

Ontario's imposed "unconstitutional" quota system in place

By Lynda Powless
Editor

At the Wabigoon First Nation band owned grocery store business is brisk.

The ice road is frozen and First Nations people from isolated communities are down to take advantage of cheaper prices.

They buy gasoline, filling their vehicles and drums.

And they load up on tobacco products at Wabigoon, near Dryden, Ontario.

Back in Cat Lake, an isolated northern First Nations community, the community doesn't even have a store so the ice road is welcome and so is Wabigoon First Nation's store.

Like an oasis in the desert, for any one travelling back home to northern communities or heading to Thunder Bay, Wabigoon Lake First Nation is the last stop on the highway home.

Wabigoon enjoys the business, says band councillor Lana Kooshet.

Any profits go back into community events.

But the community's economic success is limited by an Ontario government tobacco allocation system that determines the number of cigarettes any first nation person can buy.

And it's a system that has already been struck down by Ontario courts.

It cost Six Nations \$300,000 in 1989 to take Ontario to court over the, then "quota" system.

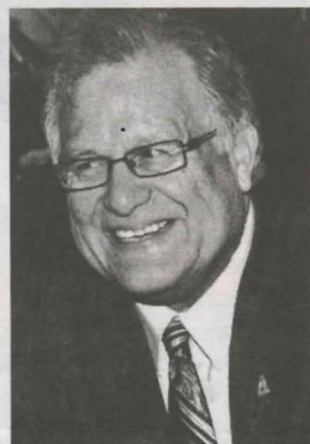
The courts agreed with Six Nations. Ontario had exceeded its authority and was illegally imposing a tobacco distribution system on First Nations.

But before First Nations could celebrate the win, Ontario changed the name to an "Allocation" system and left it to First Nations

to take them to court all over again.

Six Nations balked at the cost.

Former Elected Chief Bill Montour says as a result "the quota system became part of the community by default"



Former Six Nations Elected Chief Bill Montour

"That system is ghettoizing our people," he told Turtle Island News.

He says, "It's unconstitutional."

He was elected Chief when the tobacco industry first started taking off in 1985 and 1986. "That's when tobacco was just starting to become an issue. Ontario had a quota system, in 1983 and Six Nations had 150 quotas out, a number of councillors had quotas themselves at the time.

He said he tried to get the band council to get control of the system in 1987.

"I told them it will get out of hand now look what we got, 547 businesses, some are out of business, some have passed away."

He said Six Nations took Ontario to court in 1989 to prove Ontario had overstepped its authority.

"It's unconstitutional. They put a quota on a segment of Canadian society and we challenged it in court and the Supreme Court agreed with us. The

court said no, you cannot put a quota on First Nations."

Here's what happened.

Ontario began to impose its tobacco products quota on First Nations 31 years ago, in 1983.

Before that First Nations people could buy any quantity of tobacco products from a wholesale dealer in Ontario that they chose to, like any other business in Ontario.

And like any other business in Ontario, they sold to whomever walked in their door.

But First Nation businesses began to prosper with increased customer demand for tobacco products and Ontario put the brakes on.

Ontario claimed they were suffering a "substantial loss of tax revenue," and arbitrarily imposed a quota system on all First Nations in Ontario.

The Chiefs of Ontario (COO) tried to intervene, in 1982 when word leaked the restraints were coming.

The COO passed a motion that they would take the responsibility of nominating tobacco retailers on their reserves to purchase tax exempt tobacco products in bulk from wholesale dealers for their communities.

At Six Nations, 72 permits were issued by the Chief and council. In the four months between January 1, 1983 and April 30, 1983, more than forty million cigarettes were sold tax-exempt under the permits issued by the Chief and council.

Ontario's Minister of Finance wrote to then Chief Wellington Staats complaining "clearly, non-Indians not entitled to tax-exemption have improperly benefited from the



Wabigoon lake community store. (Supplied photo)

purchases made under these permits, resulting in a very substantial loss of tax revenue to the Province of Ontario."

The Minister urged Staats to limit the permits his council was handing out.

When Six Nations refused, the Ministry claimed they had "no alternative now but to impose the restrictions that the permit system was intended to achieve voluntarily."

The Minister's letter to then elected Chief Wellington Staats on May 31, 1983 read:

"Ontario abides by the federal law and recognizes that provincial tobacco tax is not payable by an Indian on the tobacco acquired by him for personal use on the reserve. In order to ensure that the individual Indian obtains this exemption to which he is entitled, prior to October 1, 1982 it was possible for an Indian to purchase tobacco products in any quantity from any wholesale dealer in Ontario."

By June 1, 1983, Ontario had imposed quotas on First Nations.

At Six Nations, the most populated First Nations community in Ontario, the community was limited to buying a total of 2.5 million tax exempt cigarettes a month from wholesalers.

In July 1983, Staats objected to the quota system, writing to the ministry that

the limited quota system they were imposing was "unconstitutional. There is no doubt that cigarettes are a vital part of our businesses, and under the system you have implemented, it leaves each and every store owner a capacity to sell approximately 35 cartons of cigarettes per week. This is absolutely undesirable, and I think the quota system is unconstitutional."

Staats had proposed setting up a cigarette by-law to be instituted by band council to help resolve the quota issue, but the ministry, on July 20, 1983, ordered all licensed wholesale dealers in the Brantford area to stop selling tax-exempt cigarettes to any retailers on the reserve, writing a letter to off-reserve wholesalers stating:

"...effective immediately and until further advised by me in writing, no further cigarettes are to be sold by you tax-exempt to any retailer on the Six Nations Reserve. The reason for this is that the number of cigarettes purchased tax-exempt in the first two weeks of July by retailers on the reserve far exceeds the quantity reasonably required for resale there in any calendar month. In the meantime, I am working with the Chief to establish a revised system acceptable to both him and the government and as soon as possible you will be advised and tax-exempt

sales may then resume."

The ministry says the number was based on the reserve's population at the time.

As a result each permit holder was only able to purchase 34,700 cigarettes tax-exempt each month. Wholesale suppliers in the region were notified of the change.

But Ontario soon learned it had imposed an illegal limitation on First Nations when two Six Nations men, charged with selling cigarettes wholesale, with the backing of the Six Nations elected Council took on Ontario and its quota system and won.

The late Victor Bomberry, owner of Chiefswood Gas Bar and the late Richard "Dick" Hill, owner of Dick's Smoke Shop challenged Ontario's provincial system of tobacco tax collection in court charging:

- 1) Quotas imposed an unconstitutionally prohibited indirect tax instead of a direct tax
- 2) That the Indian tobacco quota is not authorized by the Tobacco Tax
- 3) That the Indian tobacco quota represents an administrative overreach of provincial power into jurisdiction constitutionally reserved to the Dominion and exercised by Parliament in s.87 of the Indian Act which exempts from taxation the personal property

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