

Draft tobacco law clarifies Haudenosaunee ancestry

By Donna Duric
Writer

Any person who can trace his or her lineage back to Six Nations of the Grand River will be protected under the Haudenosaunee Confederacy Chiefs Council's (HCCC) new tobacco law.

The clarification came at a meeting held last Wednesday at Six Nations Polytechnic, where Haudenosaunee lawyer Kim Thomas explained that a person doesn't have to be "100 per cent Haudenosaunee" in order to be eligible for a license and protection under the new law that is currently being drafted.

She said the requirement that the local tobacco industry is "100 per cent Haudenosaunee-owned and operated" under the new law does not refer to a person's so-called "blood quantum."

"It doesn't mean you have to be 100 per cent Haudenosaunee by both your mom and your dad," said Thomas.

She said as long as the person can trace his or her ancestry back to Six Nations Grand River, he or she is protected under the new Haudenosaunee tobacco law.

Thomas said the reason for the stipulation is because there are non-natives profiting from the industry here on Six Nations.

Thomas represents the Haudenosaunee Trade Collective, (HTC) a group of local tobacco manufacturers at Six Nations.

The Confederacy council established the Haudenosaunee Trade Delegation, a committee made up of tobacco industry representatives and Confederacy Representatives, to oversee

the development of a tobacco "law". A draft of that document is now being presented for community input.

The draft law is in response to Bill C-10.

Bill C-10, or the Tackling Contraband Tobacco Act, is a new federal law that carries minimum prison sentences for anyone caught trafficking in so-called "contraband tobacco" – that is, tobacco that is not licensed by the federal government.

The law has already received royal assent and could come into force at any time, said Thomas.

"Bill C-10 is seeking to regulate tobacco for our people and to criminalize our people that are involved in the tobacco industry," she said. "It's a threat to our economic rights and our security."

The HCCC has provided the



Haudenosaunee Confederacy legal adviser Aaron Detlor, one of two Confederacy appointees to the Trade Delegation explains the "law". (Photo by Donna Duric)

delegation with a terms of reference to come up with a draft tobacco law. The delegation is in the midst of its consultation process with the community on the draft law. The group is gathering feed-

back from a series of community meetings currently taking place and will tweak the draft law before bringing it back to the community again for further input in the next few weeks.

"This is by no means a done

deal," said Thomas. Kris Green, a Six Nations tobacco manufacturer and industry representative on the delegation, said the group wants as much feedback from the community as pos-

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Tobacco "law" has to be enacted by Confederacy

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sible.

"We are definitely looking for input from the community on what we are working on," she told a crowd of about 60 people last Wednesday.

Aaron Detlor, HCCC legal advisor, said Haudenosaunee history and trade on Turtle Island dates back more than 60,000 years and the draft law is meant to demonstrate to outside governments and the courts that the Haudenosaunee have an inherent right to trade tobacco without the threat of criminalization.

"What we're really trying to do is get all this stuff and put it into a 10-page document that respects this long history we have with respect to trade and commerce," he said. "The trade and commerce is a smaller piece of your 60,000-year history."

Thomas also stressed the importance of Haudenosaunee sovereignty with respect to trading tobacco and self-government. "We know under the Great Law we have an inherent right to govern ourselves and that includes the right to freely use our lands and resources for the prosperity of our people," she said. "Since contact, external governments have continued to put their laws in our canoe. At what point do we say enough is enough? We know the HCCC has never relinquished its inherent law-making power and it's always operated outside of the Indian Act."

The local industry's strongest protection against Bill C-10, she said, is to enact "our own legislation." And that has to be done by the HCCC, said Thomas, not the elected band council. She said the jurisdiction of band council is limited to the by-law making powers of the Indian Act.

"Those are very limited

powers," she said. "Any by-law that's enacted by the band council has to get approval from Indian Affairs. The likelihood of them approving a law that's going to run contrary to Bill C-10 and approve that law is pretty minimal. We're using the word 'law' so external governments will understand what we're doing and the authority that we're acting under."

She said the working group is looking at translating the final version into one of the traditional Haudenosaunee languages, but she acknowledged the difficulty of translating English words into a Haudenosaunee language.

"Those are discussions that we're having as well."

She said it is vital that the community unifies to make the new Haudenosaunee tobacco law works.

"We cannot afford to remain divided," she said. "This is not going to work if we cannot find that unity of our people."

One community member asked how the HCCC will ensure the Canadian government recognizes the new tobacco law and Thomas said it will have to be tested in court.

"If we look at a legal challenge, it's probably going to happen because one of our people are going to be charged criminally," she said.

Thomas also said Six Nations people have an edge in court if somebody gets charged under Bill C-10 because the federal government did not consult with any Haudenosaunee communities before enacting the legislation.

"If you can prove the right was such a great infringement that you should have actually had our consent, then it can also be struck down on those grounds."

Cam Staats asked about treaties going into courts, but Detlor said they wouldn't be taking treaties

into courts. "What we do is we come up with a strategy to make the Canadian system follow Canadian law," he said. He also said the Haudenosaunee tobacco law will ensure those in the tobacco trade have more strength in numbers if they are brought into court and they argue their right to trade tobacco is a collective right.

Bill C-10 in force Friday

By this Friday, police forces across the country will be able to enforce the controversial Tackling Contraband Tobacco or Bill C-10. The Governor General announced on April 2 the bill is coming into force on April 10, 2015. Bill C-10 is a new federal law that carries minimum prison sentences for anyone caught trafficking in so-called "contraband tobacco" – that is, tobacco that is not licensed by the federal government, and would include tobacco products made and sold on Haudenosaunee territories. It was introduced in parliament in November 2013.

The legislation enactment comes just as the Haudenosaunee Confederacy Council is developing its own Trade and Commerce laws that include regulations surrounding the tobacco industry.

Some community members questioned how Six Nations will ensure the Canadian government recognizes the new law.

Detlor said, "It's going to happen that Canada is going to come and say, 'this is our law. Your law doesn't matter.' In the worst case scenario, the government comes down and applies this. If we did nothing, they would have a better chance of success in criminalizing people and putting people in jail. If we do this (law), we have a better chance of making sure that doesn't happen. But this is not a perfect solution."

Detlor said while Canada has already started levying fines for contraband tobacco under other legislation, so far, there hasn't been a collective response to make the government concerned about doing that.

"If they just come after me, I'm all alone in my fight. But instead if there's a collective

response, it's much tougher to pick on me or anyone else. They may be more concerned about other people involved in this industry and leave the Haudenosaunee alone. We don't know those things yet but if you pick on one of us, you pick on all of us. That's really what all this is about."

Staats asked if the HCCC could negotiate with Canada and Ontario instead

of going to court.

Thomas said, "I think ideally, a negotiated resolution would be better because you have a better chance of guaranteeing what the outcome would be. We know that traditionally, that's what our chiefs would have done, is used that creative diplomacy to negotiate a resolution."

The draft Haudenosaunee tobacco law calls for licensing, payment of licensing fees, setting minimum prices for tobacco products, and provisions for enforcement of the law. It also calls for a governing body to enforce the law and to impose sanctions on anyone caught contravening the law.

The law stipulates that only 100 per cent Haudenosaunee-owned tobacco enterprises are allowed on the territory and it provides for the banishment of non-Haudenosaunee owners or partners involved in the trade. That stipulation does

not apply to non-native people who are merely employees in the tobacco industry.

At least one community member expressed displeasure with the contents of the draft law.

Don Tripp, who is currently facing sentencing in a Brantford court for arms dealing, said he and others might not like the idea of being "forced" to follow the Haudenosaunee tobacco law.

"How are you going to get people to unite if you're shoving laws and fees...this is not going to work," said Tripp.

Green said the delegation is working on a costing model that will set prices for tobacco on the territory that's "viable" for the community. "The intent isn't to hurt any of the businesses – it's intended to make sure that our businesses prosper," said Green.

She also said the law will ensure that non-native people who are "making a lot of money at our expense" could be banished from the territory.

Thomas again stressed the importance of unity in ensuring the strength of the new law.

"If we can bundle our arrows together like we're supposed to, we will be a force to be reckoned with. But because we continue to divide ourselves, we remain weak. They (the government) play on that weakness and they play on the division. Our greatest strength is if we can unify our people."

Bill Monture, of the Six Nations Men's Fire, said he's in support of the draft law and he asked people not to "rip the document apart."

"We need to support this," he said. "Let's just keep thinking positive and unite ourselves. Right now, there are a lot of people who are doubting this (law). They don't have faith in who they are. We need to get that

back. I'm all for it. We need to get together and get all these (tobacco) prices level across the board for everybody, so our people for a change can make some money."

Green said the draft law is not set in stone.

"We're doing the best that we can, given all of our history," she said. "We brought it to the community to hear what we need to do and how we can do it better. We want your suggestions; we want your comments, but we're looking for solutions. If we don't get something right, we'll fix it."

The Six Nations tobacco industry employs over 2,000 people and spills over into other areas of the community, in terms of donations to community initiatives and fueling the local economy, said Thomas.

"If the tobacco industry is shut down, it will have far-reaching impacts," she said. The law will apply to any grower, manufacturer, retailer, importer, exporter, transporter or stamping agent on the territory.

Green and Thomas said at first, the Haudenosaunee tobacco law won't apply to anyone with a federal license including tobacco manufacturing giant Grand River Enterprises because the company has a federal license, but the delegation hopes to meet with GRE in the future.

The delegation hopes to involve the Six Nations Police at some point, said Thomas. Thomas said any Haudenosaunee person will be eligible as long as they can trace their ancestry back to Six Nations of the Grand River. "We don't want to exclude anyone," she said. "It's not our intent that we get to decide who is Haudenosaunee and who is not."

The next meeting is today Wednesday, at 6 p.m. at the Six Nations Community Hall.