. Could you tell me anywhere that in any agreement that has clauses to with a six months notice, as in NAFTA, to be cancelled or any other agreement including the Constitution of Canada that elected people under the rules that are set out that would affect the democratic rights of governments and people?

And more specifically to this agreement, this agreement hasn't even been negotiated yet so I'm not quite sure how the democratic people that are negotiating this agreement in the future, how that takes away the rights of governments and citizens to get out of an agreement or change it in the future. That's what it's all about. So could you point out anywhere that would take that right away from elected body to negotiate or change any agreement or just get out of an agreement if they don't like it.

Ms. Cape: — I think under the enforcement and the dispute resolution panel, that's specifically where you're going to see more of a penalty phase in the enacting piece of any new legislation. In TILMA there is a provision whereby not only will governments, if they are enacting a piece of legislation, run it by the other parties to the agreement — which in this particular case would be BC and Alberta — but also take into account, not just hear what they have to say, but take into account in the developing of legislation. And it's in TILMA. Would you like to know the particular clause?

Mr. Weekes: — Well my point is, but elected people are negotiating this agreement with those clauses in. I know what you're getting at. But in NAFTA and in Canada we have a constitution and we have a Charter of Rights. We have laws of the land that if politicians don't follow the rules their . . . the elected, the democratic right you might say is taken away. And at the end of the day we can change the constitution. We can change how the courts work. We can change NAFTA or get out of it if we want. I don't see any difference here in this case as with any other function that we are involved with as a country or as a province.

Ms. Cape: — So if I can just ask for some clarification. You're asking where in here it says there's no escape clause. Is that correct? Where in TILMA . . . I'm asking for clarification on your question.

Mr. Weekes: — Well I asked you a question. Where does the democratic rights of governments and politicians be affected by this agreement? It's something that's being negotiated by the elected people and they can change it at a future date. And also

it's being negotiated and so I mean a lot of the stuff is up in the air.

Ms. Cape: — Fair enough. As someone who has been at more than my fair share of bargaining tables, I can tell you quite clearly that interpretation on a collective agreement or on a set of negotiations, as I said, is subject to interpretation.

And I will point out yet again that the democratically elected rights of the, the democratic rights of the citizens of this province to have their legislators deem what is in the best interests of these citizens is compromised by the fact that a province should have to run these ideas by another province or another tribunal. You were elected for the citizens of the province to govern on behalf of the citizens of the province. And quite frankly, what is the interest of BC and Alberta of the laws of Saskatchewan? I would ask that question of you. The province of Saskatchewan is governed by people of Saskatchewan for the people of Saskatchewan. And BC and Alberta have no business interfering in our government.

Mr. Weekes: — Well I could answer that question. First there is a 12-month clause that a government can get out of TILMA if they so choose. And as I stated before, in Canada there is all sorts of things that legislators have to follow the rules that are set out by the constitution, by the Charter of Rights, so on and so forth. So if we go into an agreement, first off we would . . . only were proposing about going into negotiations to come with an agreement. Many things that are up in the air can't be negotiated and clarified before it's signed on, and that's elected people doing that at the end of the day. Thank you.

The Chair: — Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. My question has to do with approaches to trade and labour mobility, investment in Canada. We traditionally have approached these issues in a pan-Canadian or a total Canadian viewpoint with all participation of all jurisdictions on an equal footing. Today we're faced with two choices, you know. As you know, we have the AIT which is already in place, and it's continually evolving and continuing to mature. Would it be your organization's position that to continue a preference to a pan-Canadian approach to trade, investment, and labour mobility or to participate in regional trade investment agreements? We now are looking at an agreement between Alberta and British Columbia. We're also hearing rumours of an agreement between Ontario and Quebec, and that starts to compartmentalize the country in various regional agreements.

Ms. Cape: — From our perspective the cross-Canada proposal is the best way to go. By regionalizing, you compartmentalize each area's or each region's particular interests, and I don't think that's in the best interests in terms of national unity. So yes, the pan-Canadian would be the way that we would want to see things done.

The Chair: — Mr. Iwanchuk.

Mr. Iwanchuk: — Yes. Thank you very much for appearing here today. I want to comment particularly on your questions. I think they're definitely going to stimulate some discussion as we enter into our deliberations. The other thing you've got is if

you could comment on two things for me: on the dispute resolution panel — and you had indicated somewhat about how you thought the rulings are and what the rulings would be based — if you could expand on that. And you did mention, I think, in one of your replies about the buy-local, and I wonder if you could just expand on that as to the impact that that is going to, that you think this agreement will have on that.

Ms. Cape: — I may have to ask you to repeat your questions. What we see in terms of the dispute resolution panel is there is no reference in the actual agreement stipulating that they should be referencing any of the decisions made in the NAFTA panels, the WTO [World Trade Organization] panels as a guideline or as a guide forward on same, similar trade investment issues.

So we are concerned because the dispute resolution tribunals have appointed panellists on them and there is no subsequent accountability to . . . I mean they're not an open forum to the best of our knowledge in the reading of TILMA, and I do not see a challenge mechanism that is clearly laid out to the dispute resolution tribunals. And while they are appointed by government, they are not elected people who are sitting on these panels. So our concern is the accountability measure in that piece of the enforcement.

When you ask about the local, we referenced local procurement policies. I specifically think about Assiniboia and I'm sure Janice could give you examples in Swift Current as well. There are local procurement policies both in the school divisions that we represent and in the rural municipalities that give preferential consideration to local companies, businesses, services. And that I think is a very, it's a good policy in terms of trying to keep a local economy or a small town or a rural municipality vibrant, alive, and the returns keep coming back to that community.

By eliminating that piece of governmental oversight or jurisdiction of a urban or rural municipality, it goes to the lowest bidder and it may not or probably won't necessarily be the local contractor. So where else do these people go to compete? They're going to be competing against bigger, better funded corporations, companies. And yes, while one of the gentlemen from that side of the room had mentioned that, you know, small business and corporations are our producers of wealth — and I couldn't agree with him more — but the engine that keeps that production happening is the workers. And at the end of the day the workers need to be considered in this. The local economies need to be considered in this. And the small-business men that were referenced over here, they need to be considered in preferred local procurement practices. Pardon me.

Mr. Iwanchuk: — Okay, thank you. You know I think you answered the questions quite well. So thank you very much.

Ms. Platzke: — I just wanted to speak about shopping locally as well or using a local business. Ten chances to one that the people that work in those local small businesses live in the town, pay taxes in the town, and if it starts to be where you have to tender out the work and it has to go to a big company in Regina, pretty soon those people who work for the independent small business in your local town or city are unemployed, have to move to the larger centre, and it cripples the rural towns,

villages.

It's no different than if you went to the town of Simmie and shopped in their small store. If the people don't support that small store and go to Swift Current to buy their groceries, pretty soon you won't have the small store in Simmie any more. It's the same with small business.

The Chair: — Mr. Duncan.

Mr. Duncan: — Thank you. Good afternoon and thank you for your presentation. I had three or four questions here and I'll try to get to them as succinctly as I can.

On page 4 of your presentation you referenced that with North American Free Trade Agreement, private corporations have the right to sue governments for holding up the province's interests. Do you know of any time since NAFTA was brought into place that the Government of Saskatchewan has been sued under the provisions of NAFTA?

Ms. Cape: — The Saskatchewan government, no I do not.

Mr. Duncan: — I might be wrong on this, but from looking at your presentation and from hearing your presentation, is it your view that if a corporation is going to sue a party — so say a corporation in Alberta is going to sue the Government of Saskatchewan — and going forward let's say that that suit is successful and the penalty is up to \$5 million. My understanding is that that corporation wouldn't get the \$5 million, that the party that was essentially, I guess, the Alberta government, if it was an Alberta company, would get the 5 million.

Is that your understanding? Because my read of your presentation is that you believe that the individual corporation or business would get whatever penalty would be assessed.

Ms. Cape: — It is my understanding that the individual corporation that brings suit under the dispute resolution tribunal would receive up to \$5 million. My understanding also is that the 5 million is the maximum penalty that can be assessed.

Mr. Duncan: — Okay. That's a point I guess we'll have to get further clarification as these meetings go on.

Earlier in your presentation you made the comment — and I didn't write it down; I don't think I have it exactly — but you made the comment in reference to TILMA that, why should people of Saskatchewan or why should the Government of Saskatchewan be or what . . . I guess the way I heard it was, what are the interests of Alberta or British Columbia to Saskatchewan, how Saskatchewan is governed? Am I correct on that? Do you recall saying something to that effect?

Ms. Cape: — Something to that effect.

Mr. Duncan: — To that effect.

Ms. Cape: — My comment, while I can't give you an exact quote . . .

Mr. Duncan: — Sure. I understand.

Ms. Cape: — But what do the interests of the governments of BC and Alberta have to do with the interests of the citizens of this province in the governing of our province?

Mr. Duncan: — The reason I bring that up . . . And I would ask if you could clarify this. After you said that, in response to a question from Mr. Yates on the idea of a pan-Canadian approach to trade and investment, and your line was — and I think I got this right — that cross-Canada is the best the way to go.

So if you're questioning what are the interests of the government of Alberta and BC as to how Saskatchewan is governed, wouldn't you extend that further to say that then what are the interests of Nova Scotia or New Brunswick or Newfoundland? So I'm just not sure. If you're questioning what the interests are of two other governments, what about the other eight governments? I'm just, I don't see the line. I don't connect the logic of why a pan-Canadian approach is the best way to go. If we're questioning why other governments have an interest, then why are we bringing more governments into it?

Ms. Cape: — The way I understand it, Mr. Yates's question was in relation to the Agreement on Internal Trade as well — was it better to make sure everybody was on a level playing field? The AIT does not have nearly the strength of enforcement or dispute resolution — or the provision of the dispute resolution tribunal — as TILMA does, and I think that's pretty clear. I don't think that's a big surprise to anybody in the room. The AIT sets out that level playing field, from my understanding.

And the pan-Canadian approach makes sure that everybody has an opportunity, but that they're . . . TILMA does allow, in my opinion, a heck of a lot of interference in the governing, in the determination of laws and legislation that we use in this province to ensure workers' safety, to ensure small business and small government, you know, school divisions, local governments, urban and rural municipalities, their ability to have preference for the small local businesses in procurement.

Mr. Duncan: — Just on that point, and my understanding is that AIT doesn't cover municipalities or the school boards or the health regions and that TILMA would, or there is a proposal that after the two-year period that that would be up for negotiation.

But even looking at procurement under TILMA — I'm just looking at the numbers — for goods it's \$10,000, for services it's \$75,000, for construction it's \$100,000. If, and the example that was used is Assiniboia, if the school board, if Prairie South School Division is getting a new school bus for Assiniboia, they're not buying it in Assiniboia. So I think perhaps it needs to be looked at for these other organizations that would potentially be under TILMA, what exactly local procurement would be in and what would be out. Because I mean, you know, you're not going to get to find a school bus in Assiniboia, a brand new school bus — I don't think.

Ms. Cape: — Probably not. I don't think that there is a school bus manufacturing plant in Assiniboia. But if they're fixing the skating rink or if they are doing some work on the town administration offices, they are procuring locally to get that

work done.

Mr. Duncan: — That may be. I understand that. But if I'm a local business in Assiniboia . . . Madam Chair, I think we're probably getting into debate so I'll just probably leave it at that. Thank you for your answers.

The Chair: — . . . getting close and the time for this presentation has elapsed. So I thank you very much for bringing forward your paper today, for answering the barrage of questions, and thank you for adding to our deliberations.

Ms. Cape: — Thank you again for having us and good luck in your deliberations.

The Chair: — Safe travel.

Ms. Cape: — Thank you.

The Chair: — Now of the questions noted there, the legal counsel for Justice I believe said that under the dispute mechanism, how it works with NAFTA, because it's been government to government, there hasn't been — as AIT doesn't have that mechanism — a monetary penalty. It's the person who is launching the complaint, if they receive a favourable opinion from the panel would ask of the court to give them the certificate they would take to be payable by the government who's been found in fault or in default of that. But that's a question we're not clear on so we should be having that recorded to note when the officials come. Okay, that's a good question.

The next presenters are with us and we'd ask them to come forward. Jessica Sinclair, Hillary Aitken, and Kathleen Wilson, young women of our community and they are presenting as individuals to us today. If you'd like to introduce yourselves and then what we've allowed usually for individual presentations — about 10 to 15 minutes for the overview presentation and we would open up to the committee for questions, and the question-and-answer time. I am encouraging both our committee members and the presenters not to enter into debating. This is a forum to hear your information, to be able to access where your sources might be, and/or to clarify the information you've presented.

So thank you very much, and please proceed.

Ms. Aitken: — My name is Hillary Aitken.

Ms. Sinclair: — I'm Jessica Sinclair.

Ms. Wilson: — I'm Kathleen Wilson.

Ms. Aitken: — We are presenting today as individuals and as young people of Saskatchewan just addressing some concerns that we have with TILMA. It was a hard presentation to put together because of the broad and sweeping nature of TILMA and because of the way that it addresses so many things that are important to young people and important to all people in Saskatchewan. We decided to just pull out a few issues that were the most relevant and the most salient, and talk about what could happen if TILMA was signed on to by Saskatchewan.

Ms. Sinclair: — All right. I'm going to talk a little bit about harmonization, about the harmonization of entrance standards for post-secondary education. Because TILMA ensures the harmonization of policies across provincial boundaries, entrance standards for post-secondary programs would come under fire.

Any standard in each province that could potentially serve as a barrier to labour mobility could be challenged under the TILMA. As provinces seek to harmonize these standards, they'll undoubtedly lower the qualifications to enter our post-secondary institutions. According to the Ottawa-based lawyer, Steven Shrybman, who constructed a report on the effects of TILMA:

Whatever mobility gains TILMA may deliver, these are likely to come at the expense of weakening training, certification and apprenticeship standards because of the overall pressure that TILMA will exert to reduce such standards to a lower common denominator.

So an example of this might be the idea that education prerequisites to get into education programs differ between Alberta and Saskatchewan and the potential that they might be reduced — in this case to the lowest common denominator which is that of Alberta — exists.

Ms. Wilson: — Another concern we wanted to address today is the issue of accreditation and how TILMA says it's going to help, but there have been issues brought up around this.

Different jurisdictions have different accreditation standards. If citizens seek to move between provinces, they may face obstacles in recognition of their professional or blue-collar accreditation. In much the same way that entrance standards would be driven down to a lowest common denominator, TILMA will result in lowered accreditation standards and programs — an effective race to the bottom for professional and blue-collar occupations.

While it is undeniably true that accreditation between provinces is an issue and national standards need to be created, this situation needs to be dealt with in a different manner. Signing a comprehensive and threatening agreement like TILMA to deal with national accreditation standards is analogous to killing an ant with a sledgehammer. The Canadian Institute of Chartered Accountants have publicly opposed TILMA for precisely this reason. When testifying before the Senate committee on banking, trade, and commerce on November 23, 2006, the CICA [Canadian Institute of Chartered Accountants] said:

As provincial standards for . . . [regulation] of professions are not uniform to begin with, this provision essentially makes the lowest of the standards that may exist in Canada acceptable as the base qualification, essentially a "race to the bottom" if you will.

We do not believe that this is consistent with the obligation of . . . [legislatures] and governments, nor of the professions themselves, to ensure that the public is protected.

It should be noted that other actions are already being taken to

address this issue. For example, the Red Seal program is responsible for aligning certification for trades programs between provinces.

Ms. Aitken: — Now the next issue we wanted to draw your attention to was the issue of youth retention and it's something that's very important to Saskatchewan people and Saskatchewan young people. And Saskatchewan has been dealing with a falling population for many years. It's started to turn around now, but people are definitely paying attention to how we can keep people in our province and keep young people in our province, especially qualified professionals.

It is this out-migration that has made headlines, caused public outcry, and put political pressure on our leaders and the people around this table. So the Government of Saskatchewan has introduced some measures to retain our qualified, young professionals and keep them working and living in our province that young people are applauding these, these actions a lot of the time because they are positive for us.

Recently the government introduced the graduate tax credit in the last budget and this action . . . Well TILMA gives other provinces the opportunity to challenge this action as a barrier to labour mobility because it is impeding young people from moving to another province. Saskatchewan will be forced to not only recede this action but it would be refrained from introducing any other measures, essentially putting a social policy chill on any other actions that the government wanted to take in keeping our young people here. While young people definitely support the notion of being able to travel and work in different jurisdictions, barriers to this action do not currently exist in Canada. The Saskatchewan government does not need to pursue actions like signing the TILMA which will only escalate the loss of our young people to other provinces.

Ms. Sinclair: — Labour issues are obviously hugely prescient when it comes to TILMA with respect to young people. Many, many of us are employed in a variety of workplaces across the province and often this work is precarious, part-time, temporary, or minimum wage. Young people are fortunate to work under the protection of government regulations that offer some protection from unhealthy working conditions. For example, the minimum working age protects children from being forced to work in this province. The minimum age in Saskatchewan in most sectors is 16 whereas Alberta in some it's as young as 12, and this discrepancy could be effectively seen as a barrier to investment and might be subject to challenge under TILMA.

Similarly, minimum wage guarantees workers the right to a fair wage that will bring them closer to the poverty line. Since Alberta's minimum wage is lower than that of Saskatchewan's, Saskatchewan's attempts to protect its workers could be challenged and/or reversed under TILMA. Any attempt by workers to lobby for an increased wage to cover the ever growing cost of living could also be squelched by the agreement if parity between the provinces on this issue became a concern. Alberta has introduced a probationary period for young workers that allows employers not only to pay workers lower wage but also allows for them to dismiss workers without proper warning. Collective bargaining rights could also come under threat.

Without doubt, discrepancies in labour standards between jurisdictions, just like quality of education and accreditation, will fall to the lowest common denominator under an agreement like TILMA.

Ms. Wilson: — We also just wanted to make a quick note about social policy. Proponents of TILMA may suggest that the above concerns will be excluded from TILMA because they fall under a broad and ambiguous heading of social policy which is protected in the agreement. However, TILMA does not offer a clear definition of what each government includes in that term. Different jurisdictions have very different definitions of what social policy is.

So in conclusion, though Saskatchewan's young people are far from the only group negatively affected by the Trade, Investment and Labour Mobility Agreement, we are the future of this province and, as stakeholders, arguably have the greatest potential to see the negative effects of this agreement for many years to come. We want to be proud to see our younger siblings and eventually children attend public post-secondary educational institutions unfettered by the interests of the corporate sector and unburdened by the debt that might mark a decline in government funding.

We want to be secure in the knowledge that our peers in the skilled trades and service industry are enjoying healthy workplaces and qualities of life, and that their hard work is being honoured by our government.

Our province has a unique legacy to nurture, one that involves a deep respect for our vibrant community of young people. And it is our hope that this legacy will not include the signature of a damaging agreement like TILMA. Thank you.

The Chair: — Thank you very much for your presentation. I'll open up for questions now from the committee. Mr. Chisholm?

Mr. Chisholm: — Just something just comes to mind that was just recent in your . . . under labour. Just to make it clear that under the exemptions of TILMA, part V, section (f), "Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation," these are specifically exempted items from TILMA. And yet, I see they show up in your report as areas of concern. So I just wanted to address that specific issue, specifically on labour items.

Ms. Sinclair: — Does that mean that into the future they will be exempt from consideration? Because I mean, I think what we were thinking is that if Saskatchewan employees, if labour groups in Saskatchewan wanted to unite in order to ensure a higher living wage, for example \$10 an hour, that might be viewed as a threat too.

Mr. Chisholm: — I can only take the answer from what is in the agreement between Alberta and BC. And in the agreement, minimum wages are exempt. So whether 20 years from now that will be the case, I'm certainly in no position to answer that. But the agreement we are looking at today specifically exempts one item, being minimum wage. So that's all I can answer to that.

Ms. Wilson: — Well, as well we're just sort of worried it's going to open the door for labour relations in general because, I mean, there are different measures. I mean not just minimum wage. But talking between Alberta and Saskatchewan, there are different legislations in place for labour regulations.

Another thing we're sort of concerned about when thinking about labour is sort of even like the government coming forward with new policy. Say if available hours came forward again which is something a lot of youth were in support of, but that's something that could be challenged up front with TILMA and something that governments would even be afraid to bring forward. I think we're just worried that there's going to be no movement on social policy and just a decline on social policy when it comes to labour regulations because there will be this threat of TILMA.

Ms. Sinclair: — And that the government might have an excuse when it comes to introducing more progressive social policy because they're afraid to be challenged by TILMA.

Mr. Chisholm: — Well I don't want to enter into a debate either, but we're talking about, I mentioned . . .

The Chair: — Well the Chair won't allow that either.

Mr. Chisholm: — Thank you. I mentioned minimum wage. Including in that sentence was labour standards and codes which are exactly where these items you're bringing up would fall. At this point in time, the agreement between BC and Alberta exempts minimum wage, labour standards and codes, etc. So that's just where I'm coming from. I'm done.

The Chair: — I think this has been a point that would be good to be asking of the presenters from the provinces because there's certainly . . . The discussion ranges between saying, it's here in writing, it's in these agreements, and presenters telling us that they have seen other agreements and negotiations that aren't written in stone or this is still a transition period. So I think we'll have an opportunity to ask witnesses from those provinces and would ask our presenters to stay tuned to those types of presentations. Ms. Crofford.

Ms. Crofford: — Thank you for coming today. People often comment on the reducing number of people involved in the democratic process, and at least you'll know what we do in this process when we're here listening and trying to figure out what's the best thing to do for Saskatchewan.

Thank you for bringing to our attention this Canadian Institute of Chartered Accountants. I'm going to look into that a bit further. And you know, hopefully they explain a bit what their concerns are, so we can get a better understanding of that.

The question I wanted to ask you is, the minister, when he gave this assignment, I guess, to our committee to look at his question was . . . are there real trade, investment, or labour mobility problems in Canada? And if there are, is this the real solution? Because there's many ways you can solve problems. And is your discomfort with the entire concept of TILMA? Or for example if there was a better dispute resolution process or if there wasn't a clause that specifically said we intend to keep eroding what's protected, would you have more comfort level?

Or do you think this is just the wrong solution?

Ms. Aitken: — Our sense of the agreement is that it is unnecessary, that there aren't significant barriers to investment, labour, and labour mobility in Canada. There are definitely some issues as we identified with accreditation and other issues, but those need to be addressed on their own, not with a broad, encompassing, damaging agreement like TILMA.

Ms. Crofford: — As far as the Confederation of Canada, normally the way pan-Canadian solutions are done is all the ministers and the federal minister get together and negotiating groups are set up and then people come to an agreement. And we try usually, except for Quebec, we try to come up with something that works across Canada so that the pressure is towards unity within Canada rather than pressures towards balkanization or separation.

The AIT agreement has been working on some of these same things, using a negotiated process across Canada. I think this is the first time we've seen something of this scope that has two provinces at the table but not the other provinces. And this is a bit of a stretch maybe to ask you this, but do you think that for making things like trade rules in Canada the government would be better put to stay at a broad negotiating table? Or are our interests better protected by joining this negotiating table and debating for those things we think should be in this agreement?

Ms. Sinclair: — I think that in this case when Hillary says broad she doesn't necessarily mean pan-provincial. I think that one of our main concerns is, you know, TILMA effectively ties the hands of government when it comes to corporate interests, for example. And . . .

Ms. Crofford: — So it's the jurisdiction of government.

Ms. Sinclair: — Right, right. And, you know I mean, you don't necessarily have to deal with sort of potential trade barriers between provinces by sort of emasculating the government as it were.

Ms. Crofford: — Okay thank you.

The Chair: — Mr. Weekes.

Mr. Weekes: — Thank you, Madam Chair. Thank you for your presentation. I appreciate it. Just some comments before I ask my question. A number of the points — probably all of the points you brought up — have been raised already with the previous groups. So it's a common theme of concerns that you have and other groups have about TILMA.

Before I get to my question, when we look at kind of the mother of all trade agreements, NAFTA, many or all of the same concerns were raised, and it was debated hotly. And looking back, I think everyone would agree that it's been a huge advantage to our economy — not only Canada but in the United States and Mexico. And many of the concerns that were raised at the time haven't come true.

Now given that, is NAFTA perfect? Absolutely not. I mean there's a dispute mechanism that has its flaws. Certainly nothing is perfect in that agreement, and I'm sure there won't

be . . . everything will be perfect in any future agreement.

But would you agree with me? And again, you know, in the world we live in, the world is not going to stand still. The world is moving, changing, progressing — hopefully. And trade agreements and trade blocks are something that is being developed around the world. And would you agree that, in general terms, reducing barriers of trade, entering into trade agreements in a general way, would you agree with that comment in a general way without necessarily talking about this particular agreement? But I think it has to be taken into the context of . . . if it's been beneficial in other examples, would it not be beneficial in this one as well?

Ms. Aitken: — I'm not sure that it's our role or the role of this committee to decide the legitimacy of or to debate liberalization and globalization and neo-liberal economics. I think that our point is that this agreement will threaten . . . The disadvantages of this agreement outweigh the advantages. And if you guys want to add to that . . .

Ms. Sinclair: — I mean I think it's difficult to put sort of a value judgment on progress even though obviously we all have our, sort of, own ideological ideas about what progress is. And I mean there have been trade agreements like Mercosur in South America and others that have been relatively successful. But I think the nature of this particular agreement is that it deprives our elected officials of their ability to make decisions in the public interest, and it puts more power into the hands of corporations. And that's not something that I want to see in my province as a young person, frankly. So I think that that's sort of where we're coming from.

Mr. Weekes: — If I could have just one follow-up question. Could you identify . . . I asked this question of the group before you. At the end of the day, could you identify something that elected people, where their hands are tied . . . and I know the example's given, TILMA and the dispute mechanism, our hands would be tied to a certain extent. But also elected people have entered into this agreement, and elected people can get us out of the agreement. So at the end of the day I guess my question is, why do you have the concern about the loss of the role of the democratically elected government given that minds can be changed, agreements can be cancelled?

Ms. Aitken: — I don't think we're familiar with the process to remove parties from the agreement. But I think our concern with that issue is that governments not only would be afraid to implement new measures and new initiatives for fear of going through the dispute mechanism process — just wouldn't want to even enter that, that field — and also that actions that have been taken in the past would also be open to challenges too, that anything seen from an eye outside of government and seen from an eye outside of the collective public interest, but from another party, could be challenged.

I mean yes, there is the potential to remove yourself from the agreement apparently. I'm not familiar with that. But the agreement is formidable right now and threatening, and it has real teeth. So definitely government actions could be challenged.

Mr. Weekes: — Thank you.

The Chair: — Ms. Crofford.

Ms. Crofford: — One of the questions I meant to ask the last group, and we ran out of time. So I'll try it on you, and maybe you'll have an opinion on it. One of the articles in the agreement talks about the parties to the agreement. In an economy the parties include both the people who own enterprises and the people that work in them, and quite often they're parties to agreements. But in this agreement, the parties to the agreement are governments, and the disputes are settled by an appointed panel. Would you have any higher comfort level with a trade agreement, not necessarily this one, that had a better representation of parties that were involved in the discussion and the dispute resolution?

Ms. Aitken: — I think that's definitely a concern of ours that the dispute mechanism, from my understanding, is made up of appointed officials with a lack of recognition of youth, of labour interests. And it's lawyers that have all their own perspective but definitely don't represent a full cross-section of society. That's a concern, I think.

Ms. Crofford: — So that kind of goes to the heart of, is it a democratic agreement?

Ms. Aitken: — Right.

Ms. Crofford: — Yes.

Ms. Aitken: — Right. Or is it a very exclusive agreement signed exclusively with ... I mean I think in Saskatchewan we're lucky because we're having this process, and we're having the opportunity to approach government. And government's having the opportunity to hear from citizens what we really think about it, whereas that didn't happen in BC and Alberta.

Ms. Crofford: — Yes.

Ms. Aitken: — But yes. Not the best democracy.

Ms. Crofford: — You don't know if students there had an opportunity to speak to the discussions going on in those provinces?

Ms. Sinclair: — Our understanding is that they didn't.

Ms. Crofford: — Okay. Thank you.

The Chair: — Thank you. Our time has come to an end for this presentation. We are entering into some questions that I think we would want to have further information on, so I'm hopeful that Michel tapping away beside me is capturing some of the questions that I mentioned earlier and some that are coming up. And we would at some point present that list to the committee. The steering committee can look at them, make sure we've got a complete list, present to the committee, so that we capture as many of those before our presenters from BC and Alberta appear. And perhaps an opportunity to have questions of the department at the end of the process if we so need.

So we thank you for your thoughtful presentation. It's encouraging that you're coming forward and being part of a

democratic process and hearing. And we're really appreciating the information and your candour in the answers that you've provided. Thank you. All best wishes for future endeavours.

Ms. Aitken: — Thank you very much.

Ms. Crofford: — But did you have to skip class to come? That's the question.

The Chair: — We'll stand recessed now until a few minutes before 3 o'clock when our next presenters will be before us at 3 p.m. So you have 10 minutes recess.

[The committee recessed for a period of time.]

The Chair: — We did say to our guests 3 o'clock for their presentation, and we're welcoming this afternoon Saskatchewan Provincial Building and Construction Trades Council represented by Bert Royer, the president, and Terry Parker, the business manager. What we've been doing is allocating about 15, 20 minutes for your overview or presentation, and opening up to questions and answers from the committee. I've been schooling both committee members and our presenters that I'll stop when it gets to the debate part. We're here to hear what you information you have to give us, ask questions of those presentations, and perhaps ask for your sources or if you're aware of where the information could be found. And we welcome you to do that this afternoon. Thank you for your presentation.

Mr. Royer: — I'm president of the Saskatchewan Building Trades Council. Basically we are a group of unions, the construction unions, AFL-CIO [American Federation of Labour and Congress of Industrial Organizations] unions, and have operated as the building trades in the province for decades.

The majority of our members live and work, have families and homes within the province of Saskatchewan, and the prosperity of our industry is dependent on the economy and industry growing, which can only happen through trade investment in our province.

Construction is not permanent employment. We have highs and lows in our industry, and currently we're enjoying fairly good times. TILMA, the agreement itself is a fairly complex agreement, and unless you're directly involved in business, the average person has very little knowledge of TILMA. The labour employment issues, TILMA in our opinion is geared more towards business than it is towards working men and women.

At the first glance TILMA is the agreement between Alberta and British Columbia. It is our understanding there was very little or no public consultation, that the agreement was derived over many meetings in the backrooms and showed up as TILMA. It is an amendment to the A-I-T, AIT, which was created in '94. TILMA represents a very business-centred approach which limits the amount of control any provincial government has over its own economic environment.

Under the AIT agreement, there's no punitive measures, but under TILMA there is. There's monetary awards of up to \$5 million. Key parties in Alberta and British Columbia have stated that monetary awards will only be awarded in cases of

severe disregard for this agreement.

The presentation from our council, our three main concerns are mobility, procurement, and construction industry labour relations Act. These are all items that will affect the construction industry, the unionized construction industry.

The men and women employed in our trades work through an apprenticeship system. They all, the majority attend school through SIAST. They move from a first year to a second year to a third year. Apprenticeships generally are from three to five years. At the completion of their apprenticeship, most trades now write the Red Seal interprovincial exam. This exam is the highest qualification in any trade. A Red Seal ticket, an interprovincial ticket, is good in all provinces in Canada except Quebec which did not buy into the Red Seal program. An apprentice qualified in Saskatchewan under the Red Seal interprovincial program in their trade has mobility to work in any trade in Canada without having to requalify as they arrive for work.

In Saskatchewan there was a time when our apprentices wrote the provincial exam and then further went on to write the Red Seal. That system has now changed. When I did my provincial ticket, I did the provincial first and the Red Seal later. The apprentices today go directly from apprenticeship to Red Seal which qualifies them to work in any province.

British Columbia currently still has the old system that was used in Saskatchewan. You can write a provincial exam and not necessarily a Red Seal. The Red Seal is the higher qualification, so under TILMA a contractor that employed British Columbia tradespeople who are less than qualified, less than the Red Seal, could secure work in Saskatchewan and bring their employees here with less qualifications than Saskatchewan workers have. We don't quite agree with that. We spent considerable amounts of money in addition to what SIAST provides to train our people, and we would like and we would appreciate that the money spent is recognized.

Both the AIT and TILMA recognize the Red Seal program; however TILMA states that "... any worker certified for an occupation by regulatory authority of a Party shall be recognized as qualified to practice that occupation by the other Party." That does not mean that the worker will be recognized to the highest qualification. It means that where two or more parties are involved, if there is a qualification, it can be recognized, and it can go down instead of up. This is a concern to us.

If Saskatchewan would enter into TILMA, there could be a negative impact on our province and our citizens. If a British Columbia and a Saskatchewan contractor were both bidding work in Saskatchewan, the British Columbia contractor would only be required to use trade people that had their provincial tickets. This may represent small cost savings, but would be detrimental to the Red Seal program.

Currently people that do not have Red Seal tickets that were going to Alberta, up until TILMA, had nine months to complete their Red Seal program. If the program was not completed in Alberta, they were offered employment as an apprentice or asked to go home to their respective provinces. TILMA has

downgraded the Red Seal program in Alberta.

In the province of Saskatchewan, the apprenticeship Act allows for a specific number of qualified journey persons, depending on the trade, to work with the apprentices. This procedure is called a ratio system. The ratio system is in place to provide safety, quality of training, and regulate how many apprentices are in the system at any given time. Recent discussions on apprenticeship have moved the ratio or hoping to move the ratio from 1:1. Some trades, it's 3:1. Some trades, it's 4:1.

The problem we have with TILMA type agreements is a contractor could come in, electrical contractor, and if there's no limit placed on apprenticeship, they could use pretty well all apprentices as long as they had a journey person doing the terminations. This would be a problem for the trades, the established tradespeople in the province.

In the province of British Columbia, there is no set ratio system under the Apprenticeship Act. So a British Columbia contractor who has no obligation to limit the number of apprentices employed on a construction project could come here under this agreement and continue on with their unlimited number of apprentices which, in addition to providing cheap labour, you're not always getting the best bang for your buck as far as the quality of work goes.

Temporary foreign workers are being used more frequently in some provinces than others. Under TILMA, if construction company ABC found a loophole and managed to bring in foreign workers into British Columbia and secured similar employment in Saskatchewan, would they be allowed to bring the foreign workers to Saskatchewan? We are not opposed to foreign workers. We would like to know more about who and how the process is being done to qualify foreign workers. A recent fatal accident in Fort McMurray involving Chinese workers has launched an investigation as to the trade qualifications of people coming into the country and what qualification standards are being imposed on them. We have a concern that British Columbia seems to be the leader although northern Alberta did hire a lot of foreign workers — approximately 600 in northern Alberta. How much mobility do the foreign workers have and how far do these visas go? Would they be allowed to get interprovincial mobility?

Procurement. The Saskatchewan Building and Construction Trades Council has a long-standing relationship with many of the Crown corporations. One example I can give you is the SaskPower. The coal-fired power generating stations along the US border both in Coronach and Estevan, we have approximately a three-decade relationship with the Power Corporation as far as building and maintaining their facilities.

Under TILMA the maintenance agreement that has currently been signed with the Saskatchewan Building Trades Council we believe would be null and void. The agreement would have to be reopened to fair competition meaning that non-union contractors and other unions that are not currently employing people in the province of Saskatchewan would be free to come and bid. We believe the race would be to the bottom and not to the top. We built these power houses. We maintained them for 30 years, and we feel that for the sake of an agreement opening these three-decade agreements is not beneficial to any of the

people that live in Saskatchewan.

Saskatchewan union hiring halls basically operate on a first-in, first-out basis. We use hiring hall lists. An employee who is laid off puts their name on the list. When their name comes up on the rotation, they are sent to work. Currently many trades have no people on their out-of-work lists. Most unions have offices in all the major cities in Canada. So for instance if the boilermakers union were short workers in Saskatchewan, they would contact Winnipeg, Thunder Bay, Sault Ste. Marie, Toronto, or go west and the first call would be out. So as far as the mobility goes, if we can't supply in Saskatchewan, we have quick access within 24 to 48 hours to bring in qualified people to complete the work that's necessary. In a lot of cases an industrial plant will break down, and within 24 to 48 hours we could mobilize two, maybe 300 people if required. An example would be the IPSCO steel mill.

They lose hundreds of thousands of dollars being shut down. If they had something blow up at the steel mill and they needed 300 people for Friday morning, I know we could have them here, and we could get that business back up and operating. They would work 24 hours a day, seven days a week, whatever it took, to get IPSCO back online. And that applies to all industries. That is the relationship that the building trades council has with most of our industrial clients.

The contractors that sometimes come from out-of-province, they bring their journey persons, and they hire local cheap labour as apprentices. Often the contractors move our young people out of this province, and only rarely do they return to work here. We believe in the apprenticeship system. We believe that if young people in this province are to stay here, make a living here, and have families here, that apprenticeship is very important.

And project labour agreements are mutually beneficial because they create harmony and peace between trades. On sites where PLAs [project labour agreement] are not in place, we see union and non-union trades feeling a sense of disenchantment towards one other. This type of climate is not condoned or promoted, but the result for general contractors is a less productive job site.

If the Saskatchewan government decided to go ahead with a clean coal project and gave us a project labour agreement, which we would typically sign with the Power Corporation, we would do the construction and attempt to do it on time, on budget, in the safest possible . . . Under the TILMA agreement, the project labour agreement is not possible. The construction of a clean coal power house would have to be completely open, and at the end of the day we would be competing for tradespeople. And the building trades would be able to supply it; however alternative people may come to Saskatchewan and attempt to do so.

Another example of the project labour agreement that we did with the Crown corporation was the windmills at Swift Current. We went ahead with that project, and there was absolutely no problem with it. It was done under a project labour agreement, and as far as the safety and the productivity goes, it was a good job.

TILMA clearly states there shall be no obstacles or discrimination in projects over \$100,000. \$100,000 in today's market in Regina is a half a house. At the end of the day, the big industrial clients that would like to build projects, Co-op Upgrader expansions, possibly tar sands project, uranium mines, all of the potash mines that currently employ our people. Project labour agreements are a big part of Saskatchewan construction. We are able to provide skilled, qualified people. And where we run short of people, we have access to all the people required. We do not need TILMA to access people. I've been in the trades for 33 years. I came from another province when there was no work here, and I've stayed.

The Construction Industry Labour Relations Act was created in '92 to address many problems that were occurring in the construction sector. Basically the Act identifies trade divisions that can work under a collective agreement within the province of Saskatchewan. To change this Act at this time would be a major mistake.

We believe that alternative unions such as CLAC [Christian Labour Association of Canada] — the Christian labour organization which currently employs a fair amount of people in Alberta — would be . . . The peace of the construction industry in our province would be disrupted if The Construction Industry Labour Relations Act . . . This Act came about as a result of terrible rounds of bargaining that happened in the early '80s. I can tell you there's been no walk-offs of construction sites for at least a decade and a half. We recognize the mistakes we made in the past, and we've done everything we can to clean up our industry.

Does drug testing become a part of TILMA? We have to ask ourselves that. We drug test some of our employees here. Would people from another province be obligated to drug test? I mean, we have to ask all of these questions.

TILMA seeks to allow unrecognized unions to represent the tradespeople of Saskatchewan. We are positive that there should be a challenge that The Construction Industry Labour Relations Act is discriminatory.

The peace and harmony the government had created in the organized construction labour sector in '92 would be lost. The organized construction sector would once again be subject to infighting. Furthermore we could be creating unsafe conditions for construction workers in the province due to implementation of cost-cutting measures with the goal of retaining work.

TILMA and AIT have many similar facets. AIT was never created as a race to the bottom but as a means of raising standards to create mobility in the trade. We believe that TILMA is not for the workers of this province. It may be a business-friendly agreement and we would . . . First off, I'd like to thank the committee for actually taking the time to meet with the people of the province and not go ahead and sign this thing with no consultation.

We'd like to thank the Standing Committee on the Economy for their time and we hope the information we've provided to you is useful and insightful.

Mr. Parker: — Bert's covered all of it off for all of the

building trades council. He's done a good job and I think we're open for questions now.

Mr. Royer: — It's not a long presentation.

The Chair: — Weekes, Chisholm, Yates.

Mr. Weekes: — It's good to see you again. Thank you for your presentation. Just a clarification on the issue of the Red Seal. I'm just not totally clear with the Red Seal program and if you could explain it a bit more. I mean you said that it's across Canada except Quebec, but didn't you say BC doesn't necessarily make their people take the exam? And my question further to that is, where's Alberta with the Red Seal program?

Mr. Royer: — To go back to the reason the Red Seal was created, we had 10 little kingdoms in Canada in one trade. I'll use the electrician trade. They may have had 10 different standards across the country. So all the provinces said we're duplicating, we're reinventing the wheel. All the provinces got together, employers and employees, and their came up with a standard — the highest standard available in each craft. You get a Red Seal designation. So I'm an ironworker by trade. I am qualified to work as an ironworker in any province in the country by virtue of the fact that I have a Red Seal affixed to my trade ticket.

Alberta is a big promoter of the Red Seal. They're actually one of the leaders of the Red Seal program in Canada. However since April, since TILMA — not that BC has no standards — they've done some really nasty things with their apprenticeship system. The standards in general amongst the construction trades have declined. They've come down somewhat in British Columbia. So a BC contractor who secures work in Alberta, the Red Seal no longer has to apply. As long as they have some form of trade qualification in British Columbia, they're mobile to go across into Alberta, where six months ago they could not have had they not had the Red Seal. Most trades in Alberta are compulsory and in order to work in a trade you must be qualified to this level. They've abandoned the provincial certification and gone directly to the Red Seal.

When I mentioned the members . . . I had members from this province that went to Alberta that did not have the Red Seal. They were offered employment for nine months as a journeyman. At the end of nine months . . . They were given nine months to get their Red Seal. If you don't have your Red Seal by the end of nine months, you're called in and you're offered employment as an apprentice until such time as you get this qualification. However TILMA has reduced the Alberta need for the Red Seal.

Mr. Parker: — In BC they first write for a provincial ticket and then, after receiving the provincial ticket, journeyman's ticket, they then can write for their Red Seal examination. And if they receive that, they get the Red Seal affixed to the back of their provincial ticket.

Mr. Royer: — This would be the same as a pilot if he had to requalify every province he went to. He doesn't have to. He has this; he's good to fly anywhere in Canada. And you know, this streamlines the example I gave where if IPSCO blew up and they wanted Red Seal ironworkers, I put a fax across the

country, emails across the country, need a Red Seal ticket, show up, and they start coming. But the qualification's there. In advance, we know what they're capable of doing and what training they've obtained.

Mr. Parker: — In Saskatchewan we do not have a provincial examination. We just have the Red Seal examination. We go straight to the higher level right to begin with.

Mr. Weekes: — Okay. Thank you for that. Now my question is, you say TILMA has basically negotiated away the Red Seal standard in Alberta or . . .

Mr. Royer: — They've made it optional.

Mr. Parker: — It's eroding the Red Seal program.

Mr. Weekes: — Where in TILMA does it say that? Where in the agreement? I'm not being flippant about it but . . .

Mr. Royer: — It becomes an obstacle. I think its article 2 under TILMA where it becomes, it's an obstacle.

Mr. Weekes: — We have it in here, I think in number 2.

Mr. Parker: — I think it's number 2 just off the top of my head.

Mr. Weekes: — Because many of the questions that and the concerns that have been raised is mainly about labour standards and different things. And we've also come back to part V with the exemptions, you know — and I can read them again — but including labour standards, codes, minimum wage, so on, so forth. It seems to me that that flies in the face of that. But you're saying under what . . .

Mr. Parker: — Sorry, it's article 13:1.

Mr. Weekes: — Article 13:1.

Mr. Royer: — It says . . . Both the AIT and TILMA recognize the Red Seal program. However, TILMA states:

. . . 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.

So a British Columbia employer coming to Saskatchewan, as long as his people are provincially certified in British Columbia, does not have to be Red Seal certified to work in Alberta. So that's less than the standard. It has not forced the British Columbia employee to become a Red Seal journeyman.

Mr. Weekes: — But again, I don't mean to be flippant about it, but you're making the assumption that the other standards aren't as good as Red Seal. I mean why wouldn't other standards be equivalent to Red Seal in other provinces?

Mr. Royer: — I can speak for my trade. We have annual apprenticeship competitions. I speak to the trade coordinators for all the Western provinces and all the trade coordinators in Canada, and all I hear from my British Columbia counterparts is

their funding's gone. Their programs are gone. The standards are down. At the end of the day, there's so much cost cutting, they literally don't have an apprenticeship program left.

Mr. Weekes: — That's more in BC, you're referring to?

Mr. Royer: — In British Columbia is what I'm, that's what I'm referencing. Yes.

Mr. Weekes: — Okay. Thank you for that, because I just wasn't very clear. That whole issue around Red Seal and what's going on in the . . . The other point is that we've been told that TILMA labour articles — if you want to call them items — and the AIT are going to come into effect at the same time, in 2009. So that says to me that a lot of the concerns about the differences in labour mobility areas aren't really, aren't as worrisome as they should be. Could you comment on that?

The fact that all the provinces and the territories and the federal government is part of AIT, and they've agreed on certain things — we don't have the list in front of us, which I'm trying to get — but doesn't that say that all these things that are accepted by all the other jurisdictions in the country and AIT, why would TILMA be a problem?

Mr. Royer: — Because AIT is non-punitive. I can speak for the construction industry where up to not too long ago, every five years, the flow of construction workers in Canada was east to west. You could almost bank on five-year cycles.

However now in the West I believe that probably for the next decade we will have as much employment as we can handle in Saskatchewan, Alberta, and British Columbia. Mobility's been around . . . Next month I've been in the trades for 33 years, and I have travelled the entire country working. I've never had a problem. I believe we're creating problems that don't exist.

There's no need to over regulate. Millions and millions of dollars were spent developing Red Seal and mobility programs so that our employers could bring their workers. To reinvent the wheel and basically downgrade the amount of money spent on training in certain areas is . . . It's unbelievable that we would undo such a thing as the interprovincial standards.

The process itself took almost a decade to complete, and I believe that, you know, some provinces are farther ahead as far as trade requirements go. And those that have high requirements should not be asked to bring their standards down, but rather the provinces that have low standards should be asked to bring their standards up.

As a client of construction services, you want the best bang for your buck. You want to know that people are safe and they're as skilled as possible. Saskatchewan puts out very high-quality apprentices and journeypersons and we'd like to keep what we have.

Mr. Weekes: — Yes, I agree with you. But it seems to me the jurisdictions that . . . I mean you're basically saying BC is gutting their apprenticeship program and underfunding it and in turn is creating, you're saying, unqualified people. If that is happening, I mean, I think any jurisdiction that is doing that has a big problem and I wouldn't know why they're doing that. I

mean I know governments' cutbacks and cutbacks because of expenditures, but it seems to me that it wouldn't be a logical thing for BC to be doing. And especially with the AIT coming into effect, aren't they obligated to certain standards under that anyway?

Mr. Royer: — In British Columbia the erosion of the apprenticeship system is not new. It didn't start this year. It started several years ago and it's continued to go down. If you can get a TQ [trade qualification], trade qualification ticket in British Columbia, you're able to work in that province.

And the Red Seal program is available in British Columbia. It's available in all provinces except Quebec. Only if you don't need it, why . . . You know some people feel that if the standard I need is here, why do I want to go qualify up here? I have no intention of ever leaving the province so as long as I'm qualified to work in British Columbia I don't care. And that is probably some of what, you know, the attitude is.

However there are people that realize that if you're going to make a living in the construction industry, you're not going to punch a clock and go home every night from your job site. You're going to be obligated to travel within your home province and other provinces in Canada. And if you can get the highest qualification, why would you agree to less?

And we're pushing hard on the Red Seal program. I was involved in the Red Seal for my trade with the federal government since 1991. I'd like to think that the last 16 or 17 years of my life haven't been totally wasted, making sure that the people that I do business with are as trained as they could be. And we work in heights. We work 2, 3, 4, 500 feet in the air and I want to know that the person working at 280 feet in the air with me has received the same training that I have. It's my life.

Mr. Weekes: — Yes, I agree with that. Just one point. This process we're talking about, TILMA, we're debating whether Saskatchewan should enter into negotiations to sign on. It's not whether we're going to sign on or not. But I would think that the whole Red Seal program and what you're talking about happening in BC with the apprenticeship program, I would think that was something Saskatchewan would say, well this is going to be something that is going to be straightened out or we're not in. But that's just a comment. Thank you.

Mr. Parker: — Well we're hoping we'll see that straightened out in the transition period and have questions answered. Because I know our counterparts in BC and in Alberta are asking these questions as well.

Mr. Weekes: — Thank you.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — Thank you. Maybe I'll just . . . I'd just like to follow up on this Red Seal situation in BC. And maybe specifically in your trade, could you tell me how much more education or training or time would I need as a steelworker with a TQ than with a Red Seal if I was in BC? How much more is involved in obtaining the Red Seal?

Mr. Royer: — How much more is . . .

Mr. Chisholm: — More education, more training?

Mr. Royer: — You have to take training. Based on the old apprenticeship system where you used to get your apprenticeship book signed by your foreman every week and you wrote an exam at the end, and there was a bit of school time, it didn't take long. The TQ and the Red Seal, if you ran programs with two new apprentices, would take approximately the same time to complete.

The Red Seal is more detailed. A TQ in structural steel would be strictly structural steel. So you would be qualified for one portion of the trade. A person in the Red Seal would be trained for structural steel, reinforcing, curtain wall windows and high rises, post-tensioning. So it's a more extensive study of the same trade. A TQ exam, if you tie reinforcing rod, to reinforce concrete . . .

The Chair: — The Chair is having trouble hearing our presenter with side conversations on both sides.

Mr. Royer: — If you reinforce concrete and that's what you do, that's one portion of my trade. That gives you a TQ to be a rod man. Over here you've studied rod, you've studied structural, you've studied all rigging. Everything else that an ironworker would do is in the Red Seal package. TQ is specific to one portion of the trade. That's the difference. However the time is about the same for an apprentice.

Mr. Chisholm: — So if I understand you correctly, there's no additional training involved to go from a TQ to a Red Seal? Basically it's challenging the exam on general knowledge?

Mr. Royer: — It's a challenge. In Saskatchewan I believe it's 8,100 hours if you have not attended the apprenticeship program in the trade before you can challenge my trade's exam. Otherwise, going through the school there's 5,400 hours of actually hands-on trade time and I think it's seven weeks, seven weeks, and eight weeks of school. So typically in a high employment time, it's a three-year program. At the end, you would write your Red Seal exam. But you've been to school for, I think, 24 weeks — 23, 24 weeks.

Mr. Chisholm: — So the actual education part and the training part are not much different between the two programs, in your particular trade anyway. Is that correct?

Mr. Royer: — In my trade the Red Seal is a more thorough and extensive study of the same trade, that's all.

Mr. Chisholm: — And is that similar, let's say, if we're talking about construction, like carpentry? Is it the same type of thing?

Mr. Royer: — Carpentry would be exactly the same. In carpentry you could get a ticket as a scaffold installer — this is the tube and clamp scaffolding you see all over the place — you could get a ticket strictly as a scaffolder that didn't qualify you to go frame a house.

If you were a Red Seal carpenter, you would frame the house; you'd probably have cabinetmaking experience; and you'd also be qualified to install the scaffolding. So it's all a part of the carpenter trade, but it's more extensive and it allows you to do

more things with your trade ticket. So you're not limited.

If you worked out of a . . . If a company was hiring a Red Seal carpenter, they're looking for somebody that's versatile and capable of doing anything required of a carpenter. If they wanted a scaffolder, they would apply for only a scaffolder. By getting the Red Seal carpenter, they're getting somebody that's capable of doing whatever is required. They're getting the bang for their buck.

Mr. Chisholm: — But if I just need the scaffolding done, maybe the scaffolder guy is the guy I need. I mean, maybe I don't need the cabinetmaker.

Mr. Royer: — Okay, but if you're framing a house and you want the scaffolder . . . The scaffolder is a separate ticket. So now you have to send your framer to go get a scaffolding ticket because he needs a special ticket to build a scaffold. If he has the Red Seal, he's already got all the tickets. So that's what I . . .

Mr. Chisholm: — I think I've got a feeling for how that works. You started out your presentation and I think you even referred to TILMA being a backroom, some kind of a backroom deal. I'd just like to quote from January 10 from the Ministry of Economic Development of the province of British Columbia in relation to this that has been pointed out:

TILMA was not negotiated in secret. Each of the joint cabinet meetings in the three years leading up to the Agreement issued news releases. Consultations were held with ministries, business groups and academic institutions. All regulatory bodies were consulted, including those responsible for labour mobility. All provinces, territories and the federal government were advised; country-wide consultations were initiated by the Agreement on Internal Trade's Ministerial Committee of Ministers on Internal Trade.

So just for the record, certainly the province of BC does not agree that it was behind closed doors that this TILMA was brought forward.

Mr. Royer: — I have yet to meet one labour person that ever had an opportunity to speak at a TILMA presentation, give a presentation of any kind on TILMA.

Mr. Chisholm: — Are you suggesting that that's not likely to happen now in the next two years of the transitional period? That . . .

Mr. Royer: — I would strongly suggest . . .

Mr. Parker: — The agreement is now signed between BC and Alberta. There is no changing that agreement, so consultations is not really, you know, consultations. It's more, this is what you're getting and we will basically clear up any problems that may be there, but we're not going to change it right now.

Mr. Chisholm: — Okay. I'll take that . . .

Mr. Royer: — This didn't happen in British Columbia right now — what's happening here today — as far as we know.

There may have been some consultation with business groups . . .

Mr. Chisholm: — Well this certainly indicates there was consultation with the parties.

Mr. Parker: — I know our counterparts in BC building trades were never consulted on TILMA prior to it being implemented.

Mr. Royer: — They never had a word to say.

Mr. Parker: — We have spoken with Colin Hansen after the fact but never before it was actually implemented.

Mr. Chisholm: — One other thing you mentioned about, talking about procurement and the \$100,000 limit, were you aware that this same \$100,000 was the limit under the Agreement on Internal Trade? It hasn't changed at all.

Mr. Royer: — We're saying the way construction's going, \$100,000 might get you the handrail on the front of your house now. It's such a low number that it's insignificant.

Mr. Chisholm: — Correct. But it's also not specific to TILMA. It's also what has been in for 12 years under the Agreement on Internal Trade.

Mr. Royer: — We just came back from British Columbia and former Premier Barrett spoke to us for about half an hour. He said good day, and he went on his half-hour TILMA attack saying that it was a direct attack on labour — good for business, terrible for the working men and women of Canada. So that's the message that we've stuck with.

Mr. Chisholm: — That's labour's message then.

Mr. Royer: — I suppose it is.

Mr. Chisholm: — Okay. Thank you.

The Chair: — Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. I want to just clarify a couple of points in your presentation. You indicated that today in BC a BC company can apprentice any number of apprentices under a single journeyman and after TILMA that would allow that same practice to enter into Alberta and, if Saskatchewan signed on, eventually into Saskatchewan.

Mr. Royer: — That is our belief. Currently I know in Saskatchewan most trades are regulated a certain number of apprentices per journeyman. It doesn't allow for a 10:1 ratio, say, to save money as a cost-saving item. And the example I give is wiring a house using 10 apprentices. I mean apprentices know how to install a wire, pull a wire, and using journeyman to make the terminations, therefore it's done. They don't have a number in British Columbia. That concerns us because a contractor that would use a very high number of apprentices in British Columbia, under TILMA, can they come here with the same crew and do the same thing? We suggest they can.

Hon. Mr. Yates: — Okay. Thank you very much. The other

standard question I've asked all the presenters today, traditionally the issues of trade and investment and labour mobility have been approached in a pan-Canadian approach, a Canada-wide approach, looking to have a Canada-wide standards and Canada-wide system in place. Would it be your . . . versus potential regional agreements. We have now Alberta, British Columbia. There's talk of Quebec, Ontario starting to balkanize throughout Canada different sets of arrangements. Could you tell me which . . . The reality is there are always going to be trade agreements and there's going to be trade between jurisdictions. Do you prefer a pan-Canadian or a Canada-wide approach or a regional approaches to . . .

Mr. Royer: — No, I was just going to say the labour portion, in my view, does not belong in a lot of these agreements. If the standardized trade certifications were accepted across the country and you had a company in Ontario and wanted to come and do a project here, there's no issue. Then come. We all have the same training standards. And at the end of the day I think a national approach . . . I don't know where Quebec stands on most things, but other than Quebec, I don't think there would be a problem.

Hon. Mr. Yates: — Okay. Thank you very much.

The Chair: — Thank you. The time has elapsed for the presentation. We thank you very much for the clear information you've presented and the following responses to questions and look forward to getting answers to questions that we're gathering along the way. We will have presentations from people from British Columbia and Alberta as well.

And one of the questions that I've noted is, can you be a party to the negotiation without signing on first? That's not clear. No one's really answered that. Someone's talked about you can become part of the negotiations but you don't have to sign on. There's another belief that you have to sign into the TILMA agreement — you sign on and then you become part of the transition negotiation. So that's another question we'll note and try and get an answer for.

Mr. Parker: — We would once again like to thank the committee for meeting with us and giving us this opportunity to present you with our presentation. Thank you very much.

The Chair: — Thank you. We're going to take a short few minutes. The next presenters haven't arrived yet. I guess I could have asked, are there further questions of these presenters before I dismissed them, but I didn't. So thank you, Bert and Terry, for being here this afternoon.

[The committee recessed for a period of time.]

The Chair: — I'll remind committee members that they have about one minute to get back in their chairs. Our next presenters are here.

Thank you, committee members, for your quick resumption of our proceedings. We have the Canadian Centre for Policy Alternatives today, represented by Lynn Gidluck, who is the director, and Jim Grieshaber-Otto, research associate. And we thank you for appearing before the committee. We're allowing about 15 to 20 minutes for an overview and presentation from

yourself, and then we open up to about another 15, 20 minutes of questions from the committee and would ask you to introduce yourselves and begin your overview. Thank you.

Ms. Gidluck: — Great. Good afternoon and thank you for the opportunity to appear today before you on this important issue. My name is Lynn Gidluck, and I am the director for the Saskatchewan office of the Canadian Centre for Policy Alternatives. And for those of you that don't know about us, we're an independent, non-partisan research institute that's concerned primarily with issues of social and economic justice. We were founded in 1980, and we have offices nationally in Ottawa, Nova Scotia, Manitoba, British Columbia, and Saskatchewan. And our office in Saskatchewan actually just opened in 2002, so we're relatively new to Saskatchewan.

We're one of Canada's leading progressive voices in public policy debates, and we've been in the news a lot in the last year with the work we've done to highlight the growing gap between the rich and the poor in Canada and most recently for our study about gas prices that kind of grab the attention across the country from coast to coast.

So our mandate is to work with progressive organizations to show that there are choices and alternatives in public policy, even in the context of globalization. So we promote participatory and accountable approach to the development of public policy in Saskatchewan and policies that we believe are socially and economically just and environmentally sustainable.

Now the CCPA [Canadian Centre for Policy Alternatives] is a registered non-profit charity, and we depend on the support of more than 13,000 members across the country.

Now I'm pleased today to introduce you to Dr. Jim Grieshaber-Otto, who is one of our research associates, who came all the way today from Agassiz, British Columbia. Jim always winces a little bit when I introduce him because he's a very humble person. He's not big on bragging about himself even though he's very deserving of it. He prefers that I start off by saying that he's a farmer who lives with his wife and two children on a diversified, 35-hectare organic farm in the Fraser River Valley, about 100 kilometres east of Vancouver. And like most Canadian farmers these days, he has to have an off-farm job to support his farming habit. So for this we're very happy because he has a tremendous amount of knowledge on trade treaties that we'd hate to see go to waste.

Now Jim has over 15 years of experience assessing the impacts of international trade and investment treaties such as NAFTA, the GATS [General Agreement on Trade in Services], bilateral treaties, the EC [European Community] treaty and the proposed FTAA [Free Trade Area of the Americas] on public services, health care, education and postal services and public interest regulation. So he's been called upon by groups like the World Health Organization, the Ontario Public Health Association and many others to do trade treaty analysis.

He has a Ph.D. from the University of Reading in England and is the author of numerous trade related publications, including these which I'll just pass around now so you can just have a quick look at. And with that I'm going to turn the mike over to him because Jim is the expert on this issue. And we hope that

you'll find the comments that he has today helpful in your deliberations.

Mr. Grieshaber-Otto: — Greetings and thank you very much for the opportunity to contribute to your important deliberations. On the way to Abbotsford Airport from our farm this morning, as I passed stockpiled sandbags and a very swollen Fraser River and drove past recently raised dikes ready to protect communities that are nervously on flood watch, I reflected on the resources available in Saskatchewan — feedlots capable of housing thousands of dairy cattle with trucks to transport them and people with rural roots who know where milk comes from.

But before we get to the stage of recruiting the users of Saskatchewan's fitness centre users for wrist and forearm exercises milking dairy cows that have been evacuated from BC, might I suggest something simpler? That you send your lotus land visitors a month's supply of mosquito repellent because they'll certainly appreciate it because it's going to be a bumper crop this year.

But seriously, as we prepare for the daunting likelihood of a flood in BC, you are in the enviable position of being able to prevent a different kind of threat, TILMA, from inundating democratic decision making here in Saskatchewan. More on that later.

In the short time we have today I'd like to focus on the following issues. Firstly as an introduction we'll stress the importance of studying the actual text of the TILMA. This is a prerequisite for any effort to analyze a potential impact of Saskatchewan signing the agreement. Secondly we'll consider a fundamental feature of TILMA that is often overlooked but which is of overarching importance: TILMA's private dispute settlement procedures. And thirdly we'll highlight what would be a key issue if Saskatchewan were ever to join TILMA: the adverse impact on Saskatchewan's Crown corporations. And finally very briefly we'll point out some of the myths that have been circulating about TILMA.

At the outset, the citizens of Saskatchewan, the Government of Saskatchewan, the members of the Legislative Assembly should be commended for conducting these public hearings which include an initial examination of the potential impacts of Saskatchewan joining the BC-Alberta Trade, Investment and Labour Mobility Agreement. Far too often and in many jurisdictions in the world governments sign and implement far-reaching agreements of this type without adequate or sometimes even any public examination of their likely impacts. Through these public hearings, the government and members of the Saskatchewan legislature are demonstrating a degree of responsibility and democratic accountability that extends far beyond that now found in the governments of BC and Alberta. In those provinces, no public hearings were held on TILMA either before it was signed or when it came into force on April 1 of this year. So congratulations on beginning an important exercise in democratic due diligence.

You've set yourself a very ambitious schedule. In 1988 when BC established a special committee of the Legislative Assembly to conduct an examination of the proposed Multilateral Agreement on Investment — an agreement which, like TILMA,

used NAFTA as a model — the committee required over a year to do its work. They received evidence from 89 expert witnesses, 361 members of the public, and 10 communities. The committee's first report was 194 pages long. And I have them here, and I have two copies to leave with the Clerk later.

When NAFTA came into effect, Canadian provinces and the US states had two years to determine which provincial and state laws and regulations could and should be protected from just a small subset of that agreement's many rules. This stuffed, 2-inch binder contains the list of protective reservations that just one state, Oregon, submitted to the US federal government. After provinces and states were unable to meet the deadline, the US, Canada, and Mexico agreed to extend the deadline and then, when that extension proved inadequate, modified the treaty requirements to provide sub-national jurisdictions the maximum possible but still limited protection.

This agreement's impacts on Saskatchewan merits the same scrutiny as NAFTA's investment chapter and the failed MAI [Multilateral Agreement on Investment]. TILMA is extraordinarily broad in scope and coverage. It contains complex legal provisions, some of which are unique and untested. Determining its potential impacts in Saskatchewan is a challenging undertaking that cannot be achieved by relying on general econometric studies or by conducting crude surveys of initial impressions.

This critical task of due diligence requires — and there's no substitute — it requires an understanding and assessment of the text of the agreement itself. It requires an understanding of the many complex and sometimes confusing legal provisions drawn from international trade law and how appointed dispute panellists may interpret them. It requires a determination of which of the literally hundreds of Saskatchewan's existing laws and regulations — and laws and regulations that may be needed in the future at the provincial, regional, and local level — could be contested as TILMA violations. It requires an assessment of the types of measures that TILMA could affect in the future as its reach is extended as mandated in the agreement itself.

In the absence of these analyses, even the most talented and dedicated legislators cannot adequately ascertain the impact of the TILMA on particular sectors in Saskatchewan and more generally on the environment, the economy, and the province's social fabric. So how could even the most efficient committee members, with the assistance of the most competent staff and officials, with input from an increasingly informed public, possibly assess the potential impact of TILMA on Saskatchewan in a month? Such a task seems not only incredibly daunting; it seems overwhelming.

As an international trade policy analyst by vocation, I've travelled from British Columbia to try to save you a lot of money and a lot of work and to save Saskatchewan taxpayers a lot of money. In fact your report doesn't need to go into a lot of detail. You and your staff don't need to examine all aspects of this complex agreement. Why not? Because one elemental aspect of TILMA overshadows all other aspects of the agreement.

What do I mean? The TILMA incorporates, at its very core, a fundamental feature that cannot be justified in our form of

democracy. This aspect of the TILMA is sometimes played down or even overlooked. For example the CBC [Canadian Broadcasting Corporation] program *The House* highlighted the agreement when it came into force on April 1. But the program failed to even mention this aspect of the TILMA. The critical aspect is TILMA's private enforcement process.

TILMA incorporates a NAFTA-style, private, court-like system which, if adopted, would allow BC- and Alberta-based individuals and corporations to sidestep Saskatchewan laws and courts to directly challenge local, regional, and provincial government practices that those individuals and corporations assert violate the agreement.

Appointed dispute panellists, usually lawyers, would issue rulings that would be binding on governments. These appointed panellists would also be authorized to direct governments to pay individuals and corporations up to \$5 million for TILMA violations, awards that would then be enforceable through Saskatchewan's provincial court system.

In short, the TILMA would set up a highly controversial, separate court system where appointed panellists would use TILMA rules to pass judgment on laws that citizens' elected representatives, such as yourselves, have enacted in the public interest.

This type of private enforcement process was originally designed to facilitate the settlement of disputes between two corporations. Later this process for settling corporation-to-corporation disputes was adapted and used in the NAFTA and many bilateral investment treaties to settle corporation-to-government disputes, seemingly without appreciation for the fact that governments are not like corporations — that in a democracy, governments exist to act on behalf of the public.

This private enforcement process, which is also by the way called investor-to-state dispute settlement, privileges private interest by allowing them to sidestep well-established domestic laws and judicial processes and avoid conventional requirements for transparency and democratic accountability. Under this process, private arbitral panels cannot directly overturn established laws, but they can and have awarded large monetary compensation for alleged breaches of agreement rules.

The NAFTA version of this regime has already been shown to be powerful, shown in this slide. As of March of this year, there've been 15 private enforcement claims filed under NAFTA against Canada and similar numbers for the other two countries. Of those cases that have been decided, two were settled out of court. Two were decided against Canada, and Canada has paid \$27 million in damages. Investors continue to mount new cases. In the recent Adams Lake case initiated last year, a US investor is challenging the decision to halt a highly contentious landfill project to propose to depose of Toronto's solid waste in an artificial lake on the site of a former open-pit mine in northern Ontario.

The controversy surrounding private enforcement of investment agreement rules cuts across partisan and ideological lines. In the United States the National Conference of State Legislatures are

so concerned about the impact of the controversial process on state sovereignty that they recently wrote to the US trade representative requesting that the process be kept out of the new US-Korea Free Trade Agreement.

Once they learn about it, citizens and representatives of diverse political persuasions reject private enforcement for a variety of reasons including increased financial risk to taxpayers, harmful impact on government's ability to regulate in the public interest, diminished transparency and democratic accountability, and privileging of private investors over other interests. It is rare indeed for an elected legislator or government official to defend this controversial process in public.

When the process was examined during extensive public hearings in British Columbia, it received, in the words of the committee report, withering criticism from the public and rightly so. I highly recommend that you review the committee's work on the private enforcement process in particular. To the best of my knowledge, it constitutes the most extensive public examination of this critical issue that is available. Both of the committees' two reports which are available online would be very valuable resources, and as I mentioned I brought a copy of each report to leave here.

The committee recommended that this dispute settlement mechanism, and I quote:

... which enables a foreign-affiliated investor to bypass the domestic court system and challenge government measures before international arbitral panels — should be eliminated. The use of international commercial arbitration procedures should be limited to their original and proper purpose.

Private enforcement should be eliminated. Unfortunately it wasn't. The process remains intact in NAFTA and has proliferated in many dozens of bilateral investment treaties.

Regrettably private enforcement was not only imported into TILMA. The TILMA version is even more extreme than the NAFTA model. For example while NAFTA allows private challenges only under specific treaty rules, TILMA allows private challenges to any of the many provisions of the agreement and their interpretation. NAFTA only allows genuine investors to initiate challenges. TILMA is broader. It allows any individual from a member province to do so.

Significantly if Saskatchewan adopted TILMA, the province could face private TILMA enforcement suits brought by US and other foreign-owned corporations that are registered in BC and Alberta. TILMA allows for the same measure to be contested repeatedly and for panels to award monetary compensation serially to multiple disputants contesting the same government measure. These variations make TILMA's private enforcement process particularly problematic.

What would it mean for Saskatchewan? As Professor Helliwell noted, almost any provincial or municipal program could be subject to attack. And while not writing specifically about Saskatchewan, international trade lawyer, Steven Shrybman echoes Helliwell's sentiment. He states that private claims are likely to proliferate and exert enormous pressure on

governments to abandon or weaken a broad and diverse array of public policies, laws, practices, and programs.

Given the extraordinarily broad reach of TILMA rules, it is difficult to conceive of a sector of the economy or society that would be immune from these extreme private enforcement procedures being invoked against government measures that investors deem to be restrictions on their investment.

In a nutshell by combining broadly worded rules outlining government measures that can be argued to restrict trade, investment, or labour mobility — by combining these broad rules with a powerful private enforcement mechanism — TILMA threatens democratic authority.

It is of crucial importance that your committee pay particular attention during examination of the potential impacts of TILMA's private enforcement process. Together you may well determine that this feature is so threatening that its existence alone justifies and should result in your committee unanimously recommending that the Government of Saskatchewan reject the TILMA to protect taxpayers from financial jeopardy, to protect public interest regulation and democratic, accountable policy making.

TILMA's potential impact on Saskatchewan's Crown corporations. It is critical to recognize that the ethos, the thrust of TILMA is at odds with Saskatchewan's Crown corporations and their activities. Your Crowns are designed to address the specific needs of the citizens of Saskatchewan, in part by constraining, directing, and in certain cases curtailing the operation of market forces to ensure universal access to high-quality services at affordable rates or to meet other public interest imperatives.

There's an underlying tension between these aims and the basis of TILMA, namely to promote the freer flow of goods, services, and investments throughout member provinces, territories. This conflict is explicitly acknowledged in the TILMA itself. Measures of or relating to Crown corporations are listed as transitional measures that, if it weren't for the listing, would violate the agreement.

TILMA is a top-down agreement. This means that the agreement would cover all government activities pertaining to Crown corporations and sectors unless they were specifically exempted.

Now the agreement does contain a general exception in article 11(4) for monopolies, but this exception is limited. It would allow governments to create, maintain, and regulate monopolies quote "for the provision of goods . . . [and] services within its own territory." It would shield government regulation of Crown monopolies but would not shield the activities in which such monopolies engage in their own right that are arguably outside their strict statutory monopoly. More importantly this exemption would provide no protection for the regulation and activities of Crown corporations that are not monopolies.

If adopted the agreement imposes a freeze or a standstill on all the activities and government regulation on Crown corporations — article 23:2 — that extends throughout a two-year transition period. During this time Crown-related measures are not to be

made more inconsistent with the agreement — article 9:4. During the transition period, the full extent of the agreement's coverage of Crowns is to be negotiated — article 9:2 — by the ministers of each TILMA member government. And for this you need to look at article 17:1(c) and 9:3.

Could Saskatchewan negotiate a full exemption for its vital Crown sector if it joined TILMA? There is indeed scant potential for this. TILMA does not stipulate that newly acceding members can renegotiate the agreement upon entry. On the contrary, new members join upon acceptance of TILMA's terms, article 20.

The agreement does allow for a ministerial committee to, quote, “approve any amendments to the Agreement,” article 17:1(e). But the committee operates by consensus — see article 18:4 — and it seems highly unlikely that BC and Alberta would amend the agreement to grant Saskatchewan a general exemption for its Crown Corporations when they didn't do this for their own Crowns and since they are expressly committed to, quote, “ELIMINATE barriers that restrict or impair . . . investment . . .” through the agreement, part 1, operating principles.

There is some potential for negotiating protection for a small subset of existing measures pertaining to Crowns as Alberta and BC have done. But a full exemption for Crown corporations is very unlikely. Indeed the logic of the agreement means that TILMA is likely to intensify pressure for the reduction or elimination for any such protective exceptions in the future.

Article 17:1(b) stipulates that each year TILMA is in force, a ministerial committee will review protective exemptions to the agreement explicitly, quote, “with a view to reducing their scope.” In other words, any limited protective exception for Crowns that could be obtained upon accession could not be considered permanent. TILMA would put in place an annual process to review and reduce this and other protective exemptions, to whittle them away or to eliminate them.

It is crucial for this committee to understand that any one minister acting on behalf of Alberta, BC, Saskatchewan itself, or any other acceding province could insist on full coverage of Crown corporations and their regulation simply by withholding consensus on new proposals from Saskatchewan to limit the extent of Crown coverage.

When the transition period ends on April 1, 2009, if ministers of TILMA member governments have not reached unanimous agreement on limiting the extent of Crown coverage, TILMA's main rules, including its private enforcement mechanism, would apply fully to measures of or relating to Crown corporations and government-owned commercial enterprises. And for this see part 6, page 29, and articles 9:1 and 9:2.

The impact of this could be profound. Combined with the agreement's broad scope and application, this private enforcement mechanism would at minimum give private individuals and corporations a forceful tool to challenge and redirect the activities and regulation of TILMA members' Crown corporations.

Private enforcement would open the door to individuals and private corporations in other TILMA provinces to challenge the

activities of Saskatchewan Crown corporations operating outside their home jurisdiction without themselves being subject to similar suits. This potential is especially important for Saskatchewan as SGI [Saskatchewan Government Insurance] and SaskTel operate in other provinces that are or are considering becoming TILMA members. TILMA suits of this type could impede the ability of these Crowns to generate revenue by operating outside Saskatchewan. Ironically this aspect of TILMA could have the effect of stifling rather than promoting interprovincial commerce in these areas and would also hit Saskatchewan citizens in the pocketbook.

Full TILMA coverage would enable private individuals and corporations to use the private enforcement process to seek equivalent access to publicly owned Crown infrastructure in Saskatchewan, since denying this could be construed as a violation of TILMA rules and non-discrimination, article 4. Private individuals and corporations could challenge even the continued existence of Crown corporations in the province, claiming they impaired private investment, contrary to article 3, no obstacles.

Let me summarize the potential impacts of TILMA on the province's Crowns. If adopted by Saskatchewan, TILMA's binding rules would restrict the activities and regulations of the province's Crown corporations. In particular, it could effectively preclude the expansion of existing non-monopoly Crown corporations, effectively preclude the creation of new non-monopoly Crown corporations, constrain the activities of monopoly Crown corporations, and expose Saskatchewan to binding disputes brought by private individuals and corporations against the activities of its Crown corporations that are alleged to violate the agreement.

It also exposes Saskatchewan to binding disputes brought by private individuals and corporations against provincial measures used to regulate the Crown sector in the public interest.

For provincial measures found to violate the TILMA, the province of Saskatchewan would be bound by panel rulings which could involve retaliatory measures of equivalent economic effect, awards for monetary compensation to aggrieved investors or parties of up to \$5 million in each instance, or both.

Let me attempt to crystallize the issue of TILMA and Saskatchewan Crown corporations. By their very nature, Crown corporations are designed specifically to serve the public interests of the citizens of Saskatchewan. In doing so, they necessarily restrict or impair the ability of private investors from elsewhere to invest and profit from doing things that are now done by the Crowns in the public interest.

Under TILMA this is forbidden. Members are required to ensure, and I quote article 3, “. . . that its measures do not operate to restrict or impair . . . investment . . . between the Parties.” And yes, Saskatchewan governments traditionally accorded the province's Crown corporations treatment more favourable than it provides to private corporations from other provinces, so Saskatchewan's Crowns can do their job of serving the interests of the people of Saskatchewan. Article 4 of TILMA expressly prohibits this approach, labelling it

discrimination.

As legislators you have a clear choice. You can opt to join TILMA and apply the agreement's rules to Saskatchewan's Crown corporations, or you can maintain and enhance the vital public interest activities of Crown corporations in Saskatchewan now and in the future. You cannot do both.

Saskatchewan is known for being one of the few jurisdictions in North America that retain publicly owned and operated public entities in key sectors of the economy. Crown corporations have and continue to be very effective in serving a wide variety of public purposes in the province. In this vast and sparsely populated province, Crown corporations provide public investment, public goods and services, public employment, public revenues, and democratic accountability. They also hold the potential to deal efficiently with new challenges that have arisen and will emerge in the future. Think global warming, for example. Signing TILMA would put these substantial benefits at risk.

In short, after TILMA, the deluge. Signing TILMA would herald a flood. It would signal the beginning of the end of Crown corporations as rock solid instruments of public policy in Saskatchewan. TILMA would grant outside investors new powerful tools to attack Crown corporations directly, to carve off for themselves aspects of Crowns' activities that their accountants judge would be most profitable and their lawyers see to be most vulnerable under TILMA.

Initially at least the pressure from threatened or actual TILMA litigation would not threaten the public ownership of Crowns per se, but it would erode the ability of Crowns to meet the Saskatchewan public's legitimate expectations. TILMA would thus undermine public support for Crowns, which is the essential political foundation upon which they rest.

Governments that are intent on avoiding direct accountability for a flood of TILMA-related constraints, threats, and litigation would benefit from the fact that most controversial TILMA issues would be out of the hands of elected officials. Decision-making authority pertaining to many Crown corporation and other sensitive public policy issues would have been surrendered to appointed dispute settlement panels that operate not under provincial laws and regulations but according to TILMA rules. At the same time, under TILMA such a government would enjoy the ability to deny plausibly but falsely the plain truth that by signing TILMA that government would in fact be embarking on the destruction of Saskatchewan's vibrant Crown corporations by stealth.

No one should rely upon the agreement's limited protective exceptions to permanently protect the province's Crown corporations from TILMA's onerous rules. While some of these exceptions will be effective, most will only provide governments with political cover but offer little or no protection from TILMA's rising waters. Those dikes are riddled with holes. And if Saskatchewan signed on to TILMA, don't think that provincial legislation to protect Crowns from privatization, The Crown Corporations Public Ownership Act, would safeguard citizens from the financial jeopardy of private investors' TILMA litigation against Crown corporations. It wouldn't. That's a myth.

In the interests of saving time for questions, I thought we'd just whistle through a number of common myths that have been circulating about TILMA. Is TILMA primarily a labour mobility agreement? Well no, it's an agreement to restrict government regulation and democratic decision making. Would TILMA eliminate burdensome barriers to trade? Well as you probably heard already in your deliberations, the paper that sets out — *Death by a Thousand Paper Cuts* — has been discredited by a CCPA monograph on this.

And in fact what the Conference Board is talking about in its publication *Mission Possible* are not barriers to trade at all. They're talking about barriers to competition which are deemed to be standards and regulation, procurement policies, licensing requirements, distribution restrictions. You can think Crown corporations there and marketing boards. And many of these barriers so called reflect different policy responses by governments elected by citizens that have distinct political and cultural backgrounds in provinces with differing resource endowments facing unique economic, geographic, and social circumstances.

Would TILMA only affect discriminatory government regulations? This is a very common myth. In fact the Minister of Economic Development in British Columbia recently stated in a technical briefing on TILMA for the media that quote:

Providing a municipality is bringing in rules and regulations that do not discriminate against a company or an organization in the other province then . . . that would not be impacted [by TILMA].

Well that assertion, with respect, is false. Article 3 and Article 4 in the agreement are distinct. One deals with non-discrimination. The other prohibits obstacles against investment. So even if a municipality instituted a rule that wasn't discriminatory but was indeed an obstacle to trade, it would violate the agreement.

Would TILMA allow governments to continue pursuing policy objectives? Well of course it would so long as the pursuit of those objectives accorded with TILMA rules.

Could Saskatchewan prevent TILMA coverage of its Crown corporations, municipalities, health care system, and other sensitive areas during TILMA's two-year transition period? Well we dealt with this in some length. But keep in mind that Saskatchewan's Crown corporations, if it were to sign the agreement, would already, would be covered to the extent that the standstill on Crown corporations would apply even in the transitional period.

I would like to bring to your attention — and I understand you don't yet have this in your binder and I hope you will soon — the valuable article entitled "Asking for Trouble" by Ellen Gould from the Canadian Centre for Policy Alternatives. I highly recommend it for examining some of these issues in greater detail.

Finally, I would like to remind you once again of the central feature of the TILMA that is so profoundly problematic, the agreement's private enforcement process.

Thank you very much for your attention. You're to be commended for your efforts and we wish you the best in your important deliberations and I look forward to any questions you may have.

The Chair: — We will now open up then for questions. Mr. Yates.

Hon. Mr. Yates: — Thank you very much, Madam Chair. I want to start by making sure that I heard you very clearly that signing on to TILMA could and would likely result in the destruction or privatization of Saskatchewan's Crown corporations as a result.

Mr. Grieshaber-Otto: — I didn't say privatization. I did say destruction. Signing on to the TILMA would not necessarily force, would not force the government to privatize any Crown corporation. It would not have that effect. It would undercut the public support for those corporations and would constrain the activities of those corporations, and in doing so would curtail their ability to serve the public interest as they are designed to do.

Hon. Mr. Yates: — Right. But the next logical step of having a corporation that no longer can meet its objectives and no longer would be then financially viable would either be closing the doors or selling off what assets you have.

Mr. Grieshaber-Otto: — It would definitely set in train a dynamic that could very easily lead to privatization, yes.

Hon. Mr. Yates: — Thank you very much. Because I think those are some of the areas that would be of great concern to Saskatchewan residents.

My next question has to do with there's been trade agreements, we have had trade arrangements for a long time between jurisdictions. We currently have the AIT. If we are going to have trade arrangements in Canada, is it in the interest of provinces and citizens to have regional agreements, as we're now seeing proposed between Alberta and British Columbia — there's talk of arrangements between Quebec and Ontario — or a pan-Canadian approach where all jurisdictions in Canada are consulted, participate in the design, and the rules apply equally to all provinces? Which would be the better approach in your opinion?

Mr. Grieshaber-Otto: — Well it depends on your perspective. In my considered view, whether you have a regional trade, investment, and labour mobility agreement or a national one, this is the wrong model. That's the point.

Hon. Mr. Yates: — Thank you very much.

The Chair: — Mr. Weekes.

Mr. Weekes: — Thank you, Madam Chair. Thank you for your presentation. You listed early in your presentation about a number of challenges to NAFTA by others against Canada. Do you have the statistics that . . . How many challenges were made of the United States and Mexico? And what was the breakdown of successful ones and the cost to their governments?

Mr. Grieshaber-Otto: — I can get that to you very easily. I don't think I have it here. But I do know that the challenges against the US and Mexico have been about the same number, yes.

Mr. Weekes: — Just to follow up a bit more on the Crowns. You're saying that . . . I'm just wondering why, entering into a negotiation, that Saskatchewan couldn't be part of the negotiation that the Crowns would be exempt from TILMA.

Mr. Grieshaber-Otto: — Well the existing agreement doesn't offer that in the text of the agreement. I mean, it would be possible to enter into negotiations with other provinces, into an investment agreement that did not include Crown corporations. But that's not this agreement.

Mr. Weekes: — Yes, but I guess what I'm saying is . . . I mean there's going to be a new . . . If Saskatchewan entered into negotiations, there's going to be negotiations. So I mean . . .

Mr. Grieshaber-Otto: — Yes.

Mr. Weekes: — That would be something to be on the table.

Mr. Grieshaber-Otto: — Yes. Well the text does not allow for the broad exemption of Crown corporations. And if you review the points there, the whole thrust of the agreement runs counter to the whole history and heritage of Crown corporations in Saskatchewan. And the agreement sets out specifically a process whereby any exemptions that are agreed, whether upon accession or further along during negotiations, these will be reviewed annually with a view to reducing or eliminating them.

And furthermore any one province, the way the text of the agreement reads right now, any one minister from any other TILMA province can veto Saskatchewan's negotiating proposal to completely carve out Crown corporations. So upon signing the agreement Saskatchewan itself would not be in a position to control the outcome of those negotiations. Saskatchewan would instead . . . Quite likely the result could be that — and I don't want to speculate here but Saskatchewan could be given an offer that, you know, you include this, that, and the other of your Crown corporations or you don't join. But the point is Saskatchewan would not be in unilateral control of what it could exempt from the agreement because the agreement operates by consensus.

Mr. Weekes: — That's right.

Mr. Grieshaber-Otto: — If you're able to persuade every other member . . . If Saskatchewan were really intent on signing the TILMA and were able to get universal agreement from each of the other provinces that the Crown corporation sector and all activities relating to trade, investment, labour mobility, and services in those Crown sectors would be completely carved out of the agreement, you could negotiate that. But it would be a new agreement. It wouldn't be this one.

Mr. Weekes: — No, that's basically what I'm saying. I mean because any agreement or any negotiations, I mean those, obviously that can happen. Obviously the AIT has been negotiated now for 12 years, and it's . . . Well I think many think it's been a disappointment because it's taken so long to

get to where it has been at this stage. But everyone seems to agree that this negotiation should take place, but it's just a matter of coming to a consensus.

Mr. Grieshaber-Otto: — Yes. No, I really appreciate the question and I think you've hit on a key point. But the AIT and the TILMA are different agreements. That's why it's so important to read the text to the agreements to know exactly what the scope in the negotiations and what the potential for negotiation, what the room to manoeuvre is before you enter into those negotiations. Because when you're in the negotiations that's the, those are the constraints under which you operate.

So it's important. Just because there's been a history of the AIT, that history does not apply to the TILMA. It's a separate agreement, separate texts, separate legal entity.

Mr. Weekes: — And further your comments on the Crowns, assuming they were in the agreement, you're saying that they would be restricted. I'm just wondering why they would be restricted to growth and doing what the Crowns do under the agreement if they were included in it.

Mr. Grieshaber-Otto: — Growth in Saskatchewan or other provinces. If you just take other provinces for example . . .

Mr. Weekes: — Take both examples.

Mr. Grieshaber-Otto: — If Saskatchewan or SaskTel were intent on expanding aggressively into British Columbia, for example, to serve people like me who are desperate for the benefits of Crown sector provision of telecommunication services . . . Because I'm still on dial-up under Telus in British Columbia, extraordinarily. I mean I'm an hour's drive from Abbotsford Airport and yet I have to download any files sometimes overnight. Like it's ludicrous.

So if SaskTel were to try and expand to serve people like me in British Columbia and if they were included under TILMA as a full, you know, under following all the rules, they could be curtailed to the extent that any investor or BC TEL itself, for example, could mount a TILMA challenge against SaskTel's efforts in British Columbia, arguing that SaskTel was unfairly using, leveraging its power granted to it by the government to unfairly compete against Telus in British Columbia. Now SaskTel couldn't mount a similar case against Telus operating in Saskatchewan because Telus isn't an arm of the government — right? It wouldn't be perceived to be a government entity whereas a Crown corporation would be at that disadvantage in British Columbia if it fell under TILMA. And so I mean that's just one example of how . . .

And I could point to a specific case in Canada, for example, where this is . . . A similar case actually is occurring under NAFTA where United Parcel Service of the US is suing Canada under NAFTA — and the case is about ready to report out — arguing that Canada Post is unfairly using its letter post monopoly to leverage business in the competitive courier market. And UPS is involved in the courier market. And that's a very similar type case and it's been grinding on for ages. So, you know, these are real issues that are occurring now under NAFTA but would likely be even worse under TILMA.

Mr. Weekes: — I thank you for that answer. I guess my point is I don't see why, in a negotiation, that using Crowns . . . And I'm sure there's going to be many other things that are going to be similar. There's going to be negotiation and there's going to be rules around what, you know, what a particular body, what advantages they can have. And there would be rules and regulations around that within the agreement. So I just think that it's kind of presumptuous of us to just to make assumptions . . .

Mr. Grieshaber-Otto: — No, I'm . . . Sorry. I'm not making assumptions. I'm trying to interpret the words, the text of the actual agreement in light of the fact that Saskatchewan has a vital Crown corporation sector like no other province. And so there are two parts of it here. One is the actual legal interpretation of the text of the agreement that would be at issue. We're not talking about another agreement. We're talking about joining an existing agreement as is with some limited room for manoeuvring to exempt certain limited measures, as the text says.

The Chair: — For clarity, we had a question earlier. I think it's contemplated that people are saying we would negotiate with, Saskatchewan would negotiate before signing an agreement, the TILMA agreement. Or are you contemplating that Saskatchewan would have to sign on to the agreement in the transition period and then begin negotiating within the agreement?

Mr. Grieshaber-Otto: — Well there would be two, as I would envisage it, if Saskatchewan were interested in moving down this route, there would be two times of negotiation. One would be the negotiation upon accession, but there isn't provision for that in the existing agreement. Okay? The second round of negotiations would be during a transition period when you would have already signed the agreement but would have been negotiating simply on exempting specific measures, existing measures, that are now in place in the province, to exempt them from the agreement.

And that's a much more, that would provide a much more limited protection for any of the Crown corporations. It certainly . . . The agreement itself does not contemplate at all a blanket carve out for Crown corporations. If all this Government of Saskatchewan is interested in is exempting piecemeal bits of Crown corporations' activities, then yes, that's possible. Keeping in mind of course that any exemption you do obtain at that time must be considered temporary and can be negotiated away and in fact can be unilaterally given up by subsequent governments.

So we're not . . . I have heard . . . The text does not support the interpretation of a broad carve out for Crown corporations. It doesn't exist in the treaty and it doesn't provide for it in accession negotiations.

If the parties to a subsequent agreement, if they want to amend the agreement to include such a carve out, that's a different matter. We can come back and look at it. But right now, it's just not there.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — I have a question. You're Canadian Centre for Policy Alternatives?

Ms. Gidluck: — Yes, sir.

Mr. Chisholm: — There's you mentioned 13,000 members across Canada. Could you tell me what the membership is in Saskatchewan, just so I'd have an idea there?

Ms. Gidluck: — The membership in Saskatchewan's at around 500.

Mr. Chisholm: — Okay. Thank you. You mentioned that a one-month period is a pretty short period of time to be trying to take in all of the TILMA information.

Mr. Grieshaber-Otto: — I salute your courage.

Mr. Chisholm: — I certainly agree. I guess my point is that back in 2003 when Alberta and BC began talking about an agreement and negotiating an agreement, our province could've been at the table at that point. And so I think we're doing a bit of catch-up. We in the opposition have asked for public hearings to get the whole TILMA thing on the table, because it was just kind of in the background.

So just for a bit of . . . It's not that we aren't, haven't been dealing with the concept for some time, and hopefully we will take more than a month to try to digest this information.

Mr. Grieshaber-Otto: — It's important, as I said at the outset, to ensure that what is being examined is the agreement itself, the text of the agreement itself, and not broad subjective statements about what might be in the agreement — what's in the AIT for example or what's in NAFTA, you know. Because there is interplay between the agreements clearly, and that needs to be sorted out as well. But don't assume just because something's in the AIT and works one way in the AIT, that it's, that's the way it is in TILMA, because that's not true.

And if I could just say that if there's . . . There are resource people available nationally that have worked on trade and investment issues for a long time, and I should re-emphasize that this is not simply a labour mobility agreement, it's not simply a trade agreement; it's an investment agreement. And it has measures, it has provisions that are distinct from others that require a very specialized look and a very deep, detailed look. So if there's anything we can do to help your committee in future, we'd be . . . I don't mean to . . . [inaudible] . . . I believe we'd be delighted to try and help in that regard.

Mr. Chisholm: — Thank you.

Mr. Grieshaber-Otto: — But there's no question the process. Analyzing an agreement of this sort is fiendishly complicated.

Mr. Chisholm: — Just one comment on the agreement itself as you see it, as it relates to the Crowns in British Columbia.

Mr. Grieshaber-Otto: — Sorry. I beg your pardon?

Mr. Chisholm: — The impact on the Crowns in British Columbia as a result of the BC-Alberta agreement coming

together in April 2007, what do you see as the future for the Crowns that presently exist in British Columbia? Are they doomed? Or . . .

Mr. Grieshaber-Otto: — I haven't looked at that carefully. Well in fact I haven't looked at that. I've been focused on Saskatchewan in the last little while, working with Lynn, in that Saskatchewan's use of its Crowns is unique. The Crown corporation sector in Saskatchewan is, I would argue, more vibrant than certainly most other provinces.

Now there is a Crown sector obviously in British Columbia in particular and Alberta, and my sense is that there are some major problems that haven't been addressed there as well. But I'm not sure that the current administrations in those provinces are necessarily so concerned as any administration would be in Saskatchewan given the history of Crown corporations in their respective provinces. But I could be mistaken on that.

Mr. Chisholm: — Okay. Thank you.

Mr. Grieshaber-Otto: — But it's certainly something that if, you know, if the Government of British Columbia and the governments of Alberta were intent upon protecting the public interest, it's certainly something that they — if they haven't already — would want to examine very, very closely. But having said that, I cannot understand why, if that was an aim in signing the agreement, there isn't a carve-out for Crown corporations because there isn't.

The Chair: — Ms. Crofford.

Ms. Crofford: — Yes. I've got a quick question but maybe a long answer. One of the things we don't seem to be hearing much about here is how this might affect the farm sector. And I'm just wondering if anyone has done an analysis on that as to how that would be treated as far as subsidies goes.

Mr. Grieshaber-Otto: — Oh I haven't looked at that I'm afraid. I did notice that the . . .

Ms. Crofford: — I perked up when they said you farmed. I thought you might know.

Mr. Grieshaber-Otto: — Yes. Yes, the trouble is each sector has its own universe, right? Crown corporations have their universe.

Ms. Crofford: — And do you know of anyone who's particularly doing work on that? Is the farmers union going to be presenting here?

A Member: — APAS [Agricultural Producers Association of Saskatchewan].

Ms. Crofford: — APAS. So we'll hear from some people in the farm sector.

Mr. Grieshaber-Otto: — Yes. But it's important to remember though that agriculture investment, agriculture services, agriculture trade is treated like other parts of the economy, right? There are some specific exemptions, and I have looked at the exemptions for agriculture in BC in the terms of marketing

boards and so on. And it took me a while to try and sort them out because they're poorly worded, and I'm convinced there's some drafting errors in the actual text. But I haven't followed it up because it is not done to a standard that's . . .

Ms. Crofford: — Yes, just because that's such a big area in Saskatchewan and everything from, you know, gas to even property tax rebates, whatever. It just seems like a big, important area to look at.

Mr. Grieshaber-Otto: — It's not just subsidies you need to look at either. It's investment that relates to agriculture. So you know, if you have agricultural organizations that invest or perform services in relation to agriculture, that could be threatened by other sectoral investors from other provinces. Then you need to look at that too.

Ms. Crofford: — Okay. Yes, I think that's something that we're going to have to ask for a little more input from either the department or somebody, just so we have a little better feel for the agricultural area.

The Chair: — Yes, I'm making notes of the questions that we would want to compile.

Mr. Grieshaber-Otto: — I can say that the private enforcement process would apply to agriculture, agricultural investments.

Ms. Crofford: — Okay.

The Chair: — Mr. Duncan.

Mr. Duncan: — Thank you, Madam Chair. Good afternoon and welcome to the committee. In one of your answers to a question from Minister Yates you indicated that it was your opinion that TILMA's the wrong model. Is AIT the right model or a better model? Or what would be the right model? Is there any . . .

Mr. Grieshaber-Otto: — I can say unequivocally that because the AIT does not contain a private enforcement process, the AIT is a better model. There's no question about that . . .

Mr. Duncan: — But then how do you square that with . . .

Mr. Grieshaber-Otto: — In terms of democratic accountability and the ability of governments to serve the interests of the population.

Mr. Duncan: — Sure. But how do you . . . okay then. And I appreciate that answer. But if according to the provincial government, three-quarters of the AIT panel's rulings over the last 10 years have not been implemented by defaulting governments, what is the point of an agreement if there's no enforcement? Or maybe do you have a recommendation as how to enforce an agreement between parties, between governments in a better way than what TILMA sets out?

Mr. Grieshaber-Otto: — No, no, that's a key issue, and it's one that I think jurisdictions throughout the world are struggling with because under the GATT as we all know there is a diplomatic process that sometimes served well and other times

did not from Canada's perspective.

That went to NAFTA, and the whole thought was that a binding dispute settlement between the parties in NAFTA would somehow result in trade irritants being overcome. Well in BC with the Softwood Lumber Agreement we know that's not the case. Like it didn't have that effect. So the notion that by trying to constrain governmental authority by having a private enforcement process attached to an agreement is somehow going to solve those sorts of issues, which are essentially political in nature, I don't think is correct.

I haven't spent time in the last 15 years — I have to confess — examining what the best option would be. What I can say and what I have been doing is trying to analyze the models that have been coming at us from all directions that have more and more curtailed the ability of governments to act in the public interest. It's hard to think of options when you're getting a new agreement.

TILMA took me by surprise, you know, when I read it and I thought well this is even worse than NAFTA's private enforcement process. You know, I was stunned quite frankly because I didn't know it could be done, but it's been done. So I think there should be a whole new effort. If you're saying it should be an effort to come up with an alternative model for arrangements between sovereign provinces, sovereign states, and sovereign countries then, yes, we should embark on that task. But that would entail not adopting agreements of this sort as a prerequisite.

Mr. Duncan: — Just one final question. On page — or it was a slide, I guess — 13, page 13 regarding Crown corporations, just the part that, when the transitional period ends and ministers have not reached an agreement, is there anything of your reading of the TILMA agreement, is there anything in there that would not allow ministers from putting in extensions if they haven't been able to . . .

Mr. Grieshaber-Otto: — Oh yes, sorry. It is possible to extend the two-year limitation period to some longer period. It could be three years. It could be four years. But the same point remains. After that four years if there is one minister in any TILMA country that says, no, no, no, no, we want Saskatchewan Crown corporations sector included, with a couple of exceptions maybe, then that's what it would be.

Mr. Duncan: — But just to follow up on that. If — say — the minister for BC says that about Saskatchewan Crown corporations and basically vetoes it, what happens if the Saskatchewan minister tries to veto that? Like how . . .

Mr. Grieshaber-Otto: — Tries to veto what?

Mr. Duncan: — Well for BC to say no, we want Crown corporations in Saskatchewan included, no exemptions, and the Saskatchewan minister comes forward and says, we want an exemption or we want a new clause basically vetoing what BC has said. I guess I don't really follow the process of what happens when they come to loggerheads.

Mr. Grieshaber-Otto: — Well the agreement is not silent, but you have to read carefully. If nothing happens, if they're at

loggerheads, full coverage. Full coverage results and that's a crucial point. And that's a point that some of us missed for a while because we were so intent on, well, what can you negotiate in that two years time?

But if there's deadlock, then the agreement assumes full coverage. So it's a way of holding . . . I guess the negotiators, whoever drafted it, was thinking that it would be a way of holding the provinces feet to the fire. And it goes along with the whole notion of a top-down agreement, that everything's included unless you're able to exempt out certain things.

But what that leads to, of course, is the exemption of subsets of sectors. And of course what that leads to then is the potential for investors to examine what those subsets are and where they end, where they don't — there's always grey area there, right? — and to exploit those grey areas in any private enforcement process and take a chance on mounting a challenge, because the issue will not be decided if a challenge is raised by the Government of Saskatchewan. Ultimately who decides is the appointed three-person panel.

Mr. Duncan: — Thank you.

The Chair: — Mr. Iwanchuk.

Mr. Iwanchuk: — Thank you very much. I'm probably with those as well that I would say that this is quite complex, and it has many sort of sides to it. I have been looking at the private enforcement process here, and I'm glad you mentioned that. It's sort of . . . I think some of you have answered some of the questions. But if I understand it correctly, you said this is an enforcement process that comes out of corporations and . . .

Mr. Grieshaber-Otto: — Yes.

Mr. Iwanchuk: — And so are a lot of the precedents, would the precedents come from those kind of situations? Or is that already dealt with within the TILMA agreement? You know, like what is there some sense of . . . you know, is this model — because I had asked that question before — where does this model come from? And then so where do they take their guide from? Or what could . . . maybe if there is no answer. I mean I don't know.

Mr. Grieshaber-Otto: — Well the model is NAFTA, and the model for private enforcement writ large I would say is from NAFTA and bilateral investment treaties that are being signed between two countries around the world. There are hundreds of them literally, since NAFTA was signed in 1994. They've just proliferated. And most . . . well many, many of them include a private enforcement process.

TILMA's is different though because the number of people, the subset of individuals and corporations that can bring cases is broader than under NAFTA as I said in the presentation. So it goes further than NAFTA. And that, if you combine that together with the fact that article 3, which says no obstacles to investment, is broader than what's in NAFTA. And there are other aspects of the agreement in TILMA that are broader or unclear. When you combine those two it's much more problematic, I would argue, than NAFTA.

So although it's the same model, it does go further. And from the standpoint of democratic decision making, it's worse than NAFTA or any other bilateral agreement I've seen. In my years of examining international investment and trade agreements, this is the most extreme that I have seen.

Mr. Iwanchuk: — So when they talk about judicial review but just in looking at the material that's only of the awards that . . .

Mr. Grieshaber-Otto: — Of the awards, that's correct. That's correct.

Mr. Iwanchuk: — Well thank you.

Mr. Grieshaber-Otto: — Just a little anecdote. When I worked in the Government of British Columbia on trade issues some years ago, we were involved in checking some of our analyses with some legal experts in expropriation law in Vancouver. And we were in their offices and we were trying to explain the provisions of NAFTA because they didn't know them. They were dealing in domestic expropriation law in British Columbia in terms . . . You know if you rollback cutting rights in British Columbia, you know, do you have to compensate and under what conditions do you have to compensate? How much? All those sorts of things are dealt with under domestic law.

And we were saying it's a whole new ball game because under NAFTA the expropriation clauses in the private enforcement process introduces a whole level of complexity and rules that are separate from, distinct from, and different from the domestic law.

And the eminent lawyer who was there, who we were consulting, looked up at his wall of books and said, do you mean that I should have to throw all these books away and get a different set of books? And we said no, no, no. But the point is you have to keep those books. But you just need another wall for the investment treaty books and figure out how they mesh. And that would be the case here too because it is a separate structure, a separate legal structure that exists independent, related to but distinct from domestic provincial law.

Mr. Iwanchuk: — Thank you very much.

Mr. Grieshaber-Otto: — Thank you, sir.

The Chair: — Well being close to the hour of completing our deliberations for today, we thank you very much for the presentation that you've brought before us. Thank you, Ms. Gidluck, on behalf of your organization and for the research point of view that you've provided to the committee, and wish you well on your travels back home. Thank you again. And we will conclude the day's activities.

Mr. Grieshaber-Otto: — Thank you very much.

The Chair: — I would remind committee that tomorrow I had another engagement arranged outside of Regina, so Mr. Weekes will be in the Chair. The first presenters will be here, wanting to present at 9 a.m. And I wish you well tomorrow in your deliberations.

I think that there's been a slight change in the afternoon as well,

and hopefully Mr. Weekes will be better at presenting you with some recess times. But until I see you Thursday, all best wishes in your deliberations. Committee adjourned.

[The committee adjourned at 17:00.]