

Haudenosaunee Confederacy tackling federal intrusion

By Lynda Powless
Editor

Controlling Haudenosaunee trade appears to have been a long time goal of federal and provincial governments.

When economic development first started in First Nations communities in the 1980s bands were restricted to engaging only in ventures that would not compete with any business in communities surrounding them.

It assured surrounding communities of the economic stability of millions of dollars in federal funding and private wages from First Nation people flowing into their towns and cities.

And they have. To the tune of millions of dollars a year from Six Nations into surrounding retail markets cutting short any growth of a retail market or industry at Six Nations.

That is until the tobacco industry was launched in the 1980s.

Since then, the trade has blossomed despite attempts by Canada and Ontario to shut it down.

But more controls are coming with five bills aimed at everything from marriage to bylaws to elections to commerce.

And the federal government is prepared to invest more money in policing to attack the First Nations tobacco industry, at least that section of the industry it

deems as "contraband."

The Six Nations Haudenosaunee Chief's Council (HCCC) has appointed a three person committee, Mohawk Chief Allen MacNaughton, secretary and Cayuga sub-chief Leroy Hill and technical adviser lawyer Aaron Detlor to come up with a draft position on the entire slate of federal bills the Harper government is implementing that essentially make "incremental" changes to the Indian Act.

**"Freedoms and liberties always come with responsibility and vigilance to keep those liberties."
Mohawk Chief Allen MacNaughton**

Incremental changes Prime Minister Stephen Harper warned band council chiefs last winter at its historic Crown/First Nations meeting in Ottawa would be coming.

A draft HCCC position will be heading to the Confederacy's April meeting.

"The chiefs asked us to draft a position that is a principled approach to the legislation coming out of Ottawa," said Aaron Detlor.

He said the position is not just reflective of Ontario and Canada.

"We have begun the process of considering a re-

sponse mindful of the broader implications of this type of legislation," he said.

Mohawk Chief Allen MacNaughton said the Confederacy position will speak to all the federal legislation from the matrimonial real



Mohawk Chief Allen MacNaughton

property act, to education, to Bill C-10.

He said the Confederacy is working with local tobacco manufacturers to draft a position on the federal C-10 amendment that will reflect the Confederacy's autonomy.

He said that includes possible Haudenosaunee regulation of the industry but "Canada and Ontario have to be aware that none of the acts that they may have passed in their legislative bodies will ever be enforced or recognized on Six Nations territory."

He said "the Confederacy will do its work diplomatically and politically but people themselves should realize they have to stand together. That while we

may have words and go to meetings there are actions that have to be taken in defence of Six Nations territory to keep the rights and liberties we have."

He said he is not suggesting violence, but "I am not excluding the fact that they may have to defend what they believe in. It's the bigotry in the greater society that has put pressure on their police forces to come up with this kind of legislation that may see those police forces trying to enforce it here."

He said people need to organize. "We may have the rights and liberties as a free people not to charge the Crown's taxes here, but the people around us are our neighbours. We have to be responsible for these rights and priviledges that we have here."

He said that could mean tobacco manufacturers may have to give back to the community to protect both the collective right and to keep pressure off the community.

He said "those involved in the industry are going to have to come together and work together."

He said those regulations could include pricing. "I believe that the people working in the industry, instead of making a pittance, because they are competing with each other and it is not regulated, it could benefit this community and

people around us if minimum pricing was regulated by a board."

He said "freedoms and liberties always come with responsibility and vigilance to keep those liberties."

He said even those unaffected by C-10, such as Grand River Enterprises (GRE) and others with federal licenses will be affected.

"If they do not cooperate with the Confederacy, they will be subject to outside laws. If they do not have the protection of the Confederacy they leave themselves out there."

The response has been triggered by recent concerns over an amendment to Bill C-10 a safe streets and crime bill that will extend policing of "contraband" from federal jurisdiction, the RCMP, to OPP, regional and local police forces to enforce.

Detlor said the Canadian muscle move is reflecting what is already happening in the U.S.

"We are considering and aware of how this process in Ontario seems to be replicating what has happened in New York and the U.S. generally."

He says the Confederacy position "will ultimately reflect the inherent jurisdiction of the Confederacy and sovereignty of the Six Nations people and we believe it is entirely appropriate to develop an inhouse solu-

tion."

But he said that inhouse solution to the tobacco trade industry will have to include those involved in the industry.

"The inhouse solution will have to be to some extent moved forward by those who are directly affected. From the Confederacy perspective, the chiefs believe it has never been their role to do what business people do."

He said, "the chiefs provide the space for people to do business and be successful, but don't take over the business."

He said the draft position will also comment on a number of federal bills that have already been approved by Ottawa or are coming.

"We are developing internally those positions to make sure they are consistent with where the chiefs stand on a number of issues and are conscious of the fact that this appears to be part of a broader attempt to de-legitimize Haudenosaunee sovereignty."

"In essence what we are saying is that today it's tobacco. Tomorrow it could be lumber, or employment income, until Haudenosaunee tax immunity is gone."

He said the Harper government's Bill C10 (the safe streets and crime bill) amendment that deals with First Nations tobacco in-

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Haudenosaunee Confederacy tackling economic war...

(Continued from page 6 industry) may appear as if this federal Bill won't touch you, but the difficulty is, there are several types of manufacturers, some federally but not provincially compliant, some Confederacy compliant, some provincially compliant and others no one knows what they are doing, but this bill will affect everyone."

He said the recent hike in tobacco prices from federally and provincially recognized tobacco manufacturers was "the thin edge of the wedge of tax right losses. The excise tax has become embedded in the pricing."

He said there is no legal foundation for the imposition of an excise tax on First Nations.

"If I buy a product tax exempt it should be tax exempt. So now they are trying to embed the taxes and suggest that it is not a tax but it is."

He said while tobacco manufacturers are now including the additional tax in their products sold on reserve, "legally, as a status Indian you are not required to pay it. But the manufacturers are embedding it into their prices."

Those increases, imposed by First Nation manufacturers on products made and sold on reserve, he says could be challenged.

"But you would have to challenge it in your own backyard very carefully and weigh it against what these manufacturers do for the community."

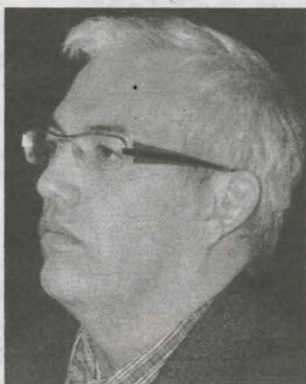
He said the community needs to have its own debate on the imposition of the excise tax within its borders.

"The community is going to have to debate the excise tax issue keeping in mind the relative economic benefit manufacturers paying the tax like Grand River Enterprises (GRE) provides. No one denies the benefit of what has happened to GRE and their growth, but

how do you balance that against what GRE has introduced whether intentional or not. That's the discussion that needs to take place."

He added "if the manufacturers agree to self regulate under the auspices of the Confederacy, then where does GRE fit into that."

GRE is a federally licensed tobacco manufacturing plant producing products sold in First Nations com-



Aaron Detlor

munities, in both Canada and the U.S. and has plants world wide.

It lost an appeal to Revenue Canada Agency last year attempting to argue tobacco products manufactured on a reserve for sale to natives should be exempt from excise taxes, claiming the act only applied to members of the public. That loss included as much as \$150 million in excise taxes.

For more than a decade GRE has maintained it has tried to push either the band council or confederacy to fight the tax issues and demand Ottawa share its excise taxes with the band.

GRE CEO Jerry Montour has appeared several times at band council seeking support from the band to seek a tax sharing revenue agreement. Several First Nations in B.C. have implemented similar agreements. That has not happened at Six Nations.

Meanwhile CRA spokesperson Philippe Brideau told Turtle Island News "The issue of revenue sharing would fall outside the responsibility of the

CRA and under the purview of the Department of Finance."

The DOF did not return Turtle Island News calls.

New York state's attorney general has filed a lawsuit against GRE in an attempt to stop the movement of tax-free cigarettes from the Six Nations plant to New York tribes, including the Seneca Nation of Indians.

Attorney General Eric T. Schneiderman filed the lawsuit a year ago against GRE, its Six Nations plant and principals - Jerry Montour, a member of the Wahta Mohawk band (no relation to Arthur Montour), and Kenneth Hill, a Six Nations band member and a shareholder in the company and Seneca businessman Art Montour the suit says was working with the Canadian operation to sell billions of tax-free cigarettes marketed under the "Seneca" brand name. Millions of dollars in penalties may be at stake.

The suit is still before the appeals court.

Both GRE and Native Wholesale Supply have filed motions to dismiss, said Casey Aguglia, of the attorney general's office. "We are still awaiting the court's decision."

Detlor says the GRE is an example of government shackling First Nations economic independence.

"Economic self sufficiency is okay to the federal government...but don't make too much money. So if that is the case what is the framework we need to set up to deal with that kind of thinking."

With increased industry, Six Nations, is facing increased infrastructure concerns. Water, roads, landfill site issues have all come to the forefront in recent years.

"Infrastructure needs are a serious concern. Would the community have needed the nice new water plant, or reinforced gas lines

or had its landfill site fill up so quickly if it didn't have increased industry and in particular such a large industry as GRE," he said.

He said "those are all issues that the chiefs will be considering. How do we pay for the increased wear and tear on roadways or even the Chiefswood Road Bridge. The bridge can only take so much and it begins

decreasing the lifespan of the bridge."

Former elected chief Bill Montour says he wants to see Six Nations develop its own tobacco commission and laws.

The Confederacy and band council had worked on a "tobacco law" in 2009 and 2010.

"I still think that has merit where both councils

mandate a tobacco commission that has delegated authority."

He said the solution to provincial quotas is "we have to get off reserve wholesalers out as distributors for Six Nations"

Meanwhile the Six Nations Band council is considering the Kahnawake Tobacco law and has come out against Bill C-10.

Breakdown of Legislation Affecting First Nations

Passed

Legislation Title: **Bill C-10 The Safe Streets and Communities Act**

Details: Omnibus crime bill, with additions and amendments to the Criminal Code, Youth Criminal Justice Act, State Immunity Act, Controlled Drugs and Substances Act, the Youth Criminal Justice Act. Date passed: April 2012

Legislation Title: **Bill C-27 First Nations Financial Transparency Act**

Details: An Act to enhance the financial accountability and transparency of First Nations. Provisions mandating the auditing and reporting of a band's finances Failure to provide and publish financial statements results in withholding of funding to that First Nation Date passed: March 27, 2013

Legislation Title: **Bill S-2 Family Homes on Reserves and Matrimonial Interests or Rights Act**

Details: Provides First Nations with the power to enact laws relating to matrimonial real property on reserves The federal provisional rules in the bill will apply until a First Nation has such laws in force.

Six Nations band council has developed its own Matrimonial Real Property law Date passed: June 19, 2013

Legislation Title: **Bill S-8 Safe Drinking Water for First Nations Act**

Details: Regulates the provision of safe drinking water on First Nations Puts the onus on band councils to provide safe drinking water. No extra funding provided to ensure safe drinking water. Date passed: June 19, 2013

Pending

Legislation Title: **Bill C-10 amendment :The Tackling Contraband Tobacco Act**

Details: An amendment to the Safe Streets and Communities Act Tabled in November 2013 Adds "contraband" tobacco trafficking as an offence in Criminal Code Many First Nations rely on tobacco industry for economic prosperity Stage of Implementation: Estimates expected to pass third reading in the House within a month

Legislation Title: **First Nations Control of First Nations Education Act (FNCFNEA)**

Details: Originally introduced as the First Nations Education Act in 2013 FNCFNEA introduced in February 2014 Promises \$1.9 billion in funding to First Nations education starting in 2016 Stage of implementation: Expected to come into effect in September 2014, according to Six Nations Elected Chief Ava Hill

Legislation Title: **Bill C-428 Indian Act Amendment and Replacement Act**

Details: Aims to amend the Indian Act to require band councils to publish their by-laws The Indian Act will be silent on by-laws regarding alcohol Federal employees, missionaries, and school teachers may now trade with Indians without a license and will not be guilty of an offence and fined Minister can no longer enter into agreements with religious organizations regarding the education of Indian children Stage of implementation:

Passed through House; has passed first reading in Senate, November 2013

Legislation Title: **Bill S-6 First Nations Elections Act**

Details: Introduced December 2011 Law that regulates elections and term of office of chiefs and councillors of certain First Nations and the composition of council of those First Nations Stage of implementation: Passed second reading in House of Commons, June 2013