

**COMMERCIAL TOBACCO
IN
FIRST NATIONS & INUIT
COMMUNITIES**



**Non-Smokers' Rights Association/
Smoking and Health Action Foundation
Trevor Haché, Outreach and Information
Coordinator**

March 2009

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Introduction

A number of issues in tobacco control overlap and intersect with Aboriginal tobacco issues. Some issues, such as the sale of cheap cigarettes to both Aboriginals and non-Aboriginals on and off reserves, are threatening to become a public health disaster. It would be beneficial for both the Aboriginal and non-Aboriginal communities in Canada to understand what the current issues are. Non-Aboriginals should understand the sacred and spiritual role tobacco has played in some Aboriginal societies, as well as the role commercial tobacco plays in alleviating the often crushing poverty and unemployment on reserves today. Aboriginals should understand the impact cheap cigarettes have on Canada's tobacco control efforts for the overall population.

It is recognized that jurisdictional concerns surface when discussing the issue of commercial tobacco and Aboriginal communities. However, raising the price of cigarettes through tobacco taxation and banning smoking in public places and workplaces are among the most effective public health policy measures that can be enacted to reduce cigarette consumption. These same policy measures, which have been applied in Canada and around the world to reduce the public health burden created by tobacco industry products, can also be successfully applied in Aboriginal communities, as long as there is political will to do so. Today, these policies are frequently undermined in some First Nations communities. Smoke shack operators in the business of selling 200 cigarettes for as little as \$8 a bag are a common sight in some First Nations communities. Two-hundred cigarettes in a baggie is the equivalent of a carton of cigarettes that typically sells off-reserve for \$65 - \$90 with all applicable taxes applied. Some band councils are allowing smoking in casinos and bingo halls as a way to attract non-Aboriginal people into their communities to spend money. More and more tobacco manufacturers are operating on reserves, making community members reliant on the industry for employment and income.

The use of cigarettes to access the potent drug nicotine has devastating consequences for those who cannot escape its addictive grip. Regardless of race, addiction to cigarettes is often a life sentence that causes the death of half of all long-term users. This death toll is bad enough among the non-Aboriginal Canadian population, which has a smoking rate of 19%. For many Aboriginal communities, some of which have smoking rates hovering around 60%, the damage is particularly grim and will continue to be felt for generations to come.

Nonetheless, there is progress. More than 25 First Nations now collect some form of tax on tobacco, the proceeds of which stay in their communities. Other reserves ban smoking in public places and workplaces. And some community leaders are starting to speak out against the tobacco companies preying on their people.

This paper is designed for policy makers and interested members of the public who would like to acquire a better understanding of the many facets that make up the larger issue of tobacco and Aboriginal communities. First, the paper details information regarding the role tobacco traditionally played in some First Nations cultures, as well as the ceremonial and spiritual applications of it today. Second, smoking rates and health outcomes for both First Nations and Inuit people are examined, as well as the links between cigarette addiction and poverty. Tobacco

taxation and its positive impact on public health are highlighted. Exposure to second-hand smoke in workplaces and public places on native reservations highlights the jurisdictional disagreements that currently exist among Aboriginal band councils, provincial governments and the federal government. This issue is examined in the context of recent developments in Saskatchewan, Manitoba, Ontario and Nunavut.

In addition, the problem of contraband tobacco is a very serious one, that is poised to become even bigger if swift action is not taken. This paper also aims to highlight the problems and implications of cigarette sales on reservations to non-Aboriginal people and of cross-border smuggling. Finally, a profile of some of the Aboriginal cigarette manufacturers in Canada and New York State is provided along with an analysis of their activities.

It is hoped that such an exercise will foster understanding, stimulate informal dialogue among stakeholders and lead to the implementation of concrete solutions. Commercial tobacco is destructive to Aboriginal and non-Aboriginal communities. Any meaningful and lasting solution to the tobacco epidemic will require a true collaboration of effort from both groups. Ultimately, it is hoped that the misery and death wrought by tobacco industry products can be lessened in Aboriginal and non-Aboriginal communities alike.

History of Tobacco Use in First Nations and Inuit Communities

Tobacco has been used in the Americas for thousands of years. Humans first encountered the plant about 18,000 years ago, but it is estimated that its cultivation didn't start until more than 13,000 years later, between 5,000 and 3,000 BC. Research has established that the cultivation of tobacco originated in South America, in the Peruvian/Ecuadorian Andes.¹

Indigenous people in different regions of the Americas had various ways of using the plant, and they used different species of it in different regions. Some dried it, toasted it, pulverized it then sniffed it. Tobacco is said to have been pulverized and combined with other plants, especially coca leaves, for sniffing. In the swamplands of the Amazon, it was made into a tea and drunk. Shamans drank the juices of the leaves as a source of visions.

When Christopher Columbus arrived in the Americas from Europe in 1492, tobacco had expanded its range from the mainland to offshore islands, including Cuba. As tobacco use moved northwards into Central America and the Caribbean, smoking became the more prevalent form of consumption. In what is now Mexico, corn-husk cigarettes appeared. Pipes of stone, wood, clay and bone were used by various tribes in what is now the United States. The Royal Ontario Museum in Toronto has collected almost one hundred ceramic smoking pipes in the Great Lakes area of Ontario, which were used by the Iroquois people.

There are historians who suggest it was common for indigenous people in America to fully inhale when smoking, as was holding their breath to keep the smoke in their lungs, to produce intoxication. Some tobacco species had such a strong narcotic effect that bark and grasses were mixed in with the tobacco prior to smoking it to dampen those effects.²

The Inuit's history with tobacco is very different from that of other indigenous people in Canada. Because of extremely cold temperatures in the far north, cultivation of any crops, including tobacco, simply isn't viable. Tobacco was therefore not used in the far north until it spread from Europe, through extensive trading between the Inuit and both the Hudson's Bay Company and the North West Company. During the fur-trading era, these companies used tobacco in gift-giving ceremonies, along with alcohol. These "gifts" were used by the highly competitive Euro-Canadian fur traders to induce Aboriginals to trade with one company or the other. Aboriginals and Europeans began smoking tobacco together to seal their trade agreements or in honour of their new relationships. As time passed, Canadian Inuit began smoking tobacco more and more.

The North West Company is still active in Canada, supplying food products and services to northern communities. In 2004 and 2005 its annual Wintering Partners Conference and Trade Show was jointly sponsored by Imperial Tobacco Canada, Rothmans, Benson & Hedges (RBH) and the National Smokeless Tobacco Company. In 2008, JTI-Macdonald and RBH both were trade show partners/sponsors. Tobacco companies' business interests in the north are well-founded, as the Inuit continue to have the highest rates of smoking and tobacco use in the

country, with approximately 70% of the adult population identified as current smokers.³

Ceremonial and Spiritual Uses in First Nations Communities

Tobacco is viewed as a sacred plant by many First Nations and Métis people across North America. It is used in prayer, and commonly burned during ceremonies to communicate with spirits and sacred beings. Many believe it to have curative properties, such that it can be used to assist in an individual's healing journey and can also be used in symbolic cleansing or decision-making activities. As noted by the authors of *Tobacco: A Cultural Approach to Addiction and Recovery for Aboriginal Youth*:

Tobacco smoke is frequently used to cleanse or purify an individual participating in a ceremony, or an object or place to be part of that ceremony. The sharing of the smoke creates a spiritual connection between the person offering it and the spirit receiving it. Ceremonial pipes are frequently used in many different rituals and are themselves of considerable symbolic significance and accordingly, are treated as sacred objects.⁴

During ceremonial and spiritual activities, tobacco is not always burned or smoked. Some methods of use include simply placing it on hot coals or throwing it into a fire. Other times it is held in the bare hand, then placed on the ground or on water. When some Aboriginal people take plants or animals for sacred use, tobacco is traditionally left in the place where the plant or animal was taken from as an offering and sign of respect and gratitude.⁵

In an attempt to stop the spread of nicotine addiction in their communities, some First Nations public health workers emphasize the fact that traditionally tobacco was used ceremonially once or twice a day, but never recreationally nor in an addictive or “abusive” fashion. Much of First Nations-led tobacco control in Canada has therefore focused on differentiating between traditional and commercial uses of the plant, emphasizing the importance of a holistic, community-based and culturally appropriate approach to public health initiatives.⁶

Aboriginal Smoking Rates and Health Outcomes

As previously mentioned, First Nations and Inuit people have the highest smoking rates in Canada. Fifty-six percent of on-reserve First Nations people between the ages of 18 and 45 are current smokers.⁷ A study from Manitoba published in 2005 indicates that 61.2% of Aboriginal women smoked during pregnancy — a significantly higher proportion than the 26.2% of pregnant non-Aboriginal women who smoked.^{8,9} In September 2006, a Canadian Cancer Society official in Manitoba indicated that cancer could soon overtake diabetes as the number one killer of First Nations people in Manitoba. The main cause of the rise in cancer rates is smoking.¹⁰

Seventy-one percent of Inuit people between the ages of 18 and 45 who live in the north are

current smokers. Almost half (46%) started smoking at age 14 or younger.¹¹ These elevated rates of tobacco use are having disastrous public health impacts. Lung cancer rates in Nunavut are four times the national average, and lung cancer mortality is nearly 10 times higher for women in the north than in the rest of Canada.¹² Unless a significant change is made, these troubling figures are likely to remain high, as the smoking rate amongst adolescents (12-19 years) in Nunavut is almost three times higher than the teen smoking rate in the rest of Canada.

Tobacco and Poverty

The health risks associated with tobacco use are widely known. The connection between tobacco use and poverty is less publicized and understood. Worldwide, the economic costs of tobacco use are devastating. While governments are burdened by higher medical costs and businesses struggle with productivity losses, families and individuals suffer in a similar fashion from lost earnings due to illness and disease. Often, it is a family's main wage-earner who is cut down early due to tobacco-related disease or death.

In Canada, Aboriginal people living on reserves generally experience worse social, economic and environmental conditions than those of non-Aboriginal people.¹³ Lower socioeconomic status corresponds to a higher rate of cigarette use.¹⁴

Those in favour of First Nations being allowed to illegally manufacture and sell tax-free cigarettes to non-Aboriginals often cite the poverty on reserves as justification for the business. They claim that there are few economic development opportunities available and that selling cheap cigarettes employs hundreds of people in communities such as Six Nations, Tyendinaga, Kahnawake and Kahnésatake.

There are undoubtedly serious health and social challenges on reserves. However, in order to halt the negative public health ramifications of widespread cigarette addiction, the same policy measures enacted to discourage cigarette use in the general Canadian population — such as implementing smoke-free workplaces, banning tobacco advertising and pricing cigarettes prohibitively high through taxation — can be enacted by First Nations communities with great success.

Enacting these policies, especially the prevention of tax-free cigarette sales on reserves, will undoubtedly lead to some job losses. But the question must be asked: when did jobs become more important than the lives of people who will be killed by tobacco industry products? If communities fail to enact effective tobacco control measures, many people will needlessly die.

First Nations and Inuit Tobacco Control Strategy

The Federal Tobacco Control Strategy (FTCS) “is directed at Canadians of all ages, with a particular emphasis on youth, young adults, First Nations, Inuit, and other Aboriginal groups.”¹⁵

This emphasis on “First Nations, Inuit, and other Aboriginal groups” is necessary. As previously noted, while the smoking rate of Canadians aged 15+ has dropped below 20%, over half of First Nations and Inuit people smoke tobacco industry products. A 2002-03 national survey of on-reserve communities estimated that 59% of First Nations members smoked (46% were daily smokers, 12.8% occasional).¹⁶ Smoking rates of Inuit are 66% (58% are daily smokers, 8% occasional).¹⁷

In April 2001, the federal government announced a 10-year FTCS, with an initial five-year budget of \$559.8 million. As part of this strategy, a \$50 million budget was allocated for the First Nations and Inuit Tobacco Control Strategy (FNITCS), which was to be managed by the First Nations and Inuit Health Branch (FNIHB) of Health Canada. The FNIHB component of the FTCS was aimed at addressing the high rates of tobacco use in First Nations and Inuit communities.

Funding Eliminated

The FNITCS was to have received \$50 million over five years, including \$10.8 million in its last year (2006). However, in September 2006, the government announced that the Strategy was not achieving “value-for-money.” The annual budget for Health Canada’s First Nations tobacco control program was completely eliminated, but some funding commitments made to external agencies through grants and contributions were honoured until the end of the 2007-08 fiscal year.

September 2009 will mark the two year anniversary of the announcement to eliminate the FNITCS.

There is currently no tobacco control strategy specifically designed for First Nations and Inuit communities in Canada, and despite meagre project funding announced by the federal Health Minister in February 2009,¹⁸ it appears as though no comprehensive strategy is being developed to bring down smoking rates. By any measure, this is unacceptable.

Even while the FNITCS was functioning, its expenditures in any given year were lower than the amounts allocated. In a March 2007 evaluation of the Strategy, Health Canada reported that this occurred for one or both of the following reasons:

Canada ratified the Framework Convention on Tobacco Control (FCTC), the world’s first public health treaty, in 2004. The Preamble of the FCTC indicates that all Parties to it are

Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous people,

Article 4 says that all Parties will be guided by a list of principles, including:

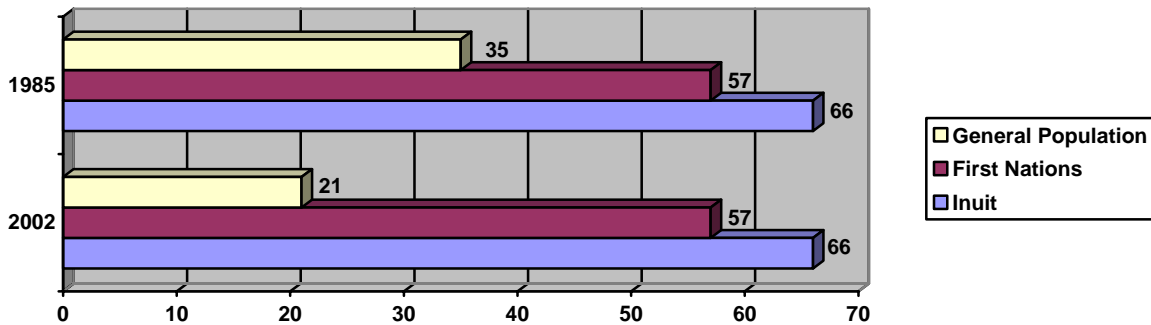
2. Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration:

...
(c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives

- First Nations and Inuit Health Branch headquarters and/or regional management reassigned a portion of the First Nations and Inuit Tobacco Control Strategy allocation to cover costs for other programs; and/or
- Funds from the approved First Nations and Inuit Tobacco Control Strategy budget were committed for specific projects through contribution agreements during the year, but were not spent because some of the projects reported surpluses, were terminated early, or were never implemented because the funding was approved too late in the year.

The lack of progress in reducing cigarette use among Inuit and First Nations communities in comparison with Canada’s general populations is illustrated below.¹⁹

Figure 1: Tobacco use (%) among Inuit, First Nations and general population, 1985-2002



Canada has a fiduciary duty to act in the best interests of Aboriginals.²⁰ When it comes to tobacco control, it is failing in that duty miserably.

RECOMMENDATION: The federal and provincial/territorial governments should work with First Nations and Inuit community leaders to develop a comprehensive, effective and well-funded strategy to reduce commercial tobacco use — and related death and disease. If the federal government does not fund a strategy, the provinces and territories should work together to do so themselves, in partnership with Aboriginals.

Jurisdictional Issues: Second-hand Smoke

The creation of smoke-free public places and workplaces has been identified as one of the most effective policies in reducing cigarette consumption. However, jurisdictional disagreements emerge between First Nations band councils, provincial governments and the federal government when discussing exposure to second-hand smoke in workplaces and public places. While all provinces in Canada have legislation which protects workers from exposure to second-hand smoke, Manitoba's legislation exempts establishments located on First Nations reserves from having to follow those laws. In all other provinces, legislation restricting or banning smoking in public places and workplaces applies on reserves.

According to Rob Cunningham, a lawyer and policy analyst with the Canadian Cancer Society, there is sometimes confusion about legislation and reserves, but from a legal/constitutional perspective there is no doubt that provincial tobacco/smoking legislation applies on reserves.²¹ However, political will is often lacking when it comes to enforcing those laws (see Ontario example below).

The *Indian Act* allows elected band councils on First Nations reserves in Canada to pass bylaws “to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases.”²² The *Act* does not permit Band councils to pass bylaws that will lead to the ill health of residents. Unfortunately, despite legislation in most provinces banning smoking in all workplaces and public places, some band councils in Canada have gone so far as to pass bylaws specifically allowing smoking at certain facilities on their reserves. Thus far, no federal Minister of Indian Affairs has been willing to intervene (either through negotiations or otherwise), despite the fact he has the authority, and some might argue, a responsibility to do so.

In spite of the above-noted legality and constitutionality of provincial smoke-free legislation applying on reserves, there are jurisdictional questions in the minds of *some* elected band councillors and chiefs as to whether or not provincial smoke-free legislation can legally be applied to reserves. Some claim only federal legislation can be imposed on them because they are regulated by the federal *Indian Act*. Citing a strong commitment to self-determination, other First Nation politicians believe only they have the right to decide whether or not smoking is allowed in workplaces in their communities. In some cases allowing smoking at on-reserve bingo halls and casinos is seen as an economic development initiative. Smoking patrons, forced out of gaming facilities off reserves, are welcomed on reserves to gamble their money away. The public health consequences related to Aboriginal bingo hall and casino workers (not to mention patrons) being exposed to this deadly indoor air contaminant is being trumped by economic and jurisdictional arguments.

Heather Crowe, the Ottawa woman who spent her entire 40-year career working as a waitress in the hospitality sector, is just one example of how allowing smoking in workplaces puts people at risk of disease and death. Crowe, a non-smoker who was born in Nova Scotia to a Mi'kmaq mother, had her life cut short at the age of 61 from lung cancer as a result of workplace exposure

to second-hand smoke. Less than two weeks before her death in 2006, Crowe wrote to Assembly of First Nations National Chief Phil Fontaine and urged him to ask all First Nations to ban smoking in all workplaces. Sadly, many of them have not yet done so and the National Chief has never publicly urged chiefs nationwide to protect health by banning smoking in all workplaces.

The brief reports which follow below summarize how jurisdictional issues related to second-hand smoke are playing out in provinces across the country.

Saskatchewan

The Tobacco Control Amendment Act 2004 made all public places in Saskatchewan smoke-free, effective January 1, 2005. Unfortunately, the Federation of Saskatchewan Indian Nations has refused to recognize the legislation as being applicable on native reserves in the province. Specifically, smoking is permitted at five casinos managed by First Nations. Three of the five casinos are on reserve lands that are within the city limits of three Saskatchewan cities – North Battleford, Yorkton and Prince Albert.

The situation creates an uneven playing field for non-Aboriginal business owners nearby who say they are losing customers, who go to the First Nations-run casinos to smoke. But most importantly, the health of casino staff is being compromised for the convenience of smoking gamblers – most of whom are presumably non-Aboriginal. Studies show that levels of second-hand smoke measured in casinos are often much higher than those in other hospitality venues.²³ ²⁴ The U.S. Surgeon General issued a comprehensive scientific report in 2006 which found that *“there is no risk-free level of exposure to secondhand smoke. Nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent.”*²⁵

The fifth First Nations-run casino opened in Saskatchewan in 2007. The Dakota Dunes casino is located on the Whitecap First Nation territory south of Saskatoon. In a CBC news story in February 2006, Saskatchewan Indian Gaming Authority CEO Zane Hansen said the smoking section at Dakota Dunes will have glass walls and a state-of-the-art ventilation system. However, Rob Cunningham, spokesman for the Canadian Cancer Society, said partitioned smoking rooms don't work. *“Even outside of these rooms, the public is exposed because the smoke drifts, leaks, ventilation breaks down, and every time a door is opened, the second-hand smoke escapes.”*²⁶ Cunningham says more First Nations need to start taking the health risks associated with smoking and second-hand smoke seriously by enacting strict bylaws and ending cigarette use in their casinos:

Smoking should not be turned into a sovereignty issue, he said. “If it is a question of sovereignty, then a First Nation can adopt a law that is 100-per-cent smoke free. We should not be going backwards by allowing smoking in the face of valid provincial legislation.”²⁷

A sixth First Nations-run casino opened in December 2008 in Swift Current, Saskatchewan.

Smoking is not currently allowed indoors at the Living Sky Casino as the File Hills Qu'Appelle Tribal Council has entered into a service agreement with the City of Swift Current which stipulates that smoking will not be permitted.²⁸ However, Stephen Shaheed, director of communications for the Saskatchewan Indian Gaming Authority (SIGA), said the Nekaneeet First Nation is applying to the federal government for urban reserve status and, if their request is approved, its tribal council could decide to pass a bylaw permitting smoking at the casino. (The File Hills Qu'Appelle Tribal Council governs sixteen Treaty 4 First Nations, including Nekaneeet.) Shaheed said that if the Living Sky Casino does allow smoking in the future, it would likely follow the policies of the other five casinos which the SIGA operates, permitting smoking in 40% of the facility and prohibiting smoking in the other 60%.²⁹

The six casinos (operated by the Saskatchewan Indian Gaming Authority), their locations and the First Nations that host them are as follows:

1. **Northern Lights Casino** (located on an urban reserve in Prince Albert owned by the Peter Ballantyne Cree Nation)
2. **Gold Eagle Casino** (located on Highway 16 in North Battleford and hosted by the Battlefords Agency Tribal Chiefs, Inc.)³⁰
3. **Painted Hand Casino** (located in Yorkton on the Kahkewistahaw First Nation)
4. **Bear Claw Casino** (located on the White Bear First Nation, near Carlyle, in southeast Saskatchewan)
5. **Living Sky Casino** (hosted by the Nekaneeet First Nation [which has applied for urban reserve status], located in Swift Current on the Trans-Canada highway)
6. **Dakota Dunes Casino** (located on the Whitecap First Nation, south of Saskatoon)

Manitoba

When the *Non-Smokers Health Protection Act* came into force October 1, 2004, Manitoba became one of the first provinces in Canada to ban smoking in public places and workplaces. But the law was controversial because it exempted First Nations reserves from the smoking ban. Robert Jenkinson, a motel owner in the town of Treherne, successfully challenged the legislation in court on the grounds that it was discriminatory and violated his right to equality under section 15 of the *Canadian Charter of Rights and Freedoms*. On August 14, 2006, Justice Albert Clearwater of Manitoba's Court of Queen's Bench issued a judgment which found the exemption to be a violation of the *Charter* and also that Aboriginal people should not be denied the health benefits that would accompany the smoke-free law.³¹ Clearwater ordered the province to start enforcing the smoking ban on reserves in short order.

In a press release, the government of Manitoba indicated that it would attempt to expand the smoking ban to include licensed liquor and gaming establishments located on First Nations reserves, despite strong objections from Aboriginal leaders.³² The government says that expanding the smoking ban to include First Nations reserves requires a three-step approach:

- Existing First Nation VLT sites and establishments that serve alcohol will have one year to comply with the *Act*;
- As casino agreements come up for renewal, the province will work with First Nations casino operators to ensure that they comply with the *Act*;
- All new First Nation video lottery terminals (VTLs) and establishments that serve alcohol must comply with the *Non-Smokers Health Protection Act*.

The government said it intended to negotiate with individual bands about how to apply and enforce the law, noting that “*jurisdiction remains a complex issue, but today we are moving to protect the health of people on reserves while respecting the rights of First Nations.*”

At the same time, the province appealed the decision to the Manitoba Court of Appeal, saying Justice Clearwater erred in his analysis of the legal basis on which the original ruling was made. On March 12, 2008, the Court of Appeal found in the province’s favour.³³

In spite of the law’s exemption of First Nations from the smoke-free legislation, ideally the province would like to protect all Manitobans from second-hand smoke, including people living on reserves. However, a knowledgeable source, who wished to remain anonymous, said the days of forcing laws onto First Nations are “long gone”:

The real question is when and what leadership are the First Nations going to show?

At the time this report was published, the source said that there are probably some First Nations that are still allowing smoking in the VLT sites:

There are 52 First Nations in Manitoba so there is probably a lot going on. Some allow smoking, some don’t. There is definitely some communities where smoking is taking place in establishments with liquor permits and VLTs, but I can’t tell you where because I don’t know.

Despite the province’s reluctance to apply the *Non-Smokers Health Protection Act* on reserves, at least one First Nation is upset. In January 2009, the Brokenhead Ojibwa Nation filed a statement of claim in a Winnipeg court against the province for using its liquor permits and gaming agreements with First Nations to try to expand the smoking ban in public places and workplaces onto the reserves.³⁴ “*The province is trying to force First Nations through policy and economics to do what it cannot do by law,*” the band council north of Winnipeg indicated in a written statement published in *The Winnipeg Sun*.³⁵

This issue will no doubt be followed closely by other provinces and territories, where similar jurisdictional issues are likely to arise.

Ontario

A massive new bingo hall located on the Six Nations reserve near Brantford allows smoking.

According to *The Brantford Expositor* newspaper:

The new hall has a capacity of 1,600, with a 1,000-seat smoking section and a 600-seat non-smoking section. The sections are separated by a glass wall, and by two sets of double glass doors.³⁶

The Bingo Hall, which is owned by Six Nations Council and operated by the Community Development Committee, is scheduled to have its grand opening on April 3, 2009.³⁷

The band council of the Garden River First Nation, located on a reserve east of Sault Ste. Marie, has passed a bylaw allowing smoking in about 50% of its bingo hall.³⁸ Batchewana First Nation, about 22 kilometers east of Garden River, also allows smoking at its bingo hall, with 70% of its bingo hall designated as a smoking area.³⁹ However, both First Nations indicate that smoking is banned in all other band council operated buildings.

Nunavut

Nunavut is the largest jurisdiction in Canada which has an overwhelming Aboriginal majority as its population base. According to the 2006 Census, the population of Nunavut is 29,474,⁴⁰ with 24,640 people identifying themselves as Inuit (83.6% of the total population), 100 as First Nations (0.34%), 130 Métis (0.44%) and 4,410 as non-Aboriginal (14.96%).⁴¹

On May 1, 2004, Nunavut passed the *Environmental Tobacco Smoke Work Site Regulations* under Section 25 of the *Safety Act*, which banned smoking in all workplaces and public places, including bars, restaurants, bingos and casinos. Despite the fact that the majority of the population (53% in 2005) identify themselves as smokers, Aboriginal politicians in the territory recognize comprehensive smoke-free workplace regulations as being a responsible policy measure to enact in order to protect public health.⁴²

RECOMMENDATION: The provinces and the federal government should work with First Nations leaders around the country to raise awareness about the dangers of second-hand smoke and to implement effective smoke-free policies. First Nations leaders, recognizing that second-hand smoke is a known human carcinogen, should prohibit smoking in all public places and workplaces within their territories to protect the health of their people. If politicians in First Nations territories refuse to protect their people, federal legislation should be enacted; designated smoking rooms should not be permitted, as they do not protect workers or patrons from second-hand smoke.

Tobacco Taxation: A Public Health Best Practice

Price has long been known to be one of the most important factors in reducing the consumption of cigarettes. A major study, published in 2000 by the World Bank and the World Health Organization, found that high cigarette prices — achieved through taxation — are “key to cutting cigarette consumption, especially among the poor, the young, and the relatively uneducated.”^{43 44}

Canadian governments, both national and provincial, have understood for a long time the importance of increasing the price of tobacco through taxation in an effort to deter people from using tobacco products. The World Health Organization *Framework Convention on Tobacco Control (WHO FCTC)*, an international public health treaty, requires Parties to implement price and tax measures to reduce the demand for tobacco.

Figure 2: Real price vs. per capita consumption of cigarettes, Canada, 1949-2002⁴⁵

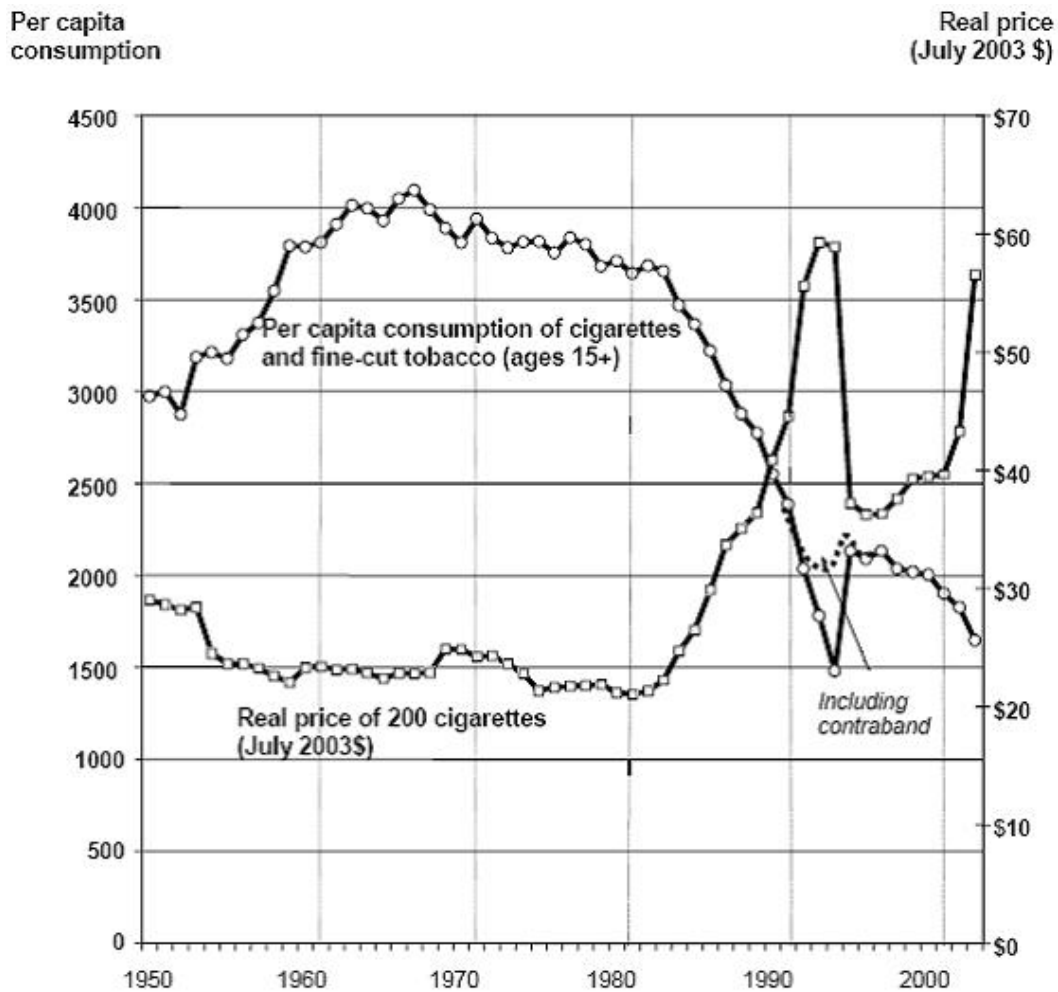


Figure 2 details the correlation between the real price of cigarettes and per capita consumption in Canada from 1949 to 2002. The lines in the graph (which rise and fall in nearly a mirror-like fashion) show that when prices are higher, consumption is lower. The graph clearly illustrates how important it is, from a public health perspective, to ensure tobacco is sold at as high a price as possible.

The public health policy of raising the price of cigarettes through tobacco taxation gained much popularity in the 1980s and the beginning of the 1990s. It contributed significantly to a more than 30% drop in per capita consumption between 1980 and 1993.⁴⁶ But as the graph also shows, consumption in the early 1990s (see the dotted line labeled “including contraband”) flat-lined and then began to rise when there were cheap contraband cigarettes widely available.

What does the law say about First Nations and tobacco taxes?

According to Canadian federal and provincial tax laws:

- Status Indians, i.e. Aboriginals that are part of the Indian Register and have a “Certificate of Indian Status” identity card, are not exempted from paying the federal excise tax when purchasing tobacco products on or off reserves (the federal excise tax is collected when tobacco products leave the manufacturing facility);
- Status Indians are exempted from paying the federal Goods and Services Tax (GST) when purchasing goods on a reserve. They are not exempted when goods are imported into Canada. The GST must also be collected when goods are sold on reserves to Non-Status Indians;
- Status Indians are exempted from paying provincial tobacco and sales taxes on products sold on reserves. The exemption does not apply for non-status Indians.⁴⁷ In some provinces, a refund system has been put in place for Aboriginal retailers. An amount equal to the provincial tax is included in the price for product shipped to reserves. Retailers on-reserve apply afterwards for a tax refund on tobacco product sales to Status Indians.⁴⁸

Can First Nations tax tobacco products themselves?

A First Nations tobacco tax was authorized for First Nations in Quebec in the 2005 federal budget, and extended to First Nations in all other provinces in the 2006 federal budget. Although it is not well known, a First Nations tobacco tax equal to the provincial tobacco tax rate, can be established if several conditions are met:

1. The band council votes to do so.
2. The First Nation enters an administration agreement with the provincial government.
3. The name of the First Nation is prescribed by the federal government to be included in Schedule 2 to the *First Nations Goods and Services Tax Act* (this federal statute

authorizes not only the First Nations GST, but also a First Nations tax on products such as tobacco or alcohol equal to the provincial tax rate).

What happens when taxes are not evenly applied?

When a highly coveted product can be purchased in a jurisdiction nearby for a price far lower than what consumers pay in their own jurisdiction, people are tempted to travel to the neighbouring area to buy the cheaper product, whether or not that purchase is considered legal. The temptation to break the law is made even greater when one considers the addictive properties of cigarettes.

To date in Canada only the Cowichan Tribes, a First Nation on Vancouver Island, has implemented a tobacco tax equal to the provincial tobacco tax rate. Cowichan is also experiencing the complications which come from uneven applications of tobacco taxes. Ernie Elliott, general manager of Cowichan Tribes, said many of their members will make a 30 minute drive to a nearby First Nations community (Chemainus) to avoid paying the high tax levels at Cowichan.⁴⁹

Still, Elliott says collecting the tax has benefited his community, bringing in about \$2 million annually since the tax was enacted in 2001. Twenty five per cent of the money collected funds housing in the community (renovations, repairs); 25% funds jobs and training for community members; 25% funds economic development and initiatives geared towards youth and elders; and the final 25% is distributed to registered band members in the form of a cheque every December. *“It does provide us with another source of income that we can take and put right back into the community,”* Elliott said. *“The money funds youth centres, youth services, counseling, sports registration. We recently hosted the North American Indigenous Games.”*

Most years the cheques distributed to all community members are worth about \$130 per person, which is helpful just before Christmas, he added. And the people of Cowichan Tribes are smoking less, he said: *“Now our people will only buy one or two packs at a time [at Cowichan] as opposed to a carton.”*

When Cowichan Tribe members travel to Chemainus to purchase cheaper cigarettes, not only do they end up smoking more, damaging their own health, they also contribute less financially to their own community.

If tobacco taxes were applied at a consistently high rate across the country, both on-reserves and off, Canadian smokers would quit much faster than would otherwise be the case. Elliot says he has witnessed this in his community: *“So many of our people are on fixed incomes, social assistance/employment insurance, that after a while [when tobacco taxes are increased] you can’t afford to smoke anymore.”* High prices have also proven to be an effective deterrent against youth initiation.

Elliott said outsiders who would come onto the reserve looking for cheap cigarettes prompted the community to give up its tax-free status:

Buyers would come in and pay people to buy their quota. They would park in their van, and weren't community members. It was like buying wholesale and then going somewhere else and selling it retail. It got pretty bad, because some people would take the money and not buy smokes and disappear. These buyers were putting up a lot of money; then they would go looking for the people [who took the buyers' money and didn't return with the smokes]. It got a little scary, the police were involved.

Although the First Nations tobacco tax is the preferred option, since it increases cigarette prices the most, there are two other options for First Nations interested in taxing tobacco (the First Nations Sales Tax and the First Nations GST).

First Nations Sales Tax

In 1998, the Government of Canada began providing taxation powers to First Nations, making it possible for them to enact bylaws imposing their own sales tax on reserves for fuel, tobacco products and alcoholic beverages. This tax is known as the First Nations Sales Tax (FNST).

The FNST rate is 5%. To date, it has been implemented by the band councils of 11 First Nations, all in western Canada (shown below in Figure 3).⁵⁰ It is administered by the Canada Revenue Agency on behalf of the band councils that have passed bylaws to impose the tax on their reserves.

Figure 3: First Nations That Have Implemented the FNST

First Nation	Effective date
Kamloops (BC)	August 6, 1998
Sliammon (BC)	August 23, 1999
Westbank (BC)	August 25, 1999
Chemainus (BC)	August 14, 2000
Buffalo Point (MB)	September 28, 2000
Adams Lake (BC)	April 11, 2001
Tzeachten (BC)	June 5, 2001
Shuswap Band (BC)	January 7, 2002
Cowichan (BC)	April 9, 2002
Whitecap Dakota (SK)	May 12, 2004
Little Shuswap Lake (BC)	May 1, 2006

First Nations Goods and Services Tax

After the FNST started being collected, some First Nations requested a broadening of their taxation powers so a sales taxes could be applied to the full range of goods and services normally taxed under the GST. In 2003, the Government of Canada enabled band councils to enact the First Nations Goods and Services Tax (FNGST) on reserves and settlement lands, thus providing Aboriginal governments with a second mechanism for taxing tobacco.

Twenty-two Aboriginal governments have chosen to implement the FNGST since 2004, as shown in Figure 4, primarily in the north and in B.C. FNGST administration agreements are also being prepared for several other Aboriginal governments but have not yet been signed.⁵¹

Figure 4: First Nations that have implemented the FNGST⁵²

First Nation	Effective date
Champagne and Aishihik First Nations (Yukon)	June 15, 2004
First Nation of Nacho Nyak Dun (Yukon)	June 15, 2004
Little Salmon/Carmacks First Nation (Yukon)	June 15, 2004
Teslin Tlingit Council (Yukon)	June 15, 2004
Vuntut Gwitchin First Nation (Yukon)	June 22, 2004
Tr'ondëk Hwech'in First Nation (Yukon)	June 23, 2004
Ta'an Kwach'an Council (Yukon)	June 25, 2004
Kluane First Nation (Yukon)	December 15, 2004
Tlicho First Nation (Northwest Territories)	December 5, 2005
Tsawout First Nation (British Columbia)	October 1, 2006
Selkirk First Nation (Yukon)	June 15, 2007
Kwanlin Dun First Nation (Yukon)	August 20, 2007
Nunatsiavut Government (Labrador Inuit)	August 20, 2007
Carcross/Tagish First Nation (Yukon)	December 17, 2007
Akisqnuq First Nation (British Columbia)	January 1, 2008
Lower Kootenay Indian Band (British Columbia)	January 1, 2008
Shuswap First Nation (British Columbia)	January 1, 2008
St. Mary's Indian Band (British Columbia)	January 1, 2008
Tobacco Plains Indian Band (British Columbia)	January 1, 2008
Nisga'a Nation (British Columbia)	July 30, 2008
Whitecap Dakota First Nation (Saskatchewan)	January 2, 2009
Tsleil-Waututh Nations (British Columbia)	November 13, 2008

Raising cigarette prices = protecting health

Raising the price of cigarettes through a tax or surcharge on tobacco products would lower the consumption of these addictive and deadly products in First Nations communities. Revenues generated could be used in part to help fund much-needed economic and social programs for poverty-stricken communities. Unfortunately, very few Aboriginal communities in Canada have taken advantage of this public health strategy, even though it would be effective and easy to implement.

People in Aboriginal communities working for and profiting from the manufacture and sale of tobacco oppose attempts to tax the product. More and more people on some reserves seem to be getting into the tobacco manufacturing and sales businesses. Smoke shacks are a common sight on many reserves throughout Ontario and Quebec.

People in Aboriginal communities responsible for public health need to understand that surcharges and taxes are resisted vehemently worldwide by all tobacco manufacturers, distributors and retailers. This resistance is one of the clearest indications as to the effectiveness of the policy. The public health benefits associated with higher prices should trump the vested interests of those that stand to gain financially by the status quo.

RECOMMENDATION: First Nations should protect the health of their people by increasing the price of tobacco products using some form of tobacco tax. The federal and provincial governments should work with First Nations leaders to develop and help fund an awareness-raising campaign to inform First Nations of the tobacco taxation opportunity and the benefits (particularly to public health) that will arise if implemented.

Contraband Tobacco in Canada

Tobacco tax avoidance in the early 1990s

The tobacco industry has described taxation on numerous occasions as the single most important threat to its market because of the detrimental effect of higher prices on their sales. As the price of cigarettes increased, smuggled Canadian cigarette brands began to appear in 1990 and rose gradually to reach close to 30% of the domestic market in 1993. Canada's largest tobacco companies began exporting vast quantities of Canadian cigarettes to U.S. duty-free warehouses which were then diverted and reintroduced illegally, i.e. untaxed, into Canada, mainly through the Akwesasne/St.Regis First Nations reserve, which straddles the Canada-U.S. border in eastern Ontario and western Quebec.

Political pressure to resolve the crisis led to a drastic cut in tobacco taxes by the federal government and five provinces (Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island) in 1994. Although taxes remained high in the rest of the country, tobacco smuggling dropped sharply because the Canadian tobacco industry decided to stop shipping its cigarettes to U.S. duty-free warehouses. It had succeeded in its campaign to lower tobacco taxes for more than two-thirds of the Canadian population.

Was the tobacco industry responsible?

Unfortunately, the extent of the Canadian industry's involvement in the smuggling crisis only became clear years later through testimony of industry whistleblowers and the release of internal industry documents made public following litigation in the United States. Authorities responded by introducing measures, such as a significant export tax in 2001, to prevent any further smuggling and by conducting investigations into the tobacco industry's past behavior.

In July 2008, as part of an agreement with the federal and provincial governments, both Imperial Tobacco and Rothmans, Benson & Hedges pled guilty to "*aiding persons to sell and be in possession of tobacco manufactured in Canada that was not packed and was not stamped in conformity with the Excise Act.*" More than \$1 billion in fines and civil damages were levied against the companies.^{53 54}

As for JTI-Macdonald, the Ontario Superior Court of Justice ruled that there was sufficient evidence for the company and seven of its former executives to face criminal charges in court. Two of its former executives have already been convicted. The federal and eight provincial governments are also engaged in civil proceedings against the company to recover \$10 billion in lost revenues. However, it is possible that an out-of-court settlement will also be struck with JTI-Macdonald.

What has happened with tobacco taxes since then?

Following the 1994 tax rollbacks, a “gentlemen’s agreement” was reached between the federal government and the provinces to slowly and collectively raise tobacco taxes in tandem and closely monitor any market fluctuations. The agreement was eventually abandoned once tobacco taxes returned to their prior levels.

Provincial governments have since responded positively to numerous calls from health agencies for more substantial tax increases. Although provincial taxes in Quebec and Ontario are now the lowest and second-lowest, respectively, in Canada, the total price for a carton of 200 cigarettes now exceeds \$80 (US\$72) in several provinces.

As previously mentioned, high-priced cigarettes are an essential component of a comprehensive and effective tobacco control strategy. When prices are higher, consumption, especially among teenagers who are price-sensitive, is lower. In the interests of maximizing profits and maintaining an influx of new customers, tobacco manufacturers resist increased tobacco taxation. Indeed, some tobacco manufacturers have been complicit in smuggling activities.

What is the current situation?

Tobacco smuggling is once again flourishing in Canada. The impact is being felt especially in Quebec and Ontario. However, the contraband problem is also spreading to other jurisdictions such as Saskatchewan, Manitoba, Newfoundland, New Brunswick, Nova Scotia, and also, according to a State Department of Health report, New York.^{55 56 57 58}

The Royal Canadian Mounted Police (RCMP) defines contraband tobacco as “*any product that does not comply with the provisions of all applicable federal and provincial statutes. This includes importation, stamping, marking, manufacturing, distributing and payment of duties and taxes.*”

When the RCMP released its 2008 Contraband Tobacco Enforcement Strategy, it identified the largest source of illegal tobacco in Canada as originating from manufacturing operations in First Nation communities “*on the U.S. side of Akwesasne and Kahnawake in Quebec and Tyendinaga and Six Nations in Ontario.*”⁵⁹

The RCMP also made a point of highlighting the fact that not all manufacturing operations in these communities are illegal, and that the majority of community members in these communities are not involved in the illegal operations, nor do many people in the communities support the operations.

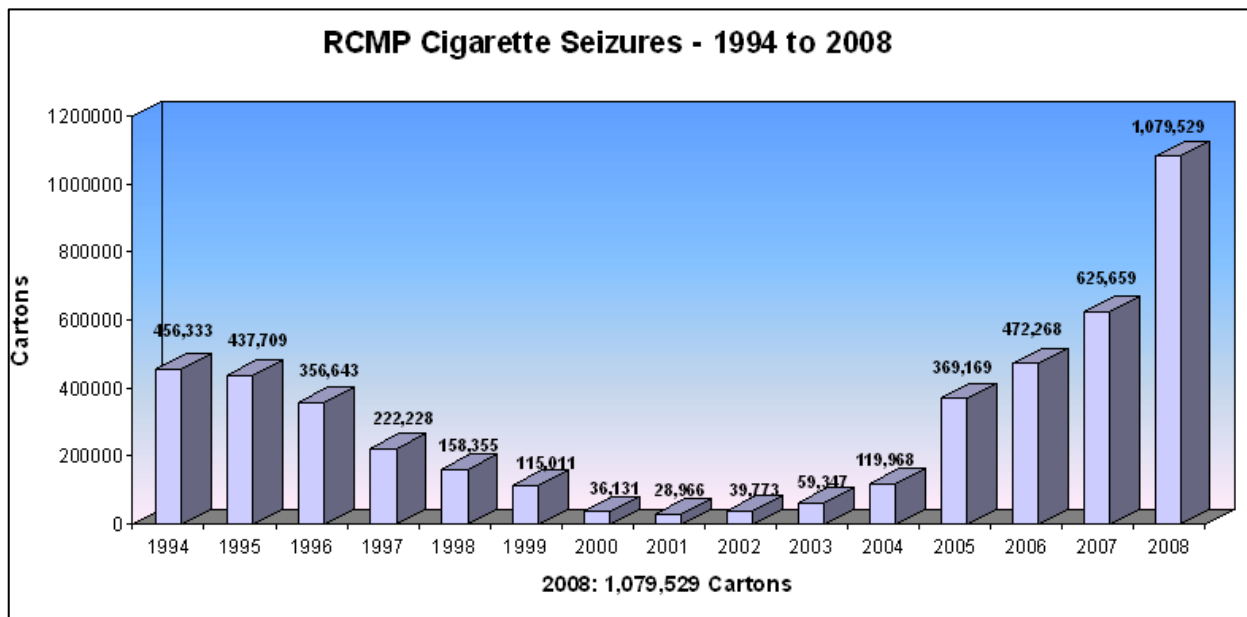
Although the largest source of illegal tobacco originates from manufacturing facilities located in those communities, in total the police said there are four sources through which contraband products are entering the Canadian tobacco market:

- Illicit manufacturing operations located on First Nations territories in Canada and the U.S.;
- Illegal importation of counterfeit cigarettes (copies of Canadian cigarette brands) made in countries such as China;
- Canadian brand-name cigarettes shipped to reserves and diverted back to the domestic market to be sold without all applicable taxes paid; and
- Cigarettes stolen from convenience stores and truck shipments.^{60 61}

Illegal cigarettes are currently available on the black market in plastic bags, commonly known as “baggies,” or in regular carton packaging at prices ranging from \$6.00 to \$20.00 for 200 cigarettes. At such low prices, there are obviously no federal or provincial taxes collected on these products. They are sold to Aboriginals and non-Aboriginals alike, in smoke shacks located on First Nations reserves, or through clandestine networks operating off-reserves.

The Royal Canadian Mounted Police (RCMP) has reported a dramatic increase in seizures of illicit cigarettes in recent years. It reports that 90% of the contraband it is seizing in Canada is manufactured on the Saint Regis Mohawk Reservation, on the U.S. side of Akwesasne.

Figure 5: RCMP Cigarette Seizures from 1994 to 2008



As Figure 5 illustrates, RCMP seizures increased by more than twenty-fold from 2002 to 2008. It seized 1,079,529 cartons of illegal cigarettes and carton equivalents in 2008, surpassing 2007 seizure levels by 73% (2007 total = 625,659 cartons).

The federal government has not conducted any studies to determine the size of the current contraband market in Canada. The 2005 Canadian Tobacco Use Monitoring Survey found that 17% of Canadian smokers had bought tobacco from reserves at least once in the last six months.

That figure should be interpreted cautiously, as it doesn't necessarily mean Canadian smokers did so more than once. Getting people to admit to an illegal activity is always difficult, so determining a reliable estimate of the size of the current contraband tobacco market in Canada is challenging. But some have tried.

The Ontario Tobacco Research Unit estimates that approximately 20% of cigarettes consumed in Canada are illegal.⁶² Physicians for a Smoke-free Canada estimated that as much as 27% of the tobacco market in Canada in 2007 was fed by contraband suppliers.⁶³ Imperial Tobacco Canada (ITC), the country's largest cigarette company, commissioned a national study in 2008 which found that one-third (32.7%) of the cigarettes purchased in the seven days prior to the study in Canada was illegal.⁶⁴ However, ITC cannot necessarily be trusted to provide reliable information about the situation, since it has much to gain by exaggerating the contraband situation in order to push for government intervention which could help reverse its loss of sales to the contraband market.

ITC is not the only large Canadian tobacco company complaining about illegal sales. When reporting that its profits in the second quarter of 2006 were down 6%, Rothmans Inc. (Canada's second largest tobacco company) attributed the decline to the growing contraband market.

It is estimated that federal and provincial governments are losing \$2 billion in tobacco tax revenue annually due to contraband. In Ontario, the Auditor General reported the province is losing \$500 million.

“The most significant issue facing Ontario today that relates to tobacco smuggling is the increase in smoking and the increase in health costs. Among those most affected are the youth who are initiated to smoking at an early age due to the low cost and easy access to contraband cigarettes.”

- Sgt. Michael Harvey,
Cornwall RCMP press release, 17 March 2009

Either way – whether the illicit market is as low as 15%, as some observers in the public health community suspect, or as high as 33%, as ITC claims – the public health consequences are not negligible, and the problem must be taken very seriously. The policy solutions for both scenarios are identical, including cutting off the supply of raw materials to illegal manufacturers and introducing an effective tracking and tracing system on cigarette cartons and packages.

In light of the fact that the relationship between the federal and provincial governments and First Nations is sometimes tense, there are many solutions that do not require enforcement on reserves. A complete set of measures endorsed by major public health groups and submitted to the federal government in December 2008 is available here:

www.nsra-adnf.ca/cms/file/pdf/CCAT_pre-Budget_Brief-2008-12-19.pdf.⁶⁵

Illegal Sales to Non-Aboriginals on Reserves

On the Tyendinaga reserve in Ontario, on the north shore of the Bay of Quinte between Belleville and Deseronto, the Smokin' Joe's drive-thru sells discount cigarettes to people in their vehicles as conveniently as Tim Horton's dispenses coffee. At a retail outlet in Shannonville, also located on the reserve, GRE's SAGO brand cigarettes are available for sale tax-free to those who are not Status Indians.⁶⁶

Tax-free cigarettes are also widely available for sale to non-natives on the Six Nations reserve near Brantford, Ontario. Numerous signs promoting tax-free cigarettes greet drivers as they cross the reserve's boundaries.

In December 2006, dozens of smoke shacks sold cigarettes to Physicians for a Smoke-free Canada (PSC) staff without federal or provincial taxes being charged, even though they do not qualify for the First Nations' tax exemption. A wide variety of products were available, including (i) brands of the major manufacturers (such as Players and Export 'A') sold GST-free, (ii) cigarettes manufactured by companies on reserves in Canada federally licensed to do so (these cigarettes had the required health warning labels), and (iii) cigarettes manufactured on U.S. reserves which did not meet Canadian health warning label requirements. A carton of these three varieties of smokes retailed for \$67, \$29 and \$20 respectively. Two-hundred cigarettes in a plastic bag, manufactured by an unknown source, sold for as little as \$9.⁶⁷

Cut-rate cigarettes are also available on the Oneida of the Thames reserve (near London, Ontario), as well as in the communities listed in the chart above.

Cross-Border Smuggling

The RCMP has reported that 90% of the contraband cigarettes it is seizing across Canada are manufactured on the Saint Regis Mohawk Reservation in upstate New York.⁶⁸ Since it straddles

In 2006, the RCMP says there were a total of 315 known bulk sales locations for contraband cigarettes. These smoke shacks/shops are located in numerous First Nations communities:

COMMUNITIES	NUMBER OF SMOKE SHOPS/SHACKS
Kahnawake	125
Six Nations	100
Tyendinaga	40
Kanesatake	28
Kitigan Zibi	12
Curve Lake	10



The pink-coloured tear strip on this pack of SAGO cigarettes means that it is for sale in Canada to 'Status Indians' only, but it was sold to a non-Aboriginal person in Feb. 2007 on the Tyendinaga reserve in Ontario.

Quebec, Ontario and New York State, the Akwesasne/Saint Regis Reservation's location has always presented unique enforcement challenges for Canadian, Mohawk and American authorities. It is said to be an area long used by smugglers. Some Mohawks claim that since they have lived in the area “from time immemorial” and that the Canadian and U.S. borders were imposed on them, they have the right to bring products from one country to the other and not pay duties on those products.

Nonetheless, several Mohawks were convicted in U.S. District Court in 1998 for smuggling tobacco products through the reserve from the U.S. into Canada, products initially supplied by the Canadian tobacco industry in the early 1990s.⁶⁹

In more recent years and up to the present day, many Akwesasne residents have been arrested and charged with possession of untaxed cigarettes which they have been transporting in the Cornwall area, after the products were allegedly smuggled across the Canadian border from St. Regis.



There are individuals, such as Doug George-Kanentiio, an Akwesasne Mohawk, who have spoken out against the smuggling:

Smuggling tobacco, narcotics, and whatever else commands a profit has created a “narco-culture” at Akwesasne in which the traditional values of humility, compassion, simplicity, generosity and communal service have been replaced by violence, intimidation, greed and death.... The easy money has led to corruption not only at Akwesasne but throughout the region. The fragile economies of Massena and Cornwall are now sustained by this narco-culture.⁷⁰

Unfortunately, those willing to take a stand against the industry are few and far between.

Ties to Organized Crime Groups

The RCMP says there are more than 100 organized crime groups involved in the illicit tobacco trade. These groups often exploit the porous border area near Cornwall, as well as the jurisdictional and political sensitivities of some First Nations communities, in order to profit from the illegal sale of untaxed tobacco products. Police say some of the profits generated by the criminal networks that smuggle Canadian-grown marijuana south into the United States are then laundered through the cigarette manufacturing operations.

For example, in March 2009, RCMP in Quebec targeted 22 people, including two members of

the notorious criminal Hells Angels biker gang, who all were allegedly involved in illicit tobacco sales. The RCMP say those involved in the contraband tobacco ring “*bought cigarettes produced on the Kahnawake reserve south of Montreal and distributed them in the Quebec City region while using violence and intimidation to collect money and establish their turf.*”⁷¹

The RCMP alleged that money generated from the sale of contraband tobacco was reinvested into another illegal operation:

“We knew that the organized crime (group) was involved in illicit tobacco sales, and now we hope to be able to prove in court that the profits of those sales were used to produce drugs that were sold in the Quebec City region,” [RCMP Sgt. Luc] Bessette told a news conference in Quebec City.⁷²

These were not the first arrests which drew a link between marijuana smuggling and cigarette manufacturing operations. In November 2006, the RCMP, in partnership with Akwesasne Mohawk Police, Ontario Provincial Police and Canada Border Services, arrested the alleged kingpins of a cigarette and marijuana smuggling operation.

The two-year long joint investigation led to the arrest of 12 people and a total of 115 charges being laid. In addition, an underground cigarette manufacturing factory was shut down. Large quantities of marijuana were seized in the raid as well as a high-powered motorboat, guns and ammunition.⁷³

At a press conference related to the arrests, RCMP Inspector Tim Mackin said the alleged kingpins of the operation, William Hank Cook of Cornwall and Patrick Johnson of the U.S. portion of Akwesasne, invested a lot of money into an underground company named MHP Manufacturing to produce cigarettes. The smokes were smuggled into Canada, by runners who police said were often youth, and delivered to clients in Ottawa, Montreal and New Brunswick.

It wasn't the first time Johnson or MHP has gotten into trouble. The Saint Regis Mohawk Tribal Council had previously suspended Johnson's cigarette manufacturer license. In an April 21, 2006 press release, the Council announced it was taking immediate action against MHP Manufacturers. This followed a federal indictment the day before by the U.S. Attorney for the Northern District of New York alleging Johnson's involvement in a major drug smuggling operation.⁷⁴



Sheryl Farrar of the Hastings and Prince Edward Counties Health Unit displays contraband cigarettes seized in 2006 by Smoke-Free Ontario enforcement officers. The Native and DK's brand cigarettes are manufactured on the U.S. side of Akwesasne, smuggled into Canada and illegally sold en masse. (Photo Courtesy Luke Hendry, The Belleville Intelligencer)

A news story in the *Cornwall Standard-Freeholder* in November 2006 related to the RCMP busts reported that:

Akwesasne Mohawk Police Chief Louis Mitchell explained the Akwesasne community is "often exploited by organized criminals" and that the unique jurisdiction is taken advantage of for its prime locale. "This is taking our kids away from us," Mitchell said. "We have a hard time competing with organized crime. Our youth see that gold and glitter and we want them to know they don't get to keep this, that they need to focus on the right path."

Cornwall Police Chief Dan Parkinson agreed with Mitchell, saying these criminal organizations "intent on continuing to harm our community" have a direct affect on the "proper social development" of young people.⁷⁵

Investigators believe Cook was making between \$200,000 and \$300,000 each week through his role in the operation.

Big money buys big influence in small communities. With so much money up for grabs, those involved in the illegal activity don't take threats to their profits lightly. Members of the St. Regis Reservation have said that people who speak out against the tobacco industries operating in their community risk personal injury.

Former Akwesasne Police Chief Mitchell emphasizes that people in his community, located on the Canadian-side of Akwesasne, are reluctant to speak out against smuggling for fear of intimidation. Even police officers are intimidated. Mitchell reports that some police officers have previously had their homes shot at. Mitchell says it's not just tobacco posing a problem; marijuana smuggling (going south into the U.S. from Canada), human trafficking and gun smuggling are all negatively affecting his community. "*Our territory is being exploited by organized crime from off the reserve and native organized crime is establishing itself here, too.*"⁷⁶

According to Mitchell, the tobacco smuggling problem would not be as severe today had the major non-native manufacturers not given some Saint Regis/Akwesasne residents a taste of the lucrative trade in smuggled cigarettes in the early 1990s. The former Mohawk Police Chief said that "*R.J. Reynolds was making billions. A lot of tobacco products were smuggled through here back then. A few people got a taste for it and it just grew and grew. It was a good training ground for those involved today.*"⁷⁷

It is not only First Nations people involved in the smuggling and trafficking of contraband. Non-natives frequently travel to First Nations, buy large quantities of cheap cigarettes and then sell the cheap smokes in Canadian towns and cities for a profit. In fact this occurs so frequently that one on-reserve police force has started laying charges against the illegal cigarette purchasers under the *Indian Act* for trespassing on First Nations territory.⁷⁸

What is the impact on public health?

According to the most recent data from the Canadian Tobacco Use Monitoring Survey, the Canadian Community Health Survey and the Youth Smoking Survey, smoking prevalence in Canada is no longer declining, suggesting that the widespread availability of cheap contraband tobacco products is undermining current fiscal and public health efforts to lower tobacco use. Sadly, it is Aboriginals who suffer the most from the sale of low cost cigarettes, as statistics show much higher smoking prevalence rates in their communities.

The overall burden of tobacco use in Canada is already staggering. Tobacco industry products are responsible for the death of 37,000 Canadians each year, deaths caused by debilitating afflictions such as pulmonary and cardiovascular diseases and cancers. Since cheap contraband cigarettes are impeding progress in reducing smoking, the impact of this criminal activity will no doubt exacerbate the tobacco epidemic in Canada.

RECOMMENDATION: First Nations should protect their communities and young people from organized crime groups taking advantage of them to profit from the manufacture and sale of contraband tobacco. The federal and provincial governments should work with First Nations to develop and fund initiatives to strengthen the capacity of these communities to prevent this exploitation.

Conclusions

The Non-Smokers' Rights Association recognizes commercial tobacco in Aboriginal communities as a sensitive and complex issue. Thus far, governments have appeared unwilling to invest the necessary resources required to make progress on the file. This unwillingness is perhaps indicative of governments' recognition that there is a litany of other unresolved issues with First Nations. Land claim disputes, unfulfilled treaty obligations, disturbing facts of life in many Aboriginal communities (including high rates of poverty, ill health, family break-down and suicide) are all hurdles which seem to contribute to a reluctance to invest in progress (or even begin a dialogue) for change.

We hope, however, that this document will help facilitate discussion and contribute toward greater understanding of the subject among Aboriginals and non-Aboriginals alike. The cold, hard reality is that the negative public health and social consequences will only get worse, the longer the issue of commercial tobacco in Aboriginal communities goes unaddressed.

There are effective health policy measures that should be embraced and implemented in Aboriginal communities, including 100% smoke-free workplaces and public places and the application of First Nations tobacco taxation, but as of today only a small minority of First Nations reserves have taken advantage of these opportunities and are enjoying the public health benefits. Unfortunately, effective health policy measures are often undermined or under siege. Legislation offering 100% protection from exposure to second-hand smoke in workplaces and public places is being disregarded on some reserves. Tax-free cheap contraband cigarettes and the increased smoking rates which inevitably follow inflict great damage on the health of many Aboriginals and Canadians.

A growing problem having this level of complexity demands cooperation and teamwork among all stakeholders to find sustainable solutions that work. We must act now in a nation to nation collaboration — for the sake of public health, our young people and future generations.

RECOMMENDATION: The federal government and the provincial governments of Ontario and Quebec should appoint a high-level envoy to engage the affected First Nation communities in a dialogue for change. In the interests of giving this matter the level of importance it deserves and to help speed progress, the federal Ministers of Health and Indian Affairs and Northern Development Canada should become personally involved in engaging in dialogue with First Nations about the destructiveness of commercial tobacco and effective solutions.

Appendix A

Aboriginal Cigarette Manufacturers in Canada

There is an ever-increasing number of cigarettes being manufactured legally and/or illegally on reserves. A *Presse canadienne* article from January 2006 reports that the federal government has issued 59 tobacco manufacturer licenses to licensees located on First Nations reserves.⁷⁹ The following pages will provide a snapshot of Aboriginal cigarette manufacturers in Canada as well as in northern New York State. As these companies are not traded publicly, it is difficult to ascertain the extent of their production levels and business dealings. Nonetheless, the profiles that follow aim to provide information and a short analysis of each company.

Grand River Enterprises

By far the largest Aboriginal cigarette manufacturer in Canada is Grand River Enterprises (GRE), headquartered on the Six Nations reserve near Brantford, Ontario. GRE became federally incorporated in Canada in April 1996. As the following quote indicates, GRE is clear that the company intends to profit from the high smoking rates currently ravaging the Aboriginal population in Canada. For the complete text, see Appendix B:

The company's potential market is the approximately 1.3 million Native Peoples presently residing in Canada. Statistics presently available to the company indicate that fifty-six (56) percent of the 1.3 million use tobacco products on a daily basis, generating a potential market of three hundred and eight thousand (308,000) individuals is (sic) using tobacco products.

We estimate that these individuals consume approximately 4.6 million cigarettes daily, which would convert to twenty-three thousand (23,000) cartons, or four hundred and sixty (460) cases of cigarettes. GRAND RIVER ENTERPRISES projected daily production would require only roughly ten (10) percent of its potential market to reach saturation.

It is our intention to develop a marketing plan specifically designed to appeal to the Canadian Native population presently organized into the six hundred and four (604) First Nations Communities.⁸⁰

Although the company states it was originally established to supply cigarettes to native people in Canada, court documents show GRE's business has expanded rapidly into the U.S. The number of cigarettes produced by the company and then sold in the U.S. grew by 28-fold over just five years, from 78 million cigarettes in 1999 to about 2.2 billion in 2004.⁸¹ GRE sells cigarettes south of the border by shipping them to a company it partners with called Native Wholesale Supply, located in western New York on the Cattaraugus Indian Reservation. GRE cigarettes are

then distributed across the U.S. to other Indian reservations, where they are sold cheaply.

In 2003, GRE began licensing their products for distribution off reserve by a sole non-native importer, Tobaccolville USA, Inc., a company located in Hartsville, South Carolina.⁸² Sales are currently taking place off reserve in the states of Georgia, Oklahoma, South Carolina, North Carolina, Kansas, Tennessee and Arkansas.⁸³

Besides sales in the U.S. and Canada, GRE has done business in South Africa, the Middle East, Europe, and has exported its products to China, Jamaica and Uruguay. In 2006, GRE opened a 60,000 square foot cigarette manufacturing plant in Rietz, Germany, about an hour's drive outside Berlin. The plant's construction, subsidized by the German government and the European Union to the tune of \$20 million, was designed to help create jobs in this area of the country suffering from high unemployment. GRE also won a \$50-million contract to supply cigarettes to the German armed forces.

Citing court documents, *The Hamilton Spectator* reported that sales for GRE were forecast to be worth \$334 million in 2005, with corresponding profits of \$60 million.⁸⁴

The Shares, the Shareholders

Grand River Enterprises has eight shareholders and a total of 110 shares issued.⁸⁵ Ontario Superior Court documents indicate that GRE has made its shareholders multi-millionaires. These same documents also shed light as to how the shareholders have become so wealthy:

For persons with Aboriginal status dividends are taxable but bonuses are not. Hence, the shareholders avoid taxes by characterizing their dividends as bonuses. Counsel for GRE conceded that the corporation pays out bonuses instead of paying dividends.... Since January of 2000 bonuses have been given to all shareholders.... in proportion to their share interests.... In December of 2002 bonuses totaling fifteen million dollars were distributed to the remaining seven shareholders according to their share interests.⁸⁶

GRE employees don't seem to fare as well as the shareholders of the company. A documentary that aired on *Radio-Canada* in 2005 indicated that the average wage paid to GRE's staff – mostly single mothers – is only 30% of the average hourly wage in the non-native tobacco industry, \$14/hour (non-taxed) versus \$44.⁸⁷

GRE as a Corporate Citizen

Employing Six Nations Residents; Defending Six Nations Sovereignty

GRE claims to be playing an important role in employing First Nations people at Six Nations.

Aboriginal Business magazine, in its Winter 2006-7 edition, reported that GRE is the second largest single site private employer of Aboriginals in the province, second only to Casino Rama:

At Six Nations they employ just shy of 300 people, mostly women, in the production of their own cigarette brands and specialty products. For Six Nations, the success of Grand River Enterprises means the success of Six Nations. The company has had a major effect on the economy of the Six Nations territory. Welfare rolls have dropped, and more homes are being built.⁸⁸

Besides taking the prominent role in the community as an employer, *Aboriginal Business* magazine says GRE has been “at the forefront of defending Six Nations sovereignty.”⁸⁹ GRE has played an active role in the Six Nations Land Claim dispute, a struggle which has sometimes flared up into violence in the Caledonia area. On June 16, 2006, GRE sponsored a high-tech sound stage for a concert in support of the land reclamation efforts.

As *The Brantford Expositor* reported on May 29, 2006, The Concert for Kanenhsatón (The Protected Place) was a hastily organized but large scale event designed to raise support for the Caledonia protest and to promote unity among area people. Tuesday Johnson-MacDonald, the event coordinator, told *The Expositor* that organizing the concert was difficult at first because they were working with no seed money. However, several major sponsors such as Grand River Enterprises, Ohsweken cigarette manufacturers and others soon came forward to offer in-kind donations and funding.^{90 91}

On June 11, just days before the concert, the Ontario Provincial Police obtained an arrest warrant for GRE’s senior marketing officer, Ken Hill. Hill was eventually arrested and charged with two counts of assault related to an altercation in Caledonia in which two men were assaulted near a barricade at the protest site.^{92 93}

The Dreamcatcher Fund

GRE plays an active role in the community with The Dreamcatcher Fund, an annual endowment fund established in 2004 to benefit Aboriginal youth and organizations throughout Ontario. Its five areas of focus are (i) sports and recreation, (ii) educational support, (iii) health support, (iv) water quality and (v) arts and culture. According to a press release on its website, the Fund has received over 2,500 applications since 2004, when the company launched the *Fund* in partnership with First Nation retailers across the province.

The amount of the Fund’s money each First Nation can access is determined based on how many retailers it has which sell GRE products. *The Expositor* reported that 84 of the 160 native communities in Ontario had GRE products for sale as of August 2004.⁹⁴ The Fund is overseen by a board made up of Six Nations residents including two former elected band council chiefs.⁹⁵

Apparently, the irony of a company selling products that kill half of all long-term users, then using a portion of its profits to fund health care needs is lost on the Fund’s directors.

Speaking Out Against Illegal Sales and Contraband

In May 2006, Steve Williams, president of Grand River Enterprises, spoke out against contraband cigarettes coming into Canada across the U.S. border. He said contraband was significantly biting into his company's sales, which he claimed were down 20%. He said he'd been forced to lay off 80 people because he can't compete with the cheaper cigarettes that sell for \$20 a carton. Williams said retailers on the Six Nations reserve have been told by suppliers that if their illegal products are seized by police, they'll be replaced at no cost.⁹⁶

But even GRE brand cigarettes show up on the illegal market. Nine-thousand cartons of Sago, DK's and Putters brand smokes were seized in an RCMP raid in Windsor in May 2006. Police said they were purchased in the Brantford, Ontario area and were being sold to businesses along the Highway 401 corridor in Southwestern Ontario. The police also stated "*the seized tobacco products represent approximately \$500,000 in evaded taxes.*"⁹⁷ In August 2005, in Chelmsford, Ontario (near Sudbury), the RCMP seized \$8,500 worth of the same brands of cigarettes.⁹⁸

GRE's cigarettes can be sold on reserves in Canada to status Indians free of provincial taxes and GST. However, GRE ships more cigarettes than could be reasonably smoked by status Indians on reserves. Some observers suspect GRE cigarettes are being sold from reserves to non-natives on a large scale minus applicable taxes.

Tyendinaga Mohawk Tobacco Products (TMT)

The RCMP says there are cigarette manufacturing facilities located on the Tyendinaga reserve.⁹⁹

In a lengthy interview on *CBC News: Sunday*, businessman Shawn Brant said that tobacco used in his company's products is grown in "other confederacy communities," such as Oneida of the Thames, southwest of London, Ontario.¹⁰⁰



In a news story published in January 2007, Chief R. Donald Maracle of the Mohawks of the Bay of Quinte said no bylaw on his reserve exists governing the manufacture of tobacco products, nor has anyone asked for permission to make cigarettes on the reserve.

"The council doesn't license anyone to manufacture tobacco products," the Chief said.... About a year ago, someone talked of setting up a tobacco manufacturing plant on Tyendinaga Mohawk Territory, but nothing came of it."¹⁰¹

In the *CBC* interview, Brant seemed to indicate that tobacco sales are bringing in six to seven million dollars a month to Tyendinaga, and that the money is being used to support other economic development initiatives.

However, cigarettes sold by TMT for as little as \$10 a carton are having negative public health impacts on the reserve and in the surrounding communities of Kingston and Belleville. When cheap cigarettes proliferate, smokers consume more of the deadly products. Young people are particularly susceptible.

Investigations led by the Hastings and Prince Edward Counties Health Unit and the Kingston Health Unit, and supported by the Kingston police force, have led to the confiscation of cigarettes purchased tax-free on the Tyendinaga reserve, then re-sold cheaply in outlying communities.¹⁰²

On the reserve, it appears as though retailer compliance with laws prohibiting the sale of tobacco to minors is dismal. In December 2005, the Hastings and Price Edward Counties Health Unit sent underage shoppers onto the reserve to buy cheap cigarettes. Its survey found that 80% of retailers sold to the underage shoppers. The Health Unit's survey incensed the Tyendinaga band council because it said its jurisdiction had been breached:

“The Chief and Council... believe the alleged sales of cigarettes to minors on the Tyendinaga Mohawk Territory is an internal matter and that this matter will be addressed internally.”¹⁰³

Abenaki Enterprises/Choice Tobacco

In 2005, Rick O’Bomsawin, owner at the time of Abenaki Enterprises, bought Choice Tobacco (of Prince Edward Island) and eventually combined operations by relocating the latter’s manufacturing facilities from the Maritimes to Odanak, Quebec. The Odanak reserve, located near the mouth of the Saint-François River, is home to the Western Abenaki people of the Algonquin Indians.



This ziploc-style bag sold by Tyendinaga Mohawk Tobacco Products contains 200 cigarettes.



On the books the companies are still separate, with all the inventory and supplies belonging to Abenaki Enterprises. Choice Tobacco shreds/cuts the tobacco and Abenaki manufactures the cigarettes. O'Bomsawin has distribution and stocking warehouses in Vermont and Florida and operates a business in the United States called Choice Tobacco USA.^{104 105}

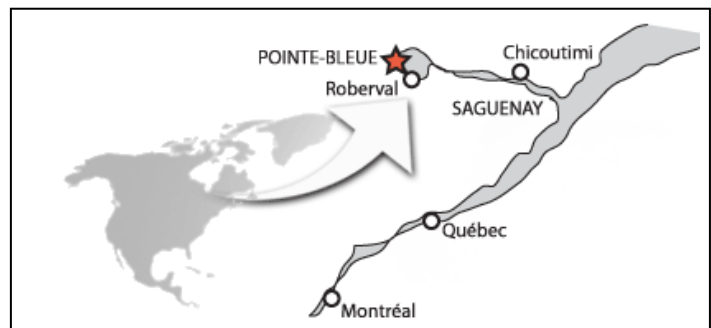
In October 2006, Revenue Québec in Montreal seized four shipping containers full of raw leaf tobacco from Croatia and Greece destined for use by Abenaki Enterprises. Revenue Québec said it seized the tobacco because Richard O'Bomsawin doesn't have an importer's license or the proper set-up to remit taxes.¹⁰⁶ But O'Bomsawin fired back in the press, saying since his company was established in 2004 he has always paid the taxes required by Revenue Québec. He demanded an apology to repair the damage caused to his reputation and the Abenaki people of Odanak.¹⁰⁷ O'Bomsawin says he got all the seized tobacco back after he applied for and received a Quebec importers license shortly thereafter.

ADL Tobacco

ADL Tobacco was founded in Pointe-Bleue, near the City of Roberval and Lac Saint-Jean. In 1995, on the Mashteuiatsh reserve, an Innu community, ADL began selling fine cut tobacco. By 1998 it began manufacturing cigarettes under the brand names Bailey's and Virginia Select. It now also sells Maximum and Supreme brand cigarettes.

ADL Tobacco is a family-owned business managed by the Paul brothers — Alain Paul is President and Donald Paul is Vice-President. They are Montagnais Indians. ADL says its products are sold in Québec, Ontario, the Maritimes and western Canada as well as parts of the United States and Europe.¹⁰⁸ In addition to their tobacco

company, the Paul brothers own a larger business called the ADL Group which has a number of subsidiary companies involved in construction, real estate, forestry, tourism and health products.¹⁰⁹



ADL Tobacco released a new cigarette in September 2006 that has a filter made partially of spinach leaves. Selling the new product under the AZUR brand name, ADL suggested that the “new biofiltration technology” reduced the risk caused by tobacco smoke inhalation.¹¹⁰ A Université Laval medical researcher, Dr. Élyse Bissonnette, was given a \$25,000 grant from ADL to conduct a series of tests on the new cigarettes. Dr. Bissonnette claims that her studies show that the spinach filter was more efficient in blocking cigarette smoke than regular filters. The claims were met with scathing reactions by many public health officials. Following Dr. Bissonnette’s involvement with ADL, the university's medical school put a policy in place barring researchers from

accepting tobacco industry funding.

Kahnawake Tobacco Association

The Kahnawake Tobacco Association (KTA) website indicates that the company was formed to unite retailers, wholesalers and manufacturers in the trade and commerce of tobacco products. It also advertises itself as playing an important role in the community by providing employment and community stabilization (see Appendix C). The home page of its website states that it has contributed in excess of \$272,000 over the years to various organizations and individuals, including schools, youth sports teams and a local Christmas basket fund.¹¹¹

It is not clear how many people are involved in the tobacco business on the Kahnawake reserve, which is located south of Montreal. A 2004 article in *The Eastern Door* newspaper indicated that tobacco manufacturing was booming on the reserve. “*The operations range from cutting-edge cigarette manufacturing facilities to cottage industry tobacco drying and cutting in residential homes.*”¹¹² Two chiefs of the Mohawk Council of Kahnawá:ke (MCK) have “Tobacco” listed as one of their portfolio responsibilities. One of those chiefs, Rhonda Kirby, is also responsible for the “Health” and “Social Development” portfolios.¹¹³

MCK has numerous press releases on its website that refer to the territory's tobacco industry. One such press release, from 2006, indicates that the Canada Revenue Agency requested “*unrestricted access to Kahnawake to perform inspections at [tobacco manufacturing] facilities licensed by Canada.*”¹¹⁴ Another press release by the Mohawk Council voiced opposition to allowing those inspections to take place, despite the fact that manufacturers agreed to the inspections as part of the conditions for receiving licenses in the first place.¹¹⁵

Since Revenue Canada adheres to confidentiality regulations, it does not release information about the people who hold tobacco manufacturing licenses. Various media reports and the RCMP indicate that the reserve does have illegal cigarette manufacturers.^{116 117 118}

Revenue Québec seized more than 91,000 kilograms of tobacco bound for Kahnawake from seven tractor-trailers in separate incidents from November 9-16, 2006.¹¹⁹



Another cause for concern from a public health perspective is that cigarettes manufactured on the St. Regis Reservation are being sold tax-free at Kahnawake to non-Status Indians. This has been the case as far back as 2002 when the *Montreal Mirror* reported on the problem:

And what is the Mohawk community's position on the rising popularity of First Nation-manufactured cigarettes.... For Timmy Norton, public relations officer for the Mohawk Council of Kahnawake, it simply does not exist. "I would say at this point that there is no official position," says Norton. "It's done in the community, and there is no enforcement within the community by our police force."¹²⁰

Aboriginal Cigarette Manufacturers in the United States

On the U.S. side of Akwesasne, the Saint Regis Mohawk Tribal Council licenses three cigarette manufacturers on its reservation. They include Native Trading Associates, Jacobs Manufacturing and Flint Tobacco. However, as of early 2007, Flint was not operating. In May 2007, the Council's public information office indicated it is aware that there are cigarette manufacturers in existence on the reservation who choose not to get a tribal license. According to the Council's Director of Public Information, "*they may be licensed by another entity in the community or may choose to not be licensed by any entity in Akwesasne.*"¹²¹

All of the manufacturers are required by U.S. law to become licensed by the American government — as is also the case in Canada — but many manufacturers choose not to and law enforcement agencies are reluctant to push the issue for they fear causing a confrontation. Only Native Trading Associates is currently licensed by the U.S. authorities.

The Tribal Council charges a fee on each carton of cigarettes manufactured and/or sold within the reservation, but the fee is not charged on those operating without a license. The Council's Public Information Office asserts that the proceeds collected go into a general fund to pay for tribal programs and services.¹²² From 2006 to 2008, this tribal fee on tobacco generated \$12 million, \$4 million each year.

Native Trading Associates

Native Trading Associates is owned by Stewart White, an Akwesasne Mohawk.¹²³ The company produces Native brand cigarettes. According to the RCMP, cigarettes manufactured by Native Trading Associates are frequently showing up in Canada, illegally.¹²⁴ Native Trading Associates appears to be designing a portion of its cigarettes for the Canadian market. Some versions of its Native Lights and Native Full Flavor brands feature gold-coloured maple leaves on the front of the packages.

Native Trading Associates is recognized in a St. Regis Mohawk Tribal Council press release from July 2006 as being a major financial donor to a project to help construct a seniors' centre in



the community called Tsi Tetewatkins (meaning “The Place Where We Gather”).¹²⁵

At this time not much else is known about the company. It remains to be seen how many cigarettes are produced a year, and what percentage of them end up on the Canadian contraband market.

King Enterprises, LLC

King Enterprises, LLC is not licensed by the St. Regis Mohawk Tribal Council to manufacture cigarettes on the reserve. Nonetheless, it appears as though that is indeed where the company is located. The company is owned by Akwesasne Mohawk Wendell King and manufactures the DK's brand.¹²⁶ Curiously, DK's are also manufactured by Grand River Enterprises (GRE), the Six Nations-based company. It is unclear whether GRE has a working relationship with Wendell King which allows them to share brand trademarks, or whether King Enterprises is essentially stealing GRE's brand design.

What does seem clear is that King Enterprises is manufacturing a portion of its cigarettes for the Canadian market, and that these cigarettes are showing up in Canada on the black market. The packages of its DK's brand have a U.S. Surgeon General's warning message on the side, but the front of the package has a prominent Canadian flag and the words “A Full Flavor Canadian Blend.” The side of the package reads “Manufactured by King Enterprises, LLC. Akwesasne Mohawk Territory.”



With a prominent Canadian flag on the package, these cigarettes, manufactured by King Enterprises, appear to be designed for smokers in Canada.

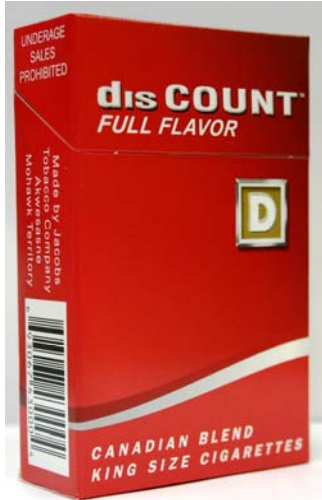
Jacobs Tobacco Company

Jacobs Tobacco is perhaps the company employing the most sophisticated marketing strategies on the St. Regis Reservation. It has paid for a Next Top Model competition to help advertise its cigarettes for at least the last two years. In 2008, it sponsored a concert featuring popular actress and singer Jessica Simpson. The company also pays for billboard advertising on the reservation (see photos on the next page).



But when tobacco companies engage in marketing, public health is bound to suffer as more teenagers become addicted to deadly

tobacco industry products, and those already addicted smoke more.



Jacobs Tobacco Company's brands include disCOUNT and Nations Best. The former is quite popular with smokers of contraband cigarettes in Ottawa, as the empty packages are often littered on the streets of the nation's capital.

Jacobs appears to be manufacturing cigarettes specifically designed for the contraband tobacco market in Canada, with its "Canadian Blend" disCOUNT brand. The brand is also sold with an "American Blend" of tobacco.

Country singer Jessica Simpson, wearing white bustier in centre of photo, performed on the grounds of the Jacobs Tobacco Company at a concert sponsored by the company in August 2008.

(Photo taken from: www.myspace.com/jacobstobaccocompany)



This billboard, situated prominently on a major highway that runs through the St. Regis Reservation, includes a photo of the 2008 winner of the 'Next Top Model' award, which Jacobs Tobacco Company sponsors, as well as its cigarettes Nations Best.

(Photo courtesy of J Walker, Canadian Cancer Society, Feb. 2009)

Appendix B

Text and graphics from www.mohawkgre.com/aboutus.html. Accessed on 18 April 2007.



Home Facility Events About Us Contact Us

Preamble...

As stated in our proposal of January 1994, the original concept of GRAND RIVER ENTERPRISES is to create employment for Aboriginal People and to promote a positive environment within the communities in which they live.

In the three years that have passed since the proposal was submitted and through countless meetings, letters and additional information that has been provided, we have not deviated from our original concept.

We continue to support the belief that Aboriginal Communities must try to develop their own economic base by creating business which will directly benefit their nations and the people that dwell on them.

The Plan...

The concept developed by GRAND RIVER ENTERPRISES is to create a Tobacco Manufacturing Facility which will produce "Generic" Brand Tobacco Products for sale and distribution to Native Communities throughout Canada. The company's potential market is the approximately 1.3 million Native Peoples presently residing in Canada. Statistics presently available to the company indicate that Fifty-six (56) percent of the 1.3 million use tobacco products on a daily basis, generating a potential market of Three hundred and eight thousand (308,000) individuals is using tobacco products.

We estimate that these individuals consume approximately 4.6 million cigarettes daily, which would convert to Twenty-three thousand (23,000) cartons, or Four hundred and sixty (460) cases of cigarettes. GRAND RIVER ENTERPRISES projected daily production would require only roughly ten (10) percent of its potential market to reach saturation.

It is our intention to develop a marketing plan specifically designed to appeal to the Canadian Native population presently organized into the Six hundred and four (604) First Nations Communities.

Our primary product line has been named "SAGO" which means "HELLO" in the Mohawk language. The "SAGO" packaging has been created to reflect original "Native" art and emphasize Aboriginal culture. Our preliminary research indicated that there will be strong support of our plan and our products throughout the First Nations Communities.

Our primary plan of operation is to achieve the following goals.

- A) To provide the "Native" market with an affordable, quality tobacco product;
- B) To provide a means by which the First Nations Community might be able to enhance its community and economic stability;
- C) To create employment and decrease the dependence on Government Subsidies (i.e. Welfare and Unemployment insurance benefits);
- D) By creating an environment and Pride in the products we manufacture and market. We believe that we can make a positive contribution to all First Nations Communities.

Conclusion...

The GRAND RIVER ENTERPRISES project has been several years in its development and we believe that it will provide countless positive benefits to all native communities.

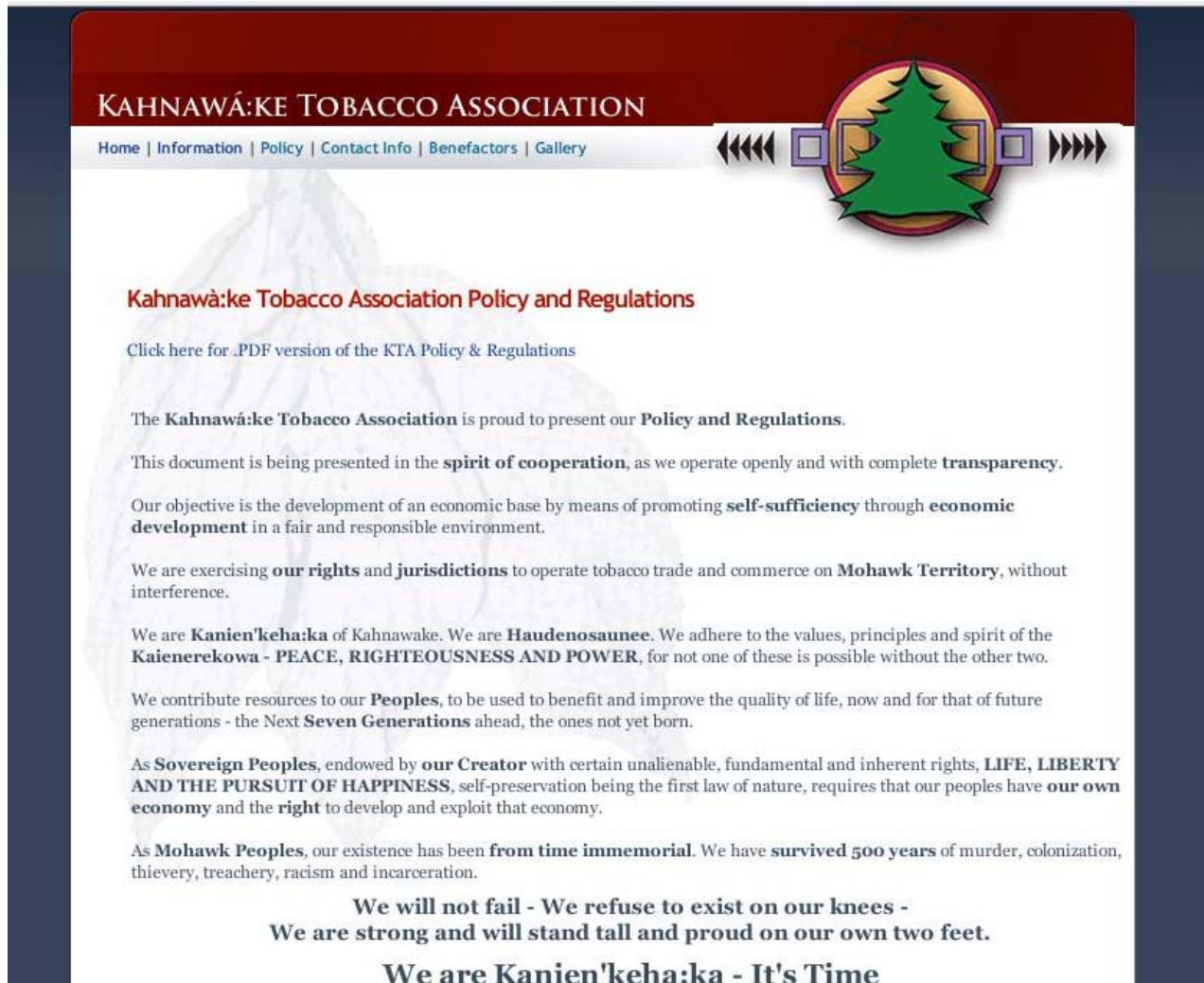
"As Honest as An India



The slogan above appears to have a typo and should likely say "As Honest as An Indian."

Appendix C

Text and graphics from www.kahnawaketobaccoassociation.com/policy.html. Accessed 18 April 2007.



The screenshot shows the website for the Kahnawà:ke Tobacco Association. The header features the organization's name in a serif font, a navigation menu with links for Home, Information, Policy, Contact Info, Benefactors, and Gallery, and a logo of a green tree inside a circular frame with arrows. The main content area is titled "Kahnawà:ke Tobacco Association Policy and Regulations" and contains several paragraphs of text. The text discusses the association's commitment to cooperation, transparency, and economic development, and references the values of the Kanien'keha:ka and Haudenosaunee peoples. It also mentions the association's exercise of rights and jurisdictions on Mohawk Territory and its contribution to the well-being of future generations. The page concludes with a bold statement: "We will not fail - We refuse to exist on our knees - We are strong and will stand tall and proud on our own two feet. We are Kanien'keha:ka - It's Time".

KAHNAWÀ:KE TOBACCO ASSOCIATION

Home | Information | Policy | Contact Info | Benefactors | Gallery

Kahnawà:ke Tobacco Association Policy and Regulations

Click here for .PDF version of the KTA Policy & Regulations

The **Kahnawà:ke Tobacco Association** is proud to present our **Policy and Regulations**.

This document is being presented in the **spirit of cooperation**, as we operate openly and with complete **transparency**.

Our objective is the development of an economic base by means of promoting **self-sufficiency** through **economic development** in a fair and responsible environment.

We are exercising **our rights** and **jurisdictions** to operate tobacco trade and commerce on **Mohawk Territory**, without interference.

We are **Kanien'keha:ka** of Kahnawake. We are **Haudenosaunee**. We adhere to the values, principles and spirit of the **Kaenerekowa - PEACE, RIGHTEOUSNESS AND POWER**, for not one of these is possible without the other two.

We contribute resources to our **Peoples**, to be used to benefit and improve the quality of life, now and for that of future generations - the **Next Seven Generations** ahead, the ones not yet born.

As **Sovereign Peoples**, endowed by **our Creator** with certain unalienable, fundamental and inherent rights, **LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS**, self-preservation being the first law of nature, requires that our peoples have **our own economy** and the **right** to develop and exploit that economy.

As **Mohawk Peoples**, our existence has been **from time immemorial**. We have **survived 500 years** of murder, colonization, thievery, treachery, racism and incarceration.

**We will not fail - We refuse to exist on our knees -
We are strong and will stand tall and proud on our own two feet.
We are Kanien'keha:ka - It's Time**

To read the complete policies and regulations of the Kahnawake Tobacco Association visit its website: <http://kahnawaketobaccoassociation.com/policy.html>

Endnotes

- 1 **Gately I.** *Tobacco: The Story of How Tobacco Seduced the World.* Grove Press, 2002.
- 2 **Encyclopedia of American History.** “Indians and Tobacco.” Answers Corporation, 2006. *Answers.com.* 23 March 2009. www.answers.com/topic/indians-and-tobacco. Accessed March 2009.
- 3 **Environics Research Group Limited.** 2004 Baseline Study Among First Nations On-reserve and Inuit in the North. March 2004. As quoted by Health Canada at: www.hc-sc.gc.ca/fnih-spni/substan/tobac-tabac/index_e.html. Accessed March 2009.
- 4 **Daniels C.** *Tobacco: A Cultural Approach to Addiction and Recovery for Aboriginal Youth.* Nechi Institute, Edmonton, 2002, p. 2. www.ayn.ca/quit/en/manual_pdfs/tobacco_manual72.pdf. Accessed March 2007.
- 5 **Ibid.**
- 6 For an example, see Cancer Care Ontario's Aboriginal Tobacco Strategy. www.cancercare.on.ca/english/home/about/programs/aborstrategy/aborigtobac/. Accessed March 2009. Also see: The tobaccowise.com Website. www.tobaccowise.com/. Accessed March 2009.
- 7 **Environics Research Group Limited.** 2004 Baseline Study Among First Nations On-reserve and Inuit in the North. April 2004. As quoted by Health Canada at: www.hc-sc.gc.ca/fnih-spni/substan/tobac-tabac/index_e.html. Accessed March 2009.
- 8 **Heaman M, Chalmers K.** Prevalence and Correlates of Smoking During Pregnancy: A Comparison of Aboriginal and Non-Aboriginal Women in Manitoba. *BIRTH* 32:4 December 2005, p. 299.
- 9 Of the Aboriginal participants, 207 (80.2%) reported their ethnic background as First Nations, 45 (17.4%) as Métis, and 6 (2.3%) as Inuit.
- 10 **Wurtak G.** “Cancer leading cause of death on some Manitoba First Nations: cancer society.” CBC News. 25 September 2006. www.cbc.ca/canada/manitoba/story/2006/09/25/Aboriginal-cancer.html. Accessed March 2009.
- 11 **Environics Research Group Limited.** 2004 Baseline Study Among First Nations On-reserve and Inuit in the North. March 2004. As quoted by Health Canada at: www.hc-sc.gc.ca/fnih-spni/substan/tobac-tabac/index_e.html. Accessed March 2009.
- 12 **Department of Health and Social Services, Government of Nunavut.** Nunavut Report on Comparable Health Indicators 2004. www.gov.nu.ca/health/PIRCenglishlow.pdf. Accessed March 2009.
- 13 **Canadian Population Health Initiative.** Improving the Health of Canadians. 25 February 2004. http://secure.cih.ca/cihiweb/dispPage.jsp?cw_page=media_25feb2004_b3_e. Accessed March 2009.
- 14 **Environics Research Group Limited.** 2004 Baseline Study Among First Nations On-reserve and Inuit in the North. March 2004. www.hc-sc.gc.ca/ahc-asc/activit/marketoc/camp/shs_label_e.html. Accessed March 2009.
- 15 **Health Canada.** Tobacco Control Programme. “Federal Tobacco Control Strategy.” Website text. www.hc-sc.gc.ca/hl-vs/tobac-tabac/about-apropos/role/federal/strateg-eng.php. Accessed March 2009.
- 16 **Assembly of First Nations.** First Nations Regional Longitudinal Health Survey (RHS) 2002/2003. Results for Adults, Youth and Children Living in First Nations Communities. Revised Second Edition March 2007. p. 107. www.rhs-ers.ca/english/pdf/rhs2002-03reports/rhs2002-03-technicalreport-afn.pdf. Accessed March 2009.
- 17 **Statistics Canada.** Aboriginal Peoples Survey, 2006: Inuit Health and Social Conditions. December 2008. p. 14. www.statcan.gc.ca/pub/89-637-x/89-637-x2008001-eng.pdf. Accessed March 2009.
- 18 **Health Canada.** “Government of Canada Works with Nunavut to Help Curb Smoking Among Aboriginal Youth in the Territory.” Press release. 18 February 2009. http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2009/2009_18-eng.php. Accessed March 2009.
- 19 **Health Canada.** First Nations and Inuit Tobacco Control Strategy – Implementation Evaluation. Final Evaluation Report – March 2007. p. 15.
- 20 Fiduciary duty: The legal obligation of one party to act in the best interest of another. Canada has a fiduciary obligation with respect to Indians and lands reserved for Indians under Section 91(24) of the Constitution Act of 1867.
Assembly of First Nations. Terminology. Fact Sheet. www.afn.ca/article.asp?id=437. Accessed March 2009. Also see: Library of Parliament. “The Crown's Fiduciary Relationship with Aboriginal Peoples.” 10 August 2000. Revised 18 December 2002. www.parl.gc.ca/information/library/PRBpubs/prb0009-e.htm.
- 21 **Cunningham R.** Lawyer and Senior Policy Analyst, Canadian Cancer Society. E-mail message. 13 September 2006.

-
- 22 **Government of Canada.** *Indian Act*, Powers of the Council. 81 (1) (a). http://lois.justice.gc.ca/en/showdoc/cs/I-5/bo-ga:s_81/en. Accessed March 2009.
- 23 **Siegel M**, Skeer M. Exposure to secondhand smoke and excess lung cancer mortality risk among workers in the “5 B’s”: bars, bowling alleys, billiard halls, betting establishments, and bingo parlours. *Tobacco Control* 2003;12:333-338. <http://tobaccocontrol.bmj.com/cgi/content/abstract/12/3/333>. Accessed March 2009.
- 24 **Trout D**, Decker J, Mueller C et al. Exposure of casino employees to environmental tobacco smoke. *Journal of Occupational and Environmental Medicine*. 1998; 40: 270-276.
- 25 **U.S. Department of Health & Human Services.** “New Surgeon General’s Report Focuses on the Effects of Secondhand Smoke.” Press release. 27 June 2006. www.hhs.gov/news/press/2006pres/20060627.html. Accessed March 2009. Copies of *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* and related materials are available on the Surgeon General’s Web site at www.surgeongeneral.gov/library/secondhandsmoke/.
- 26 **CBC News.** “New Sask. Casino should be smoke-free, Cancer Society says.” 7 February 2007. www.cbc.ca/canada/saskatchewan/story/2007/02/07/casino.html. Accessed March 2009.
- 27 **Ibid.**
- 28 **Noble M.** Chief Administrative Officer, City of Swift Current. Telephone interview. March 2009.
- 29 **Shaheen S.** Director of communications, Saskatchewan Indian Gaming Authority, Central Office. Telephone interview. 12 March 2009.
- 30 Note: The Battlefords Agency Tribal Chiefs, Inc. (BATC) was formed by the Sweetgrass, Red Pheasant and Moosomin First Nations after they withdrew their membership from the Battlefords Tribal Council (BTC) in 2007. Also in 2007, the Federation of Saskatchewan Indian Nation’s (FSIN) Chiefs-in-Assembly made a decision to replace the BTC with the BATC as the host tribal council for the casino.
- Bernhardt D**, Saskatchewan News Network. “Chiefs make call for action from Sask. premier.” *Regina Leader-Post*. 3 July 2008. <http://www2.canada.com/reginaleaderpost/news/story.html?id=a10b277a-ed1a-4797-b56b-c8eb8803f16e>. Accessed March 2009.
- 31 *R. v. Jenkinson and R. v. Creekside Hideaway Motel Ltd.* Dockets: CR 05-03-00091 and CR 05-03-00092. 14 August 2006. www.canlii.org/en/mb/mbqb/doc/2006/2006mbqb185/2006mbqb185.pdf. Accessed March 2009.
- 32 **Government of Manitoba.** “Province to Extend Smoking Ban to First Nations.” Press release. 13 September 2006. www.gov.mb.ca/chc/press/top/2006/09/2006-09-13-04.html. Accessed March 2009.
- 33 *R. v. Creekside Hideaway Motel Ltd. et al.*, 2008 MBCA 28. 12 March 2008.
- 34 *Brokenhead Ojibway Nation v. The Government of Manitoba and The Manitoba Lotteries Corporation.* File No. C109-01-59576. 7 January 2009.
- 35 **Lambert S.** “Reserve sues province over smoking ban.” *The Winnipeg Sun*. 12 January 2009. www.winnipeg.sun.com/news/manitoba/2009/01/12/8001906.html. Accessed March 2009.
- 36 **Ibbotson H.** “Under the B-- bingo.” *The Brantford Expositor*. 23 February 2009. www.brantfordexpositor.ca/ArticleDisplay.aspx?e=1447626. Accessed March 2009.
- 37 **Six Nations Council.** “Six Nations Opens New Bingo Hall.” Website text. 21 February 2009. www.sixnations.ca/BHArchive.htm. Accessed March 2009.
- 38 **Sayers L.** Chief of Garden River First Nation. Telephone interview. 23 April 2007.
- 39 **Hewson M.** Economic Development Officer, Batchewana First Nation. Telephone interview. 25 April 2007.
- 40 **Statistics Canada.** “Community Highlights for Nunavut.” 2006. www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/details/Page.cfm?Lang=E&Geo1=PR&Code1=62&Geo2=PR&Code2=01&Data=Count&SearchText=Nunavut&SearchType=Begins&SearchPR=01&B1=All&Custom=. Accessed March 2009.
- 41 **Statistics Canada.** “2006 Census Aboriginal Population Profiles.” 2006. www12.statcan.ca/english/census06/data/profiles/Aboriginal/Details/Page.cfm?Lang=E&Geo1=PR&Code1=62&Geo2=PR&Code2=01&Data=Count&SearchText=Nunavut&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=&GeoCode=62. Accessed March 2009.
- 42 **Statistics Canada.** *Canadian Community Health Survey (CCHS): Smoking and Diabetes Care: Results from the CCHS Cycle 3.1, 2005*. www.statcan.ca/english/research/82-621-XIE/2006002/charts/chart05.htm. Accessed March 2009.
- 43 **World Health Organization.** “Higher Taxes Key To Battle Against Tobacco, Says New WHO/World Bank Publication.” Press release. 8 August 2000. <http://www.who.int/inf-pr-2000/en/pr2000-53.html>. Accessed March

-
- 2009.
- ⁴⁴ Note: The 512-page book, entitled *Tobacco Control in Developing Countries*, was the outcome of a three-year research project involving a team of about 40 economists, epidemiologists, social scientists, public policy specialists and legal experts from 13 countries. The entire book can be read on-line on The World Bank's Website: www1.worldbank.org/tobacco/tcdc.asp. Accessed March 2009.
- ⁴⁵ **Canadian Coalition for Action on Tobacco**. "A win-win: enhancing public health and public revenue. A submission to the Honorable Ralph Goodale, P.C., M.P., Minister of Finance." 2004. p. 4. www.nsra-adnf.ca/cms/file/pdf/taxreport2004.pdf. Accessed March 2009.
- ⁴⁶ **Ibid.**
- ⁴⁷ **Canada Revenue Agency**. Information for Status Indians. www.cra-arc.gc.ca/brgnls/stts-eng.html. Accessed March 2009.
- ⁴⁸ **Revenu Québec**. Remboursement et exemption de la taxe pour cas particuliers. www.formulaire.gouv.qc.ca/cgi/affiche_doc.cgi?dossier=4035&table-0. Accessed March 2009.
- ⁴⁹ **Elliott E.** General Manager, Cowichan Tribes. Telephone interview. November 2008.
- ⁵⁰ **Department of Finance Canada**. First Nations Sales Tax Administration Agreements. Website text. www.fin.gc.ca/activty/firstnations/aagoods_-eng.asp. Accessed March 2009.
- ⁵¹ **Medd K.** Senior Tax Policy Officer. Department of Finance Canada. E-mail communication. 20 March 2009.
- ⁵² **Department of Finance Canada**. First Nations Goods and Services Tax Administration Agreements. Website text. www.fin.gc.ca/activty/firstnations/aagoods_-eng.asp. Accessed March 2009.
- ⁵³ **Royal Canadian Mounted Police**. "RCMP closes book on historic tobacco investigations." Press release. 31 July 2008. www.rcmp-grc.gc.ca/news/2008/2008_07_31_tobacco_e.htm. Accessed August 2008.
- ⁵⁴ **Canada Revenue Agency**. "Comprehensive settlement agreements between federal and provincial governments and Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges Inc." 31 July 2008. www.cra-arc.gc.ca/gncy/tbcc/menu-eng.html. Accessed August 2008.
- ⁵⁵ **Turenne P.** "Counterfeit cigarettes hit Manitoba." The Winnipeg Sun. 17 February 2007. <http://winnipeg.sun.com/News/Manitoba/2007/02/17/pf-3639882.html>. Accessed March 2007.
- ⁵⁶ **CBC News**. "Cheap, illegal tobacco gaining ground, Mounties say," 14 March 2007. www.cbc.ca/canada/newfoundland-labrador/story/2007/03/14/illegal-tobacco.html. Accessed March 2009.
- ⁵⁷ **CBC News**. "Have cheap smokes, will smuggle through New Brunswick." 12 January 2007. www.cbc.ca/canada/new-brunswick/story/2007/01/12/nb-smugglers.html. Accessed March 2009.
- ⁵⁸ **CTV.ca News**. "RCMP make arrests in black market tobacco ring." 22 September 2006. www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060922/halifax_cigarettes_060922. Accessed March 2009.
- ⁵⁹ **Royal Canadian Mounted Police**. Contraband Tobacco Enforcement Strategy. May 2008. p. 13. www.rcmp-grc.gc.ca/ce-da/tobacco-tabac-strat-2008-eng.pdf. Accessed March 2009.
- ⁶⁰ **Criminal Intelligence Service Canada**. 2005 Annual Report on Organized Crime in Canada. 2005. http://cisc.gc.ca/annual_reports/annual_report_2005/document/annual_report_2005_e.pdf. Accessed March 2009.
- ⁶¹ **Royal Canadian Mounted Police**. Contraband Tobacco Enforcement Strategy. May 2008. www.rcmp-grc.gc.ca/ce-da/tobacco-tabac-strat-2008-eng.pdf. Accessed March 2009.
- ⁶² **Schwartz R.** Presentation at Bi-National Conference, A Taxing Issue: Public Health and Contraband Control, University of Buffalo. 4 February 2009. <http://ataxingissue.com/Presentations/006%20Schwartz%20The%20OTRU%20Study.ppt>. Accessed March 2009.
- ⁶³ **Physicians for a Smoke-free Canada**. Estimating the volume of Contraband Sales of Tobacco in Canada. December 2008. p. 9. http://smoke-free.ca/pdf_1/EstimatesofContraband-2008.pdf. Accessed March 2009.
- ⁶⁴ **Gfk Research Dynamics**. Illicit Usage of Cigarettes in Canada. 2008 Study: Summary of Results. 2008. [www.imperialtobacco.com/onewebca/sites/IMP_5TUJVZ.nsf/vwPagesWebLive/DO7L3L5T/\\$FILE/medMD7M6VQZ.pdf?openelement](http://www.imperialtobacco.com/onewebca/sites/IMP_5TUJVZ.nsf/vwPagesWebLive/DO7L3L5T/$FILE/medMD7M6VQZ.pdf?openelement). Accessed March 2009.
- ⁶⁵ **Canadian Coalition for Action on Tobacco**. A Brief for The Honourable Jim Flaherty, P.C., M.P., Minister of Finance, Regarding Budget 2009. 19 December 2009. www.nsra-adnf.ca/cms/file/pdf/CCAT_pre-Budget_Brief-2008-12-19.pdf. Accessed March 2009.
- ⁶⁶ A test shopper was able to purchase a package of SAGO brand cigarettes for \$4.50, tax-free, on 18 February 2007, and was not asked for any sort of identification.

-
- 67 **Physicians for a Smoke-free Canada.** “Diary: December 6, 2006. It's not hard to buy untaxed cigarettes.” http://smoke-free.ca/eng_home/news_press_2006-12-18-smuggling.htm. Accessed March 2009.
- 68 **Lajoie K.** “Smuggling a provincial problem: Labour Minister says his riding hit hard, too.” *Cornwall Standard-Freeholder*. 17 August 2006.
- 69 **Associated Press.** « 17 à 22 ans de prison pour le cerveau d'un réseau de contrebande Mohawk. » *La Presse*. 7 November 1998. p. A15.
- 70 **George-Kanentiio D.** “It wasn’t supposed to be this way.” *The Ottawa Citizen*. 19 November 2008. p. A15. www.canada.com/ottawacitizen/news/opinion/story.html?id=2e6394fc-fe2b-4409-9794-c5d456e7ac7a&p=1. Accessed March 2009.
- 71 **Cherry P, White M.** “RCMP shuts down bikers’ cigarette ring.” *The Montreal Gazette*. 13 March 2009. www.montrealgazette.com/news/story.html?id=1383643. Accessed March 2009.
- 72 **Ibid.**
- 73 **Royal Canadian Mounted Police.** “Project Crawler: The RCMP arrests 12 subjects allegedly linked to a cigarette smuggling and drug trafficking ring.” Press release. 20 November 2006. www.rcmp-grc.gc.ca/qc/comm/archives/2006/Nov06/061120_e.htm. Accessed March 2007.
- 74 **Saint Regis Mohawk Tribal Council.** “Saint Regis Mohawk Tribal Council Suspends Cigarette Manufacturer License.” Press release. 21 April 2006. www.srmt-nsn.gov/press_releases/pr_042106-2.html. Accessed March 2009.
- 75 **Johns E.** “Smuggling kingpins raked in cash.” *Cornwall Standard-Freeholder*. 21 November 2006.
- 76 **Mitchell L.** Akwasasne Mohawk Police Chief. Telephone interview. 2007.
- 77 **Ibid.**
- 78 **Royal Canadian Mounted Police.** “A Trespassing and Highway Traffic Act Investigation by the Akwesasne Mohawk Police Leads to Seizure of 250,000 Contraband Cigarettes.” Press release. 8 May 2007.
- 79 **Presse Canadienne.** « Le commerce des cigarettes amérindiennes est une mine d'or pour Kitigan Zibi. » *Le Driot*. 27 January 2006.
- 80 **Grand River Enterprises.** Website text. www.mohawkgre.com/aboutus.html. Accessed April 2007.
- 81 **Grand River Enterprises Six Nations, Ltd., et al. v. United States of America.** UNCITRAL (NAFTA). Statement of Claimants' Claims Arising Directly Out of the Adoption and Implementation of the Allocable Share Amendments, p. 20. 6 November 2006. www.state.gov/documents/organization/75752.pdf. Accessed March 2009.
- 82 **Ibid.**, p. 25.
- 83 **Grand River Enterprises Six Nations, Ltd., et al. v. United States of America.** UNCITRAL (NAFTA). Statement of Claim, p. 21. 30 June 2005. www.state.gov/documents/organization/49666.pdf. Accessed March 2009.
- 84 **Buist S, Walters J.** “Tobacco's billion-dollar empire.” *The Hamilton Spectator*. 3 October 2006. p. A11.
- 85 **Buist S, Walters J.** “Tobacco's billion-dollar empire.” *The Hamilton Spectator*. 3 October 2006. p. A10.
- 86 **Grand River Enterprises Six Nations Ltd. v. Sydney Burnham.** Superior Court of Justice – Ontario. Court file no. 00-939. 14 October 2004. www.canlii.org/en/on/onsc/doc/2004/2004canlii34931/2004canlii34931.pdf. Accessed March 2009.
- 87 **SRC/CBOFT TV : LE POINT.** “Native Cigarette Industry.” 12 January 2005. Transcript provided by Kanesatake Mohawk Voice. http://kmvoice2.tripod.com/kmv/scandal/050112_rdiap.htm. Accessed April 2007.
- 88 **Aboriginal Business.** “Grand River Enterprises... The company that can.” *Winter 2006-7 magazine*. p. 15.
- 89 **Ibid.**, p. 6.
- 90 **Gamble S.** “Six Nations concert will promote unity.” *The Brantford Expositor*. 29 May 2006.
- 91 Although initial media reports said GRE was sponsoring the concert, the poster advertising the event stated that the Dream Catchers Fund and Wahta Water (both of which are connected to GRE) were the main sponsors.
- 92 **Ontario Provincial Police.** “O.P.P. Investigate Three Violent Altercations Within One Hour.” Press release. 11 June 2006. <http://micro.newswire.ca/release.cgi?rkey=1406114136&view=11636-2&Start=220>. Accessed March 2007.
- 93 **Ontario Provincial Police.** “O.P.P. Arrest.” Press release. 21 June 2006. <http://micro.newswire.ca/release.cgi?rkey=1406215298&view=11636-2&Start=210>. Accessed March 2007.
- 94 **Gamble S.** “2-million fund launched for First Nations.” *The Brantford Expositor*. 7 August 2004.
- 95 **Dreamcatcher Fund.** “Dreamcatcher Fund Applications on Rise!” Press release. 15 January 2007.

-
- www.dreamcatcherfund.com Accessed April 2007.
- 96 **Canadian Broadcasting Corporation.** “Contraband smokes killing business: cigarette factory owner.” 15 May 2006. www.cbc.ca/canada/toronto/story/2006/05/15/tor-contraband-cigs60515.html. Accessed March 2009.
- 97 **Royal Canadian Mounted Police.** “RCMP seize non-duty paid cigarettes from Windsor residence.” Press release. 4 May 2006. www.rcmp-grc.gc.ca/on/press/2006/06-05-05_windsor_cigs_e.htm. Accessed March 2007.
- 98 **Royal Canadian Mounted Police.** “Cigarette Seizure in Sudbury area.” Press release. 29 August 2005. www.rcmp-grc.gc.ca/on/press/2005/2005_aug_29_e.htm. Accessed March 2007.
- 99 **Royal Canadian Mounted Police.** Contraband Tobacco Enforcement Strategy. May 2008. p. 13. www.rcmp-grc.gc.ca/ce-da/tobacco-tabac-strat-2008-eng.pdf. Accessed March 2009.
- 100 **CBC News: Sunday.** “Shawn Brant Interview,” 23 April 2006. www.cbc.ca/sunday/brant.html. Accessed March 2009.
- 101 **Ellsworth B.** “Ottawa considers Tobacco Act revision.” The Whig-Standard. 3 January 2007.
- 102 **Ellsworth B.** “Woman guilty of selling illegal Mohawk smokes.” The Intelligencer. 29 November 2006.
- 103 **Ellsworth B.** “Health unit seeks advice on cheap smokes.” The Intelligencer. 4 November 2006. p. A3.
- 104 **Abenaki Enterprises / Choice Tobacco.** www.abenakienterprise.com/about.php. Accessed March 2009.
- 105 **O’Bomsawin R.** Telephone interview. 19 March 2009.
- 106 **Revenu Québec.** « Revenu Québec saisit à nouveau des conteneurs de tabac à Montréal. » Press release. 19 October 2006. www.revenu.gouv.qc.ca/eng/ministere/centre_information/communiqués/ev-fisc/2006/19oct.asp. Accessed March 2009.
- 107 **CJSO.** « Richard O’Bomsawin demande des comptes à Revenu Québec. » 27 October 2006. www.cjsq.qc.ca/actualites.php?ctime=1161960086. Accessed March 2009.
- 108 **ADL Group.** Website text. www.groupeadl.com/tobacco_an.htm. Accessed March 2009.
- 109 **Ibid.**
- 110 **Les Technologies Biofiltre, ADL Tobacco.** “Technologies Biofiltre and ADL Tobacco launch AZUR, a biofilter-equipped cigarette that diminishes the harmful effects of smoking.” Press release. 27 September 2006. www.newswire.ca/en/releases/archive/September2006/27/c2473.html. Accessed March 2007.
- 111 **Kahnawake Tobacco Association.** Website text <http://kahnawaketobaccoassociation.com/>. Accessed March 2007.
- 112 **Johns B.** “Voluntary Safety Program in the Works for Tobacco Manufacturers.” The Eastern Door. 17 December 2004. www.easterndoor.com/archives/vol13/47.html. Accessed March 2007.
- 113 **Mohawk Council of Kahnawá:ke.** Website text. www.kahnawake.com/council.asp. Accessed May 2007.
- 114 **Mohawk Council of Kahnawá:ke.** “MCK, Canada and Quebec to meet on Tobacco.” Press release. 2 March 2006. www.kahnawake.com/news/pr/pr03022006a.pdf. Accessed March 2009.
- 115 **Mohawk Council of Kahnawá:ke.** “MCK calls for urgent meeting on tobacco.” Press release. 19 January 2006. www.kahnawake.com/news/pr/pr01192006a.pdf. Accessed March 2009.
- 116 **Picard A, Mouton F.** « Fumer autochtone. » Le Point (Société Radio-Canada). 12 January 2005. www.radio-canada.ca/actualite/v2/tj22h/archive50_200501.shtml. Accessed March 2009.
- 117 **Renaud D.** « Marché noir de cigarettes: Ottawa ferme les yeux. » Journal de Montréal. 27 October 2005. pp. 4-5.
- 118 **Royal Canadian Mounted Police.** Contraband Tobacco Enforcement Strategy. May 2008. p. 13. www.rcmp-grc.gc.ca/ce-da/tobacco-tabac-strat-2008-eng.pdf. Accessed March 2009.
- 119 **Revenu Québec.** « Revenu Québec saisit des conteneurs de tabac dans le port de Montréal. » Communiqué de presse. 15 septembre 2006. www.revenu.gouv.qc.ca/eng/ministere/centre_information/communiqués/ev-fisc/2006/15sep.asp. Accessed March 2009.
- 120 **Paré C.** “Going native: Smokers head to the reserves for a cheap fix of non-brand name cigarettes.” Montreal Mirror. 18 July 2002. www.montrealmirror.com/ARCHIVES/2002/071802/news2.html. Accessed March 2009.
- 121 **Saint Regis Mohawk Tribal Council.** Interview with Leslie Logan, Director of Public Information. 10 May 2007.
- 122 **Ibid.**
- 123 **Powless L.** “Manufacturers React to RCMP Raid.” The Eastern Door. 4 February 2005. www.easterndoor.com/archives/VOL.14/14-1.htm. Accessed March 2007.
- 124 **Royal Canadian Mounted Police.** “264,000 Contraband Cigarettes Seized by the Central St. Lawrence Valley

-
- Regional Task Force.” Press release. 9 February 2007. www.rcmp-grc.gc.ca/qc/comm/2007/fe07/070209_e.htm. Accessed March 2007.
- 125 **Saint Regis Mohawk Tribal Council**. “Seniors Center Grand Opening Celebration July 28th.” Press release. 25 July 2006. www.srmt-nsn.gov/press_releases/pr_072506.html. Accessed March 2009.
- 126 **Powless L**. “Manufacturers React to RCMP Raid.” The Eastern Door. 4 February 2005. www.easterndoor.com/archives/VOL.14/14-1.htm. Accessed March 2007.