

Tobacco law heads to Confederacy in June

By Donna Duric
Writer

The second draft of the proposed Haudenosaunee tobacco law is heading to the Confederacy Chiefs Council for approval next month.

The new tobacco law, which aims to regulate the industry on Six Nations territory, has been re-drafted after incorporating input from a series of community meetings over the past two months.

The group working on the tobacco law, the Haudenosaunee Trade Delegation, says it is hoping the final draft will be approved at the June meeting of the Haudenosaunee Confederacy Chiefs Council (HCCC). "We're planning to take this to the June council for the Confederacy chiefs and look for approval at the June meeting and we'll see from there where we go," said Kim Thomas, a lawyer working on behalf of the local tobacco industry.

She told a community meeting of about 50 people last Wednesday. "We would like to see people's support and we would like to see that longhouse full, because the chiefs and clanmothers need to know - they need to see that support behind them. People are looking to them for leadership and protection." The Haudenosaunee tobacco law has been in the works for about a year. A delegation appointed by the HCCC, which includes industry reps, Confederacy appointees and chiefs and clanmothers, has been meeting weekly to draft the unprecedented and historic tobacco law.

A series of public meetings, clan family sessions and meetings of chiefs and clan mothers has been held over the past two months. All chiefs and clan mothers were invited to attend information sessions set up at the GREAT building in

Ohsweken, the night before each community session.

The group is drafting the law in response to the federal government's Tackling Contraband Tobacco Act, or Bill C-10, which came into force April 10 and seeks to "criminalize the Haudenosaunee tobacco industry," said Thomas.

Bill C-10 amended the Criminal Code to add an offense for trafficking in so-called "contraband tobacco", that is, tobacco that is not affixed with federal excise stamps. Penalties include prison sentences up to five years for anyone caught contravening the law.

"Anyone involved in the industry who does not have a federal license is considered a criminal under Bill C-10 as of April 10," said Thomas.

The Haudenosaunee tobacco law is meant to provide protection and defense for the local tobacco industry, said Thomas.

"The reality is, our people are going to face prosecution under Bill C-10," she said.

The Haudenosaunee tobacco law would provide people facing charges a tool for defense.

It would also provide leverage for the HCCC to negotiate with the government, said Thomas.

"If we had nothing...they'll have nothing to defend themselves with."

The Haudenosaunee tobacco law has been tweaked after community members expressed a few concerns about some wording in the draft law.

One of the main concerns, said Thomas, is some people didn't like the use of the word "law" and there is talk of changing the language to "regulations" or "rules of conduct" instead.

The law would provide licenses to any Hau-



Haudenosaunee Tobacco Trade Delegation members Kris Green and Gary Johnson and lawyer Kim Thomas answered questions at the last in a series of meetings on the coming policy last week. (Photo by Donna Duric)

denosaunee person seeking to conduct business on the territory, and also has provisions for regulations such as stamping, penalties and fee payments to an as-yet-to-be-formed Haudenosaunee Contribution Fund.

Fees would pay for the administration and enforcement of the law and would also provide donations to community initiatives under the Haudenosaunee Contribution Fund.

Others complained that the HCCC had no right to "impose" laws on the people, said Thomas.

"That's another criticism we had - that the chiefs don't have the right to impose law on the people," she said. "But they do have that right to protect the people and that responsibility to protect the people if they're coming to them for that protection. That is from the ground-up. The industry came to the HCCC for help and protection.

And, she said, "Unlike laws created from the top down, our process is different. It's come from the people themselves; the industry themselves coming to the chiefs and clanmothers asking for that regulation."

Thomas stressed that the HCCC, not the elected band council, has the right to govern the tobacco industry.

"We felt we had to go back to that original jurisdiction

that existed among the Confederacy Chiefs Council. That came from the fact our people were always here and that the Great Law was brought to our people by the Peacemaker. Because the chiefs have always continued to govern themselves since they got that message from the Peacemaker, we knew that had to be our starting point.

"We do have an inherent and treaty-protected right to govern ourselves and to promote the prosperity of our people and those yet to come."

Thomas cited the Two Row Wampum treaty and its provisions that settlers and Haudenosaunee people would not try to interfere with each other's laws and customs.

"It was meant to protect...our way of life in our canoe and respect for theirs in their boat but we know that since contact, external governments have tried to put their laws in our canoe. Do we wait until the government sinks our canoe? Or do we stand and say we've had enough and we have the jurisdiction to do this and let's do it ourselves. The industry had to take a stand. We knew Bill C-10 was going to be a threat to our economic rights."

She said band council does not have the jurisdiction to create a tobacco law.

"We know that their jurisdiction is limited to what it

sets out in the Indian Act. It's limited to certain by-law making powers that the federal government says it can have jurisdiction over."

She said any by-laws band council wants to make have to get approval by aboriginal affairs.

"We know that (Aboriginal Affairs) is not going to approve a tobacco law under an arm of its own government when you've got Bill C-10 that's going to be in conflict with that."

During April's community consultation period, some people also expressed concern with the fact the law is written in English.

"Even though the law is written in English, it's still under the HCCC and the principles of the Great Law are still part of it," said Thomas. "We want to ensure that even though it's written in English, it's still interpreted in accordance with the Great Law. We have to codify it in English. Unfortunately, our people do not speak the language anymore. I wish that we all did and external governments don't know our language either."

The final draft will be translated into one of the Haudenosaunee languages, however.

"We are going to translate this document into one of the Haudenosaunee languages once it's finalized," said Thomas.

The first draft also stated that the law would only protect Haudenosaunee people from Six Nations of the Grand River, but that will be changed to include any person from one of the Haudenosaunee territories. "They have to trace Haudenosaunee ancestry to one of the nations of the Confederacy to be eligible for license under the law," said Thomas.

The law will still initially only apply to Six Nations at the Grand River, said

Thomas, because other Haudenosaunee communities are coming up with their own laws and they want to respect their processes.

She said the law will also clarify that a person doesn't have to be 100 per cent Haudenosaunee themselves to be eligible for a license - only that the business itself is 100 per cent Haudenosaunee-owned and operated.

Thomas said the progress is being closely watched by other Haudenosaunee communities.

"We are getting calls from other communities. We're pretty excited about that. People are watching and they're following to see where we're going to go with this."

The law states there will be a Tobacco Governing Board made up of both industry representatives and non-industry community members appointed by the HCCC to ensure accountability and transparency with the new law.

That board will have a direct reporting relationship with the HCCC.

The board will meet monthly and larger decisions such as setting minimum pricing for tobacco products, will be made by HCCC.

Those who choose to follow the law, said Thomas, will be asked to pay fees which will go into a fund to help with the enforcement, administration, defence of the law and community initiatives, as well.

Thomas insisted the fees were not taxation or assessment, which was another concern expressed by some people during the community consultation period in April.

"Those are impositions on the general population, which is not happening here," she said. "We are

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not approaching this in either of those ways. Traditional principles under the Great Law expected our people to give back to the community, through either services in kind or a financial contribution. It's not

taxation or assessment as defined by external governments." There will be penalties for those who contravene the law, said Thomas. Licenses could be withheld, fines could be imposed and there could be a

seizure of property if people are not in compliance with the regulations. It will be enforced by HCCC-appointed "Peacekeepers" but, said Thomas, the industry will also be expected to enforce the law themselves.

"It's the people themselves that will enforce the law. They're saying the people themselves will follow the law and if they don't follow the law they won't get the protection of the HCCC under this law. If you choose to be licensed, you

have to follow those rules of conduct to get protection." The delegation said they welcome any further comments and questions before next month's meeting and can be contacted through the HCCC Web

site at www.haudenosauneeconfederacy.com. You can also submit comments to the Haudenosaunee Trade Collective at www.htradecollective.com/comments.