

Haudenosaunee Tobacco law aims to protect local industry

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the wampum, but we don't want to exclude our own people. We're not using status cards. That's Indian Act. That's theirs; that's not ours."

The draft tobacco law comes in response to Bill C-10, which could come into force at any time, says Six Nations lawyer Kim Thomas, the tobacco industry's lawyer who helped draft the law.

"We know that Bill C-10 has received royal assent," said Thomas. "It can be proclaimed into force any day as soon as the government decides that it's in force. Once it comes into force, it's going to criminalize all of our people that are involved in the tobacco trade. It is a direct threat to our economic rights and security."

The Haudenosaunee Trade Collective, (HTC) of which Green is a spokesperson, is a group of local tobacco manufacturers who came together over a year ago to educate the community about the impacts of Bill C-10.

The HTC approached the Haudenosaunee Confederacy Chiefs' Council (HCCC) for support. In response, the Confederacy Council established the Haudenosaunee Trade Delegation, a committee made up of both Confederacy and industry representatives. The committee was tasked with developing a draft tobacco law. The HCCC approved the working draft to go out to clan families and community members for input.

Thomas says the HCCC has the right to make its own laws outside of the Indian Act.

"We know the Confederacy has never relinquished its inherent treaty-making authority to govern itself and it's always operated outside of the Indian Act," she said. "From a Canadian

legal perspective, I believe our strongest argument for our right to regulate commerce and trade including tobacco is if it's based on our own legislation that's enacted outside of the Indian Act."

She said the by-law-making powers of the Indian Act are very limited and "they certainly do not give us the right to regulate trade and commerce the way we would have done or the way our forefathers would have done, nor the right to regulate the tobacco industry."

Additionally, every by-law must receive approval from Aboriginal Affairs.

"And we know they're not going to approve our legislation under the Indian Act," said Thomas.

The working draft was first released to clan families, she explained, before being made fully public.

The delegation will be holding a number of public meetings looking for input from community members, while also giving them a chance to pass on concerns, questions and comments to the Haudenosaunee Trade Delegation, the Confederacy's committee.

Thomas stressed the Confederacy's pre-contact sovereignty in forming its own laws around trade and commerce.

"We know the chiefs have an inherent and treaty-protected right to govern themselves and govern our people outside of any delegated authority. It is not delegated; it is not legislated."

However, she said, "We know that external governments have continued to put their own laws in our canoe," said Thomas.

"And we know that our canoe is sinking. At what point do we say enough is enough? We know tobacco was given as a gift to us by the Creator, and it's al-

ways been an important driver in our economy used for ceremony and trade."

The draft law was criticized by one community member as being full of legal jargon and too "English-sounding."

Aaron Detlor, legal advisor for the HCCC, admitted the draft looked "overly technical and sort of non-Haudenosaunee and non-Confederacy, primarily because the audience for which it's intended isn't really the internal audience. It's a translation device. We're trying to explain Haudenosaunee rules and the Confederacy rules to the outside community to get them to understand and unfortunately, this is the best way we could get them to do it, to get them to understand, to put it in a form they're more accustomed to."

He continued, "We've actually had a lot of internal discussion about what 'law' means and if this is really even a law in terms of the Confederacy approach to law, which looks at treaties and the law of the Creator, etc. We know the outside world deals in this type of language. That's the primary reason we did it (this way)."

He said the law is meant to provide the maximum amount of protection possible to people in the Haudenosaunee tobacco trade in response to Bill C-10.

Bill C-10 specifies jail time and other penalties for trafficking in so-called "contraband tobacco" that is, tobacco that is not affixed with a federal excise stamp.

The draft Haudenosaunee tobacco law contains numerous suggestions for regulations and policies regarding the Haudenosaunee tobacco trade at Six Nations of the Grand River including:



Six Nations Men's Fire member Bill Monture explains what a "fire" means to him. (Photo by Donna Duric)

-affixation of Haudenosaunee stamps on tobacco products

-requiring retailers, growers and manufacturers to get licenses approved by an as-yet-to-be-formed 'tobacco governing body'

-payment of fees for licenses, and importing and exporting of tobacco

-provisions for penalties, enforcement of the law, and revocation of licences for anyone caught contravening the law.

The draft law is meant to provide protection to Haudenosaunee people involved in the tobacco trade, but there was some confusion over how the tobacco governing board would choose to define who is Haudenosaunee.

"How do we define who is Haudenosaunee?" Green said. "We know these are difficult questions. We couldn't really reach consensus and we wanted to bring it to the community for that input."

She said a Haudenosaunee passport or ID card issued by chiefs is one way of identifying a Haudenosaunee person eligible for licenses and protection under the new law.

Confusion arose over the fact some community members don't have a clan or know who their clan-

mother is and some wondered if they can still be protected under the law.

Councillor Carl Hill, the only elected band councillor to come to the meeting, said he had a lot of questions and wondered if he would be excluded from obtaining a license under the new law because he doesn't know who his clanmother is.

He said band council and Confederacy Council need to work together on creating the law.

"If there's no unity on this, I'm concerned how everything will work out," he said.

Hill obtained a copy of the draft law to take back to band council for discussion.

The draft law contains provisions for implementation and oversight through a tobacco governing body that will be comprised of a board and operations unit that answers to the HCCC. The law proposes a seven-member board comprised of two community members, three HCCC members and two members from the HTC.

The tobacco governing body will set minimum pricing for tobacco on the territory and will meet once a month.

It will approve licenses and

collect fees, which will go into a Haudenosaunee Contribution Fund, and fees from that fund will go toward administration, enforcement and defence of the law.

A compliance unit will also be established to ensure compliance with the law. The compliance unit and governing board will have the power to banish non-Haudenosaunee people from the territory who are involved in the tobacco trade as owners or partners, but it won't apply to people who are simply employees in the tobacco industry.

The law will apply to growers, retailers, wholesalers, manufacturers, importers, exporters, transporters and stamping agents within territory.

At first, it will only apply to the boundaries of Six Nations of the Grand River, or "Oswege" but could eventually extend to other Haudenosaunee and non-Haudenosaunee territories.

The second community meeting on the draft tobacco law is being held tonight (Wednesday April 1) at Six Nations Polytechnic at 6 p.m. A third meeting will be held April 8, 2015 at the Six Nations Community Hall.