

Two First Nations taking on Ontario and Canada

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of an Indian situated on a reserve.

Ontario's Tobacco Tax Act imposes a tax on consumers of tobacco and imposes an obligation on a retailer to collect the tax.

The act states retailers on a reserve are not required to collect tax from Indians purchasing tobacco products for their own use on the reserve.

The case argued while the Tobacco Tax Act was valid as direct taxation, nothing in the act authorized the creation of the quota system.

Over \$300,000 later Six Nations won the 1989 case.

The court had said the quota treaded on an area of federal jurisdiction.

Evidence presented showed the provincial quota "exceeded the constitutional authority of the province by intruding into an area of federal jurisdiction."

Former elected chief Bill Montour said "we proved Ontario has no business legislating against us. That was clearly proven."

But before any First Nations community could celebrate the victory Ontario moved again.

The province, under the guise of a moratorium changed the name of its system from quota to allocation.

That name change meant a game change. Six Nations would be forced to go back to court again, with limited funds, to fight Ontario's move.

Former Elected Chief Bill Montour said Ontario's Bob Nixon asked for a moratorium in 1991 just as Montour was leaving office. "Bob Nixon asked for a moratorium to fix the quota system. They fixed it alright. They used the time to

come up with an allocation system but it's the same thing and council didn't follow through on it so it is still unconstitutional."

He said Six Nations Band Council has had several visits from Ontario's Minister of Finance and Ontario's Minister of Aboriginal Affairs over the years wanting the band council to help them fix the system.

"We said no. No damn way. It denies our people the right to retail or wholesale. They want us to take it over but they want to set rules, make sure we are only selling to ourselves or collecting tax for them."

Unlike several First Nation communities in Ontario, Six Nations Band Council refused to take over the quota system.

"Every year they send a list of who is getting a quota and a letter to council saying if we take it over they will increase the allocation by 20 percent and give us another 10% for pow wow time. We say no we do not support a system that ghettoizes our people."

He says "it is unconstitutional. The court has told us that but Ontario continues."

He said Ontario is strong arming Six Nations businesses.

"Now they are asking people to be more accountable, what kind of business do they have, how many are they selling. But I still maintain it is unconstitutional and should be challenged."

He said Ontario and Canada are pushing for economic development in First Nations, but on their terms.

"They are telling us to get in business but they want to decide what kind of business we can get into, who we can deal with, and they will determine who is a bona fide Indian, and they want us to collect taxes for them.

"And I say no damn way. Why should we be tax collectors for any other government."

But Ontario's allocation system is still in place. At least for now.

Wabigoon First Nation has joined forces with the Chapleau Cree First Nation

**"What really pisses me off is tobacco is a product we have traded for eons. Now they (Ontario and Canada) come along and say they are going to control it. I say oh no you don't. We never gave them that right."
Former Elected Chief Bill Montour**

and First Nations tobacco manufacturing giant Grand River Enterprises (GRE) to challenge the Ontario government's tobacco allocation system claiming it is unconstitutional.

For Wabigoon First Nation councillor Lana Kooshet it's discriminatory.

"I don't see Ontario telling Canadian Tire how many tires they can sell or telling Walmart how much bread they can sell or the 7-11 in Dryden, which is not far from us, how many cigarettes they can sell," she says

It's particularly difficult for Wabigoon, she says because they do service so many northern First Nation communities.

"We service more than just our First Nation. We have First Nations that are close by us. They utilize our store to buy their tobacco products and because of that quota or allocation we are given by Ontario it is not sufficient. We run out before the year end and have to try to limit our commu-

nity members to how many cartons or packs they can buy."

When ever the community has an event, she said they are inundated with north-erns.

"They come from Sioux Lookout and as soon as the ice road is ready, we get them from Red Lake or Sachigo Lake or other communities They all come here because our products are a lot cheaper. They pay three times the rate they would pay in Wabigoon."

The result, she says is "we have a huge indigenous customer base who are entitled to buy these tobacco products, tax free. They all come with their tax cards, and we have to sell to them we can't discriminate against them but with the allocation or quota system Ontario imposes on us, we run out before the year end and we have to buy tobacco products full price with taxes."

Councillor Lana Kooshet, has been a band councillor since last fall. Before that she managed the community owned store for the community of 600.



Wabigoon Lake Councillor Lana Kooshet

She said the store does get more quota than their demographics show, receiving 7,000 when it should only 5000, but servicing other communities means they still run short.

"Why are we limited? Why can't First Nations sell as much as they want to, like any other business in Ontario. Why are we being

discriminated against," she says.

She says Ontario's allocation or quota system is confusing, chaotic and unfair.

"It doesn't even make sense. Some communities have no stores at all so they get a quota or allocation, assigned to them but they can't get the products so they come to our store."

She says the Ontario's Ministry of Finance "is a headache. When I managed our store they would call and ask why I sold so much gas on a particular weekend. Well, that was a weekend; we had the northern hockey tournament so everyone was here and buying gas. They have their gas card so we can't refuse them."

She said they don't just buy cigarettes. "A lot of the northern communities come here to buy tobacco for their ceremonies."

Wabigoon First Nation, the Chapleau Cree First Nation and GRE are gearing up for a fight charging Ontario's "Allocation System" is unconstitutional, that Ontario does not have the jurisdiction to impose taxation on First Nation territories.

Grand River Enterprises has every reason to oppose the allocation system. Ontario is now trying to draw First Nations manufacturers under the same "Allocation System," limiting their First Nation to First Nation sales.

That could mean millions in lost sales for the First Nation company. In addition GRE is also facing the loss of as much as \$150 million in a lost excise tax court case in 2013.

The company failed in a legal challenge to argue that tobacco products manufactured on a reserve for sale to natives should be exempt from excise taxes.

The Supreme Court of Canada refused to review a lower court judgement against GRE Six Nations Ltd., that excise taxes were still applicable. That ruling ended the challenge.

Courts had held that GRE was responsible for 23 assessments for 'excise duty and related interest' on tobacco products it manufactured from September 2005 to July 2007 and sold to retailers on reserves in Ontario.

The case was lost by the Hamilton law firm of Hammond Inch and Monture. Lawyer John F.C. Hammond said at the time that a separate legal action was dealing with whether those taxes should be paid but Revenue Canada officials told Turtle Island News discussions are underway.

Hammond had argued that native-to-native sales of tobacco products should be exempt from excise taxes because natives are not "members of the general public." He said "excise-taxable products are intended for members of the general public. The court ruled drafters of the legislation could not have possibly meant to exclude (natives) from the taxes."

Former Six Nations elected chief Bill Montour said GRE did make the same offer to Six Nations Band Council to join the new fight against the allocation system.

"Our council would not join on to GRE when they made a presentation to council. Ontario is questioning whether GRE could continue their nation to nation trade. I still believe that GRE or any one of our people has the right to engage in nation-to-nation trade."

Meanwhile current Elected Chief Ava Hill says a community meeting will be held.