

Bill C-10 from the perspective of two lawyers

By Jen Mt. Pleasant

Last Saturday, concerned members of the community packed a room at Six Nations Polytech to listen to various speakers discuss Bill C-10 and what will happen if it is made into law.

Toronto criminal lawyer Mike Leitold informed the crowd that the new Bill C-10 is an attack on economic self-determination of Haudenosaunee people. Before First Nations people try and decide what steps to take next, he explained, "We need to look at the facts before you organize

a response."

"So what is Bill C-10," Leitold asked. "It is an attempt to criminalize possession of any tobacco that hasn't been stamped. Called Tackling Contraband Tobacco, it will allow for mandatory minimum sentencing if a person is found with 10,000 cigarettes or more (approximately 50 cartons). It also includes raw leaf tobacco in the amount of 10 kg or more." Those found guilty of possessing, distributing or transporting tobacco, will be sentenced to mandatory minimum sentences: 90 days in jail

for a second offence; six months for a third offence and two years less a day for a fourth offence.

Mandatory minimum sentencing means your lawyer has no power because the punishment has already been pre-determined and the judge must hand out jail time.

But the biggest deal here, according to Leitold is this, "The RCMP enforce the Excise Tax Act but if Bill C-10 gets legislated, it will then involve provincial and municipal police forces, including First Nations police, who will all be tasked to enforce the contraband to-

bacco law."

According to the Legislative Summary on Bill C-10, "the biggest challenge for enforcement has been the differing interpretations of First Nations and the Canadian government about the content of Aboriginal rights and who has jurisdiction on reserves. These issues have clearly affected how governments and law enforcement agencies address contraband tobacco on and around reserves. Nonetheless, relationships have developed between law enforcement agencies on and off

reserve. For example, in the Cornwall area, there are various efforts such as joint investigative units and a task force to encourage collaboration between various enforcement organizations such as the RCMP, the Canada Border Services Agency, the Ontario Provincial Police, the Cornwall Community Police Service and the Akwesasne Mohawk Police Service."

Leitold also said that the Chief Superintendent of the Ontario Provincial Police told a committee on December 5, 2013 that the 401 corridor is the biggest thoroughfare

for contraband tobacco and also the Quebec side of Akwesasne and suggested that police powers need to be 'ramped up' in those areas.

Enforcement of the Excise Tax Act currently includes search warrants but if this Bill becomes law, this will mean the government will up its capacity especially in the 'investigative front'. More warrants will be sought with certain permissions granted, explained Leitold. With this new Bill, search warrants will be easier to obtain,

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he said. Also, the scope of the search warrant will be broadened. If a search warrant is issued under this new Bill, police officers will be allowed to issue it at anytime, and not just within 'reasonable hours.' Dubbed a 'No Knock Warrant' or 'No Notice Warrant', Leitold said officers will be permitted to kick down doors and confiscate whatever they claim are the proceeds of such a including: houses, trucks and boats.

The goal of the RCMP Anti Tobacco Force is to target organized crime groups and Leitold said that there are continuous references being made by

police and politicians that organized crime is linked to First Nations tobacco despite the fact that there has never been any factual evidence to back up this claim. In 2008, the RCMP estimated that 105 organized crime groups were involved in the trade. Leitold referred to a study conducted by the McDonald-Laurier Institute and said that out of a thousand cases examined, only 5 were from the Quebec-Akwesasne border and out of that, none were linked to organized crime.

Leitold stated that Bill C-10 is an interference of Section 35 of the Constitution Act of Can-

ada, 1982, which protects 'Aboriginal' treaty rights and 'Aboriginal' self-government and also suggested that it can be deemed as cruel and unusual punishment. He also referred to R. v. Gladue and how Natives have been disproportionately put in jail unnecessarily. In this historic court decision, the Supreme Court of Canada told the government to stop jailing Native people, which it blatantly ignored and continues to do so at disproportionate rates to this day.

According to the Legislative Summary on Bill C-10, "Chiefs from Akwesasne have been quoted in the media voicing concerns about the

impact that mandatory minimum sentences may have on their communities, particularly their youth. In particular, Mohawk Council of Akwesasne District Chief Brian David is concerned that large fines and incarceration will turn some youth, who are only involved in contraband tobacco due to lack of legal employment opportunities, into 'hardened criminals' and force them further into illegal activity. The Mohawk Council of Akwesasne also recently issued a press release announcing the receipt of a grant from the Government of Ontario to assist in developing an Akwesasne Tobacco Law and... calling on the fed-

eral government to work with them to address tobacco concerns rather than increasing sentences and the enforcement presence around their community."

Stephen John Ford is a Kanienkehaka lawyer from Tyendinaga. Ford described a few things that First Nations people can do to prepare for this proposed legislation of Bill C-10. In regards to the Bill, Ford stated, "It's about denying First Nations people their own sources of income. It's about federal control of First Nations people and continued colonial oppression. They don't want us to make money."

Ford said that good business practices are

about making alliances and that a possible option for First Nations administrations is to create their own regulations concerning their own tobacco. In doing so, Ford explained, "As a First Nation, you are expressing your own jurisdiction and advancing your own sovereignty and that is what it's all about." Ford said that if First Nations band councils pass their own legislation in regards to taxing tobacco on reserves, then the provincial government would likely say, "You can't do that! But, that's the fight we want to have because now the onus is on them to prove they have sovereignty over us."