

Towards effective tobacco control in First Nations and Inuit communities

March 2007



Physicians *for a* Smoke-Free Canada

1226 A Wellington Street ♦ Ottawa ♦ Ontario ♦ K1Y 3A1
Tel: 233 4878 ♦ Fax: 233-7797 ♦ www.smoke-free.ca

One of the greatest virtues of sovereignty is that no permission is required to exercise it. At any time, aboriginal nations in Canada can take matters into their own hands, ratify the Framework Convention on Tobacco Control and begin implementing it in the interests of protecting the health of their own nations from the current and future ravages of commercial tobacco.

CONTENTS

Contents	1
A brief history of tobacco use in First Nations	2
In the beginning.....	2
The earliest tobacco growers	5
From <i>nicotiana rustica</i> to <i>nicotiana tabacum</i>	5
Health status and smoking status in First Nations and Inuit communities.....	7
Tobacco taxation in First Nations and Inuit communities	9
Federal tax rules – basic structure.....	9
Federal First Nations tax agreements with eleven First Nations	9
Provincial tax rules – basic structure.....	10
Provincial tax rules – innovative approaches	10
First Nations tobacco taxation policy analysis	13
Best options for the future	15
Contraband tobacco and First Nations	17
Introduction.....	17
Some Mohawk history	17
Contraband tobacco and First Nations – current situation.....	18
Factors sustaining tobacco contraband.....	21
A possible way forward	23
Control of second-hand smoke in First Nations communities.....	25
First Nations and Inuit Tobacco Control Strategy.....	26
History and description	26
Merits of the strategy	26
Flaws and failings of the strategy	27
Consequences of suspension of the FNITCS	30
The Framework Convention on Tobacco Control	32
History.....	32
Description	32
Applicability of the FCTC to First Nations’ Health Interests.....	32
The FCTC in First Nations – Current status and potential future benefits.....	35
Conclusion	45
References	47

A BRIEF HISTORY OF TOBACCO USE IN FIRST NATIONS

In the beginning...

“Four Clouds filled the pipe, gave it to Spotted-one, and lighted it while he puffed. Spotted-one, then, as master of ceremonies, for he is a distinguished old man, smoked a few puffs and then offered the mouthpiece skyward praying that the day should be propitious and that no one should be injured while the sun shone. He then offered it to the ground with a prayer that the powers of darkness should be equally kind to men, then to the four world quarters with prayers to the winds, and last of all to the bear, telling it that it had been slain to furnish food. He then passed back the pipe which was relighted and passed to the rest.”

An account a tobacco pipe ceremony on the occasion of a bear feast celebrated by the Plains Cree of Saskatchewan in the early twentieth century.¹

No one knows for sure when tobacco use began in the area that is now called Canada. Archaeological evidence in the form of recovery of tobacco seeds from sites where other artefacts have been radiocarbon dated places the earliest evidence of tobacco use in the eighth century in south-western Ontario.² *Nicotiana rustica*, the tobacco species once used most widely in North America, slowly diffused northward through trade from South America where its use was widespread much earlier than in North America. Tobacco is native only to South America, but by the time the first Europeans arrived in Canada, tobacco had spread widely and was used by First Nations peoples from east to west.

Tobacco had not, however, reached the northern latitudes (north of James Bay) before contact with the Europeans. Ironically, northern First Nations were introduced tobacco, not by trade with their southern neighbours, but by trade with Europeans. As early as 1597, Basque sailors were offering tobacco to Newfoundland Beothuks in exchange for furs.³ Inuit were introduced to tobacco in the late seventeenth and early eighteenth centuries by Europeans.⁴ Through trade, tobacco had completely circumnavigated the globe and returned to North America to be introduced to the Inuit via Siberian natives, Russian fur-traders, English and American whalers and Danish colonists from Greenland.⁵

The predominant form of tobacco use in First Nations communities was pipe smoking. The tobacco used, *nicotiana rustica*, is quite different from *nicotiana tabacum*, the species that accounts for almost all of today's commercially produced tobacco. The latter is a sub-tropical species that can only be grown in temperate latitudes if it is started in greenhouses in the early spring and transplanted when the soil is warm. It is unlikely that such knowledge and technology were

available to First Nations peoples in earlier times. *Nicotiana rustica*, on the other hand, is a hardier species that could be successfully brought from seed to smoke in a single season in temperate regions. *Nicotiana rustica* has about double the nicotine content of *nicotiana tabacum* (2.47% of dry leaf weight for *rustica* and 1.23% for *tabacum*).⁶

Nicotiana rustica, when smoked in a pipe, will reliably produce mild intoxicating and hallucinogenic effects. These pharmacological properties fit in perfectly with the traditional spiritual belief systems of the first North Americans and even reinforce those belief systems.

Such belief systems varied from nation to nation, but there are remarkably similar fundamental beliefs that were common to many First Nations peoples. Despite incursions of Christianity into First Nations, many First Nations peoples continue to hold to their traditional beliefs and in many First Nations communities, traditional beliefs are experiencing revival.

Historically, most beliefs systems were holistic and held that the spirit world was everywhere – in the sky, on the four winds, in the ground, in the water. Even inanimate objects had souls. Moreover, the spirit world and the human world existed in social harmony, and that harmony had to be constantly maintained. There existed reciprocity between the spirit world and the natural world, in which the spirit world provided peace and harmony, protection from illness and even cures for illness, provided suitable offerings were made to the spirit world. Tobacco assumed a central place in these belief systems, both as a gift to be offered to the spirit world, and a means of communication between humans and spirits. The spirit world was ever-present and there was constant need and desire to make offerings to the spirit world and to keep the lines of communication open between spirit and natural worlds.

A theme that runs through many First Nations legends and myths is that tobacco was originally a gift to man from the gods, but that since tobacco could not be grown in the spirit world, it was necessary to offer tobacco to the spirits in exchange for their protection and continued harmony between the natural and the spirit world.

The pharmacological effects of intoxication, hallucination and addiction were not at all interpreted as pharmacological effects, but in spiritual terms as symbolically charged occasions of important communication with the spirit world. The pipe ceremony described at the beginning of this chapter is just one of many recorded examples of a ceremonial occasion that combined both tobacco as an offering and tobacco as communication with the spirit world.⁷

Who controlled communication with the spirit world? In many South American native societies, the use of tobacco – the gateway to the spirit world – was often limited to shamans and prospective shamans.⁸ This, of course, was an important form of tobacco control. Only a small fraction of the population would be exposed to the risks of tobacco use. But this was not the case in North America.

A popular misconception is that tobacco use among North American First Nations was reserved for religious and ceremonial occasions, like the bear feast described above, or “smoking the peace pipe” of popular imagery, and that its use was restricted to shamans and elders. It is true that tobacco was used on ceremonial occasions in special ways. These could include burning tobacco in open fires as offerings to the spirits, placing tobacco in special places, as well as in communal smoking ceremonies. But it was also used all the time on every occasion. There can be no doubt that much of the male aboriginal population was addicted to tobacco and engaged in drug-seeking behaviour that is the hallmark of the addicted. The ethnographic literature is replete with accounts of such drug-seeking behaviour. One of many such accounts was provided by Jesuit missionary Paul le Jeune about his observations of smoking by Montagnais (Innu) in 1634:

“The fondness they have for this herb is beyond all belief. They go to sleep with the reed pipes in their mouths, they sometimes get up in the night to smoke; they often stop in their journeys for the same purpose, and it is the first thing they do when they re-enter their cabins. I have lighted tinder, so as to allow them to smoke while paddling a canoe; I have often seen them gnaw at the stems of pipes when they have no more tobacco. I have seen them scrape and pulverise a wooden pipe to smoke it.”⁹

It is, however, too simplistic to conclude that daily profane addiction to tobacco had replaced its more restricted shamanistic, ceremonial and sacred uses. Rather, what might have started as use of tobacco by shamans only was rapidly democratized to the entire male population. Tobacco use, in becoming quotidian among the male population, became even more sacred. Animist belief systems held that the spirit world was ever present and it was the duty of every man to maintain peace and harmony with the spirit world. If smoking tobacco was important to shamans for communication with the spirit world, it was no less important to every man. What was good for some was good for all. Von Gernet has called the use of tobacco among North American First Nations “democratic shamanism.”¹⁰ It should not be surprising that when First Nations members who practised traditional ways did not, when asked, agree that they were addicted to tobacco. Every aspect of their tobacco use, including craving and drug-seeking behaviour, had social or sacred meaning.¹¹

Yet this democratic shamanism did not extend to the female half of the population. Among most First Nations of Eastern North America, women were largely excluded from tobacco use. Despite the fact that women were exclusively responsible for all other agricultural work, they were often excluded from tobacco growing. Growing, harvesting and smoking tobacco were all largely male preserves. While the reasons for this divide between the sexes are unclear, it seems to have been the prevailing norm among Huron, Iroquois and other First Nations of eastern North America and thus served as a form of tobacco control that had the unintended effect of protecting the female half of the population from tobacco addiction and other hazards of tobacco use.¹²

The earliest tobacco growers

Nicotiana rustica required little tending and was grown by most indigenous peoples, including hunter-gatherers and foragers, like the Mik'maq. Tobacco growing was likely the earliest form of agriculture in North America. Even among horticulturalists, like the Huron and the Iroquois, tobacco cultivation likely preceded by several centuries the cultivation of the food crops of corn, beans and squash.¹³

The most prolific early producers of tobacco in Canada were members of the Huron nation of present-day southern Ontario – the Wendats, the Tionnontates and the Attiwandorons. The Attiwandorons grew tobacco along the north shore of Lake Erie, exactly where it is grown currently. These three tribes produced more tobacco than they could use. It was traded to northern nations for furs and other goods.

However, growing tobacco along the north shore of Lake Erie is not a continuous, unbroken tradition. In 1649, Iroquois raiders from south of Lake Ontario, attacked and destroyed Wendat communities and by 1651 had destroyed and dispersed the Tionnontates and Attiwandorons tribes too. The remnants of those tribes fled, some to Quebec and some to northern Michigan where they regrouped with displaced members of the Anishinaabe nation (Ottawas and Potawatomis) and spent centuries being pushed from place to place in the United States. About 3,500 of them survive and thrive to this day as the Wyandotte Nation of Oklahoma. There are smaller Wyandotte communities in Kansas and Michigan. The largest remaining Huron nation in Canada is the Hurons of Wendake in central Quebec.

Southwestern Ontario remained largely uninhabited for the next one hundred and twenty-five years, and tobacco growing returned only in the early 1800's to the north-western shore of Lake Erie (Essex and Kent counties) and to the north-central shore (the Norfolk Sand Plain) in 1926, this time as commercial production of *nicotiana tabacum*.¹⁴

From *nicotiana rustica* to *nicotiana tabacum*

Disruption of First Nations societies began almost immediately upon contact with Europeans and continued for centuries to follow. This disruption has been described by traditional healers as a complete disruption of the “circle of life.”¹⁵ Well-meaning missionaries were much more quickly successful at destroying souls rather than saving them when they inadvertently spread smallpox, measles and other diseases to First Nations peoples. Epidemics rapidly spread among peoples with no immunity to European diseases, substantially reducing populations of First Nations. Advancing European settlement pushed First Nations peoples off their traditional lands. For example the Iroquois nations of Mohawks, Oneidas, Onondagas, Cayugas, Senecas and Tuscaroras were chased from their traditional lands of northern New York State and established communities in southern Quebec and southern Ontario. As described earlier, the Hurons had earlier been massacred and

dispersed by the Iroquois. Those battles, however, took place in the larger context of the 17th century global war that was then going on between France and England. The Iroquois were aligned with the English and the Hurons with the French. Part of the motivation for the Iroquois raids was to curry favour with their English allies.

The Hurons were pushed from their traditional homelands in the 17th century and the Iroquois from theirs in the 18th century. These two nations, particularly the Hurons, had been prolific producers of *nicotiana rustica*. They not only supplied themselves but traded to other First Nations as well. Hurons and Iroquois were horticulturalists. They cultivated fields of corn, beans, squash and the Tionnontates and Attiwandorons cultivated tobacco – *nicotiana rustica*. Even if it was not being cultivated, it was being tended. At a minimum, among most First Nations of Eastern North America, wild patches of *n. rustica* would be carefully identified and protected, and seeds would be shaken off ripened plants to ensure that the patch would grow again the following spring. But when First Nations were pushed off their traditional lands they lost their cultivated fields and/or tended patches of *n. rustica*. Still, they craved tobacco. Their craving would be satisfied by a now familiar but very untraditional source – European traders.

By the 18th century, Europeans had acquired a liking for *nicotiana tabacum*. It was being cultivated in the English colonies of what is now the southern United States, where the soil and climate are favourable to this sub-tropical species, for export to Europe and re-export around the world, including back to North America. European traders were only too happy to offer it in trade for furs and other goods to the First Nations of what are now the northern United States and Canada, peoples whom the Europeans had effectively deprived of their traditional sources of *n. rustica*. So it was that northern First Nations, once self-sufficient in tobacco, came to be dependent on European suppliers of *n. tabacum*. As First Nations people were displaced to reserves in the 18th and 19th centuries, often far from their traditional homelands, consumption of *n. rustica* became rare. Nevertheless, some First Nations communities were able to continue or revive tending small patches of *n. rustica*. In these communities and others there is a growing interest in continuing and strengthening First Nations' spiritual life. In this context, there is a growing interest in cultivation and/or tending of *n. rustica* for medicinal, spiritual and ceremonial purposes.

In modern times, addiction to industrially manufactured *n. tabacum* is only too common in First Nations communities. But it is a very different product than the traditionally produced *n. rustica* revered as a sacred plant in many First Nations communities of Canada.

HEALTH STATUS AND SMOKING STATUS IN FIRST NATIONS AND INUIT COMMUNITIES

Aboriginal people feel ashamed or angry. They see that some communities have made great strides toward the dynamic state of health and harmony to which all aspire, but they also see that many health and social problems go unchecked and that some are getting worse. They know they did not live with such high levels of illness and unhappiness in the past, and they do not understand why they must do so now.

Report of the Royal Commission on Aboriginal Peoples, 1996¹⁶

For many years, the health status of aboriginal populations has been markedly the worst in Canada. Such observations have been made repeatedly for decades. The problem was addressed at length in the report of the Royal Commission on Aboriginal Peoples in 1996:¹⁷

“No matter which diseases and problems of social dysfunction are plaguing Canadians generally, they are likely to be more severe among Aboriginal people. ... However, as we have shown here, the current system of services does not adequately address the causes of disproportionate rates of illness and dysfunction. The system’s assumptions about Aboriginal health and well-being and how to promote them are wrong for the job.”

Although health status in these populations has improved in recent years, the health status in aboriginal communities persistently remains markedly lower than in the rest of Canada. Here are some comparisons of health status on key indicators:¹⁸

Table 1: Key Indicators

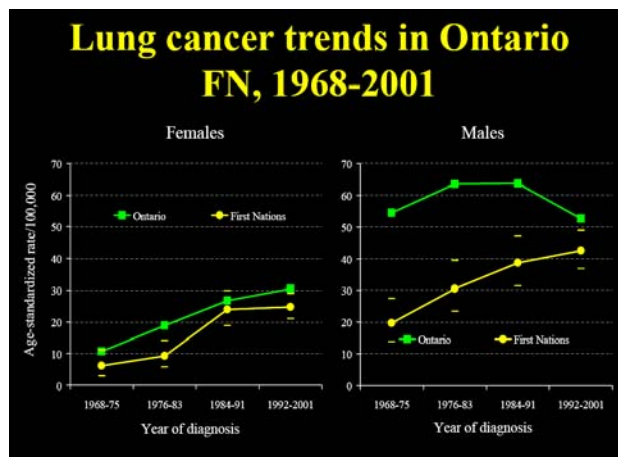
Indicator	First Nations	Canada
Male life expectancy at birth (2000)	68.9	76.3
Female life expectancy at birth (2000)	76.6	81.8
Infant mortality (deaths / 1,000 live births) (2000)	6.4	5.4
Potential years of life lost per 100,000 population due to injury (1999)	4,638	1,260
Current smoking (2005)	44% ¹⁹	19% ²⁰

It is evident that First Nations communities fare less well than the Canadian population on most key indicators of health status. Rates of tobacco use in First Nations communities are particularly high compared to the rest of Canada, and presage much higher rates of tobacco-related disease and death in aboriginal communities as today's young smokers enter their 40s, 50s and 60s and their risk of tobacco-caused death and disease increases. The highest rates of smoking in First Nations and Inuit populations in 1997 were among young adults 20-29 years of age. For this age group, smoking prevalence was over 70%. Of those in this age group who continue to smoke throughout their lives, half can expect to be killed prematurely by tobacco.

For some smoking-related diseases, like lung cancer, rates of diseases and death in First Nations communities are currently lower than in the Canadian population. However, with high smoking rates and young population structure, this situation will not continue. As the graph of lung cancer trends in Ontario shows, lung cancer rates among First Nations men continue to increase, even as the lung cancer rate for men in the general Ontario population is decreasing.²¹

In just a few years, aboriginal communities will likely face a double burden of disease and death. Even if there are some decreases in rates of disease and death from the scourges that currently plague aboriginal communities, they will continue to have unacceptably high rates of disease and death from the current scourges of injury, poisoning, violence, digestive diseases and diabetes. To these causes will be added dramatically higher rates of disease and death from the smoking-related causes of cancer, heart disease, cerebrovascular diseases and chronic obstructive lung diseases. This will occur as the under-40 cohorts with high smoking prevalence reach their 50s and 60s and come to be at high risk of smoking-caused death and disease.

Serious and concerted efforts to decrease tobacco use and the uptake of smoking now is needed even there is to be any hope at all of even slowing the expected rate of increase in smoking-related disease and death that is bound to occur in aboriginal communities.



TOBACCO TAXATION IN FIRST NATIONS AND INUIT COMMUNITIES

Federal tax rules – basic structure

Section 87 of the Indian Act states that “personal property of an Indian or a band situated on a reserve” is tax exempt. This is a very old provision of Canadian law that predates Confederation. In practical terms it means that Status Indians living on an Indian reserve are exempt from paying the federal goods and services tax, the harmonized sales tax (in provinces where this applies), and tax on employment income earned while working on a reserve. These exemptions do not apply to Métis or Inuit.²²

For tobacco products, this means that for tobacco products purchased on Indian reserves, all purchasers, whether status Indians or not, would pay federal excise duties and excise taxes. Status Indians, on presentation of their status card, would be excused from paying the goods and services tax (6%) or the harmonized sales tax (where applicable). All other purchasers would be charged the full price, including GST or HST.

Federal First Nations tax agreements with eleven First Nations

In the 1990s some First Nations began negotiations with the federal government to charge a new First Nations Tax that would be equal to the amount of the goods and services tax. The Canada Revenue Agency collects the tax on behalf of the participating First Nations and remits the tax collected to the First Nations government. The First Nations Tax applies to all goods and services, including tobacco products, from which status Indians would normally be exempt.

In effect, participating First Nations governments have acquired independent taxing power to collect sales taxes for on-reserve purchases. First Nations that are collecting the First Nations Tax on tobacco are shown in Table 2 below.²³

The federal government now has several years of experience in administering the First Nations Tax and would readily enter into agreements with other First Nations to charge the First Nations Tax on tobacco products and other goods and services and remit the tax so collected to the First Nations government. This readiness was reasserted in the 2007 budget:²⁴

“The federal government reiterates its willingness to discuss and put into effect direct taxation arrangements with interested Aboriginal governments. The federal government also supports direct taxation arrangements between interested province or territories and Aboriginal governments and enacted legislation to facilitate such arrangements in 2006.”

Table 1: First Nations collecting tobacco taxes

	<i>First Nation</i>	<i>Date of entry into force of First Nations Tax on tobacco products</i>
1	Westbank, British Columbia	February 1, 1998
2	Kamloops, British Columbia	September 1, 1998
3	Sliammon, British Columbia	September 1, 1999
4	Chemainus, British Columbia	September 1, 2000
5	Buffalo Point , Manitoba	October 1, 2000
6	Adams Lake, British Columbia	May 1, 2001
7	Tzeachten, British Columbia	July 1, 2001
8	Shuswap, British Columbia	February 1, 2002
9	Cowichan, British Columbia	June 1, 2002
10	Whitecap Dakota, Saskatchewan	June 1, 2004
11	Little Shuswap Lake, British Columbia	May 1, 2006

Provincial tax rules – basic structure

Section 87 of the Indian Act also applies to provincial levies on tobacco products. All provinces charge taxes on tobacco products. In some provinces, provincial sales tax is also applied. In others, it is not. Both kinds of provincial taxes are considered taxes on personal property and are therefore taxes that are not charged to Status Indians who purchase their tobacco products on a reserve. On-reserve purchases of tobacco products by persons who are not status Indians are subject to provincial taxes.

Provincial tax rules – innovative approaches

Many provinces have taken creative approaches to tobacco taxation on Indian reserves that, in principle, enhance First Nation autonomy and create revenue that can be used for economic and social development in First Nations communities. Several different schemes are currently in operation, as outlined below.

Prince Edward Island

Provincial tobacco taxes charged for tobacco products purchased on PEI's Lennox Island reserve are reimbursed to the community for local development projects.²⁵

Nova Scotia

In common with several other provinces, Nova Scotia has a quota program for on-reserve tobacco sales. Each First Nation is allocated allowable quota for on-reserve sales of tobacco. The First Nation can then choose not to collect any provincial taxes on this allowable quota, thereby attracting more business to the reserve for the purchase of reduced price cigarettes. Alternatively, they can apply a fee or surcharge to in-quota tobacco sales and use the revenues so obtained for community development.²⁵

New Brunswick

There are agreements in place with six of fifteen First Nations in New Brunswick to allow for sharing of revenue from provincial taxes. On-reserve sales of tobacco products to status Indians are exempt of provincial taxes. The province reimburses participating First Nations for 95% of the value of provincial tobacco taxes collected on reserves from non-aboriginals.²⁵

Quebec

Quebec has entered into a tax-sharing agreement with the Mohawk Council of Kahnawake. Members of the Kahnawake First Nation are exempt from paying provincial tobacco taxes for their purchases of tobacco in Kahnawake. As in New Brunswick, provincial tobacco taxes collected from non-aboriginals for on-reserve tobacco purchases are reimbursed to the Mohawk Council of Kahnawake (MCK). In addition, Kahnawake residents have been issued “smart cards” that enable them to make off-reserve purchases of goods and services exempt of provincial sales tax.²⁵

As attractive as this arrangement may seem to some, it is not recognized by the Kahnawake Tobacco Association which carries on tobacco trade on Kahnawake without regard to the agreement between the Quebec government and the MCK, asserting their aboriginal right to do so.²⁶

Ontario

Ontario has established quotas for unmarked tax-free sales on First Nations’ territories. The quota is determined by a formula that takes account of on-reserve and off-reserve populations. While the results of the formula can vary, it generally yields a rate of consumption of about 3,000 cigarettes per person on the reserve. This means that allowable quota is about three times the national average for cigarette consumption. Other provisions of the regulations allow for a 10% increase in quota for “special events,” and a further 20% increase in quota if band councils agree to monitor sales to ensure that sales are made only to registered Indians. There is no evidence that any such monitoring occurs.²⁷

Some First Nations apply further fees for quota allocation. For example the Mohawk Territory of Tyendinaga charges a fee of \$2.00 per carton for quota allocation. The fee is used to fund community programming in Tyendinaga.²⁸

While it is technically illegal under Canadian law to sell unmarked cigarettes to non-aboriginals, in practice there is very little monitoring of such sales. The effect of the combination of no marking on the tax-free cigarettes and the absence of monitoring of sales of tax-free cigarettes makes the system vulnerable to abuse. On-reserve retailers can and do sell, with impunity, large supplies of untaxed unmarked cigarettes – well beyond quota – to aboriginals and non-aboriginals alike.

Manitoba

The Manitoba government has implemented a tax-sharing agreement with all First Nations in Manitoba. Provincial taxes are charged and collected at the wholesale level on all cigarettes sold at retail on reserves. The province then reimburses the First Nations' councils the tax so collected, less the amount of tax collected from non-aboriginals.²⁵

While this seems like an advantageous arrangement for First Nations, at least one member of a First Nations community in Manitoba has raised questions about the accountability of First Nations community leaders with respect to the stewardship of tobacco tax revenue flowing into First Nations communities.²⁹

Saskatchewan

The province of Saskatchewan has a formal tobacco tax refund program with the 71 First Nations in the province. On-reserve retailers buy cigarettes and other tobacco products from retailers on a tax-paid basis. The cigarettes are then sold tax-free to status Indians, up to three cartons of cigarettes per week per person. Others pay the full price. Every transaction is recorded. Then the retailer claims a refund from the Saskatchewan government for the tax-free sales.³⁰

Prior to 2000, the provincial government had been collecting provincial tobacco taxes on reserves. 42 bands filed claims against the provincial government for collecting the taxes in violation of Section 87 of the Indian Act. So far, nine cases have been settled and five million dollars has been paid in out-of-court settlements.

Under the current tax-free regime, there are complaints about late payments of refund claims. Some First Nations representatives have been lobbying to have the weekly quota for tax-free purchases increased from 600 to 1,000 cigarettes per week per purchaser. The Saskatchewan Cancer Society is asking for the 600-a-week quota to be reduced as a health protection measure.³¹

Alberta

The tobacco tax refund system in Alberta is similar to that in Saskatchewan with a few important differences. On-reserve retailers purchase all their tobacco from registered wholesalers with all taxes included. They can then resell tax-exempt cigarettes (identified by their markings as “blackstock”) only to registered Indians. All other purchasers must pay the full price and buy cigarettes with regular tax-paid markings. Holders of status cards are limited to purchases of 400 cigarettes a week.

If on-reserve retailers participate in a provincially-authorized electronic transaction scheme, their requests for refunds on tax-exempt sales will be reimbursed weekly.³²

British Columbia

In British Columbia, qualifying Exempt Sale Retail Dealers can purchase tax-free cigarettes from qualified wholesalers and then resell them at retail on reserves tax-free to holders of a Certificate of Indian Status. All others are sold cigarettes with all taxes paid. No more than two cartons may be sold tax-free to the same individual at the same time and no tax-free purchaser can buy more than eight cartons of cigarettes per month. Every transaction is recorded and the purchaser must provide a signature with every purchase. The government conducts careful monitoring and enforcement of tax-free sales to guard against abuse.³³

First Nations tobacco taxation policy analysis

Advantages of current tax policies

Until about ten years ago, there were varying interpretations of Section 87 of the Indian Act. In some provinces, status Indians were obliged to pay sales taxes and provincial taxes, while in others they were not. However, following a number of court judgements on this question, there is now at least consistency on this question across the country. In all areas of Canada, status Indians pay only federal excise duty and excise tax on cigarettes. They do not have to pay the federal Goods and Services Tax, nor provincial sale tax, nor provincial tobacco tax anywhere in Canada. Eleven First Nations in Western Canada are charging First Nations Tax in lieu of the Goods and Services Tax on some goods and services, including tobacco products, and using the money so raised for local community development. Some First Nations in PEI, Nova Scotia, New Brunswick, Quebec (one First Nation), Manitoba and British Columbia (one First Nation) have revenue-sharing agreements with the province whereby they charge a tax on tobacco equal to the normal provincial tax, but the tax so collected is administered by the band council for local community development projects. In each case the province serves as tax collector on behalf of the participating First Nations.

The issue of independence and autonomy is very important to most First Nations. Independent taxing power and autonomous decision-making on how to spend the taxes so raised can, if

responsibly executed, give effect to First Nations claims for autonomy and greater control of their own affairs.

Disadvantages of current tax policies

While status Indians are excused from paying provincial tobacco taxes in all provinces, the schemes for executing this policy vary widely from province to province. In some provinces (like Alberta) the on-reserve retailers are obliged to pay the tax to the wholesalers and then seek reimbursement of the tax for legitimate tax-exempt sales. Schemes like this require retailers to have money to pay the taxes initially and seek reimbursement later. In other provinces (like Ontario and British Columbia), the retailers can buy the cigarettes tax-free and then sell them tax-free to status Indians – the only qualified purchasers. This sort of arrangement does not unfairly burden retailers with having to pay money up front. However, this system is more vulnerable to abuse. When there is careful monitoring and enforcement (as there is British Columbia and Saskatchewan), little abuse occurs. However, it comes at the cost of considerable paper burden. In both these provinces, every tax-free transaction must be recorded and accompanied by a signature from the purchaser.

In Ontario, however, the province engages in little effective monitoring and enforcement, leaving the system vulnerable to abuse. And there is clear evidence that the system is being abused. Tax-free cigarettes in large quantities, clearly over the quotas established by Canadian law, are being sold to aboriginals and non-aboriginals alike. It has been estimated that 22% of the cigarettes being consumed in Ontario are cigarettes upon which some or none of the taxes due have been paid.³⁴ The poorly monitored and enforced system for tax-free sales is serving as a convenient cover for a substantial amount of activity which is illegal under Canadian law.

Quebec faces similar problems, but Quebec has recently taken steps to improve its effectiveness at controlling contraband tobacco sales. These include increase powers of seizure of tobacco upon which not all taxes have been paid and stiffer fines for illegal possession of untaxed tobacco.³⁵

The biggest problem of tax-free tobacco for status Indians is its perverse effect on public health. As indicated earlier, the rate of tobacco use among aboriginal populations is more than twice the Canadian average. High rates of tobacco use are just one of a litany of health problems that plague aboriginal communities and cry out for solution.

In the case of tobacco use, there is ample evidence that comprehensive tobacco control policies, including high taxes on tobacco products, work well at discouraging tobacco use in all societies. Yet deliberate application of Section 87 of the Indian Act – to ensure that tax-free tobacco is available to all status Indians – completely undermines the possibility of using high taxes to discourage consumption in a population where smoking prevalence is already more than twice the national average.

Among those First Nations that have elected to charge the First Nations Tax in lieu of the Goods and Services Tax, or have entered into provincial tax sharing arrangements with their provincial governments, the possibility exists for tobacco taxes to be used as a means to both control tobacco and as a means to increase First Nation autonomy. However, no systematic evaluations are available to allow us to judge the extent to which these desirable policy outcomes are being realized.

Best options for the future

It should be assumed that historic exemptions for status Indians from paying consumption taxes will remain in place. First Nations communities would be best served by a single system for ensuring their supply of tax-free tobacco that harmonized both federal and provincial taxes. It is recommended that all provinces adopt a system for the supply of tax-free tobacco that would be an improved version of the system currently in operation in Alberta. Under this scheme, retailers would be obliged to pay the tax and then seek reimbursement for tax-free sales. Improvements would involve ensuring that all on-reserve retailers were provided, free of charge, with electronic transaction equipment and an obligation to use it. Qualifying status Indians would also be provided with machine-readable cigarette purchase cards that would allow them to purchase cigarettes tax-free at retail up to an allowable quota. Transaction data would be quickly transferred to the provincial government, so that calculations of allowable refunds could be made very soon after the purchase. Refunds to retailers for tax-free sales would be paid on a weekly basis or even more frequently. If all provinces were to adopt the same system, fairness would be ensured, retailers would have built-in incentives for compliance. (They would want to get their money back as quickly as possible) and there would be little possibility for abuse since tax-free cigarettes would not be easily available at any point in the system.

There is now some experience in some First Nations with levying taxes on tobacco and using the money so raised for community development. This is a step in the right direction and more First Nations should be encouraged to enter into tax-sharing arrangements with federal and provincial governments. Were all members of First Nations to pay the same price for tobacco products as everyone else, the higher prices would help discourage tobacco consumption in these communities, just as they do in other communities. In general, consumption decreases by about 4% for every 10% increase in price. The new tax revenue realized by First Nations government would be an important new source of revenue that could be locally managed to finance community development.

However, tobacco taxation by First Nations is not without its problems. The first is that the extant tax-sharing schemes have not been evaluated for their effectiveness. We have no knowledge of their effectiveness in curbing (or encouraging) contraband sales, nor knowledge of their effectiveness as a tobacco control measure, nor their effectiveness at improving First Nations' governance. Comprehensive evaluations that would address these lacunae are urgently needed.

One might wonder why more First Nations have not enthusiastically entered into tax-sharing arrangements with the federal and provincial governments. Fiscal Realities, a group of economists in Kamloops specializing in the economics of First Nations, has provided a thoughtful analysis of this problem.³⁶ Barriers to tax-sharing as a key to economic development that they identified include:

- Insufficient land base for First Nations;
- Very low state of economic and infrastructure development in most First Nations;
- Reluctance of federal and provincial governments to vacate tax room;
- Federal-provincial disagreements about appropriate tax-sharing arrangements;
- Philosophical opposition to taxation among many members of First Nations;
- Fear among many members of First Nations that developing autonomy in taxation will be accompanied by fewer federal fiscal transfers and eventual extinction of tax-free status;
- Resistance to paying taxes on commodities that were formerly tax-free;
- Difficulty of selling the benefits of local taxation and spending authority to people already suffering from poverty.

Despite these difficulties, First Nations taxation by First Nations for First Nations, including tobacco taxation, is seen as a key to enhanced long-term social and economic development, greater fiscal autonomy and greater political autonomy for First Nations. However, these objectives cannot be accomplished by tax-sharing agreements alone. The effectiveness of these agreements will be enhanced if they are accompanied by renewed partnerships among federal, provincial, municipal and First Nations governments to develop new fiscal relationships with First Nations that are designed to increase economic activity and investment on First Nations lands and provide more flexibility and autonomy for First Nations in the administration of fiscal transfers from federal and provincial governments. With concerted effort by all concerned it should be possible to convert the vicious cycle of poverty and dependence so evident in many First Nations to a virtuous cycle of wealth creation and greater autonomy.

CONTRABAND TOBACCO AND FIRST NATIONS

Introduction

There is concern about a growing amount of contraband tobacco that is transiting through First Nations territories. The problem is most severe in Ontario and Quebec where it has been estimated that 22-23% of the tobacco smoked in those two populous provinces is contraband and that the vast majority of those contraband cigarettes were manufactured on or passed through First Nations territories.³⁷ Before examining the current situation, however, it is important to understand the historical context that has led to the current situation in which some feel justified in engaging in the illegal tobacco trade, and why that trade continues to flourish with impunity.

Some Mohawk history

Once, Mohawk society thrived in the Mohawk Valley of upstate New York. A seventeenth century account by a Dutch employee of the Dutch West India Company reported of a Mohawk Village:

“The houses were full of corn; we call maize; in some houses more than 300 bushels...we ate heartily of pumpkins, beans and venison...so we were not hungry but were treated as well as possible on their land.”³⁸

Soon, however, wars with the Europeans and disease would ravage Iroquois populations including Mohawks. Finally, aggression and population pressure from advancing English settlement would push Mohawks off their traditional homelands to the edge of their fishing and hunting territory in the St. Lawrence Valley. One of the communities so established in the 18th century was Akwesasne on the shores and islands of the St. Lawrence River near Cornwall. But there would be no refuge from the advancing European populations. Following the American Revolution of 1776, a new international boundary was created along the middle of the St. Lawrence River, right through the middle of Akwesasne.

In 1794, the American Jay Treaty specified the right of aboriginal peoples to trade and travel freely between the British Colonies of Canada and the United States. This treaty, however, was never endorsed by the United Kingdom or Canada. Moreover, American courts have interpreted it as not excusing First Nations from paying excise taxes and duties on tobacco for cigarettes sold to non-aboriginals. Nevertheless, it has long been the case that both Canada and the United States allow free movement of people and goods within the confines of Akwesasne, across the international border that runs through the territory.³⁹

The effect of the externally-imposed political division of Akwesasne has been to turn it into a smugglers' paradise. Since the 19th century, unscrupulous operators in both Canada and the

United States have recognized that the geopolitical situation of Akwesasne could be exploited for private gain.

Since the 19th century, smugglers have been exploiting this weak point in the international border by enlisting the aid of some Akwesasne residents to smuggle people, alcohol and other goods from the Canada to the United States or vice-versa. During the time of alcohol prohibition in the early 20th century, Akwesasne was a favourite transit point for smugglers transporting alcohol from Canada to the United States.⁴⁰

In more recent times, in the early 1990s, Canada's big tobacco companies organized a major tax-avoidance scheme that involved shipping tax-free Canadian cigarettes to the United States and then smuggling them back into Canada. Much of this illegal re-importing transited through Akwesasne. Visitors from British American Tobacco (Imperial Tobacco Canada's parent company) described what was going on at Akwesasne in 1993 this way:⁴¹

“Business is carried out in a number of ways:

The Canadians will visit the MRA [Mohawk Indian Reservation Area – Akwesasne] or phone direct to establish the best price for the product they wish to buy. The product will then be paid for and the wholesaler will arrange for the product to be transported across the St. Lawrence River after dark by their “runners” for an additional fee of US\$50 per case (usually the wholesalers’ sons are runners).

As above, but the Canadian buyer will arrange for his runner to collect the product after dark to save on transport costs.

Sub-jobbers/runners arrange their own deals with the Canadian side and purchase from the wholesaler, at dusk in the MRA [Akwesasne] and transport the goods across the river themselves.”

However, tobacco smuggling through First Nations territories, rampant in the 1990s, was greatly reduced when cigarette taxes were lowered dramatically in 1994.

Contraband tobacco and First Nations – current situation

It has been estimated that in 2006 11% of smokers in Canada smoke contraband cigarettes and they account for 16% of cigarette consumption. However, the problem is most severe in Ontario and Quebec, the two most populous provinces, where 22% and 24%, respectively, of cigarette consumption is estimated to be contraband. In 2006, 97% of the illicit cigarettes smoked were smoked in Ontario and Quebec. It is also estimated that 95% of contraband cigarettes are manufactured on First Nations territories in Ontario, Quebec and on the American side of Akwesasne.⁴²

Contraband cigarettes come in several varieties. :

Cigarettes manufactured by Grand River Enterprises:

Grand River Enterprises (GRE) is a native-owned cigarette manufacture established to operate within the parameters of Canadian law on the Six Nations territory near Brantford. It has grown quickly in recent years and manufactures and sells tobacco products to First Nations customers throughout North America.

For sales to First Nations customers in Canada, GRE respects all applicable federal laws. The cigarettes it makes meet all the requirements of the Tobacco Act, including the health warning requirements. All applicable federal taxes are paid on GRE products for sale in Canada.

However, Grand River Enterprises makes no effective effort to collect provincial taxes on its products, whether they are sold to aboriginal or non-aboriginal customers. Nor does GRE effectively police sales of its products by third parties to non-aboriginals to ensure that provincial taxes are paid. GRE products can be purchased by anyone on reserves in Ontario for \$30-35 per carton.

In fairness to GRE, the Ontario law is murky on the obligations for provincial tax collection when cigarettes are sold by aboriginals to non-aboriginals. Moreover, the system for collecting such taxes is clumsy in its construction and the Ontario government makes no serious effort to enforce its own taxation law. Without effective enforcement, the obligation of First Nations retailers under provincial law to collect tobacco tax when cigarettes are sold to non-aboriginals has become seriously compromised.

Cigarettes manufactured in licensed and unlicensed factories on First Nations territories in Ontario and Quebec:

In recent years about 70 new licences to manufacture cigarettes have been issued to members of First Nations in Ontario and Quebec. Of these, only ADL of Mashteuiatsh on the shore of Lac St-Jean rigorously adheres to all federal and provincial legal requirements. Grand River Enterprises (discussed above) meets all federal requirements but does not fulfil the weakly-enforced provisions of Ontario law.

Of the other licences that have been issued, most have not been taken up; no manufacturing enterprise has been created. In other cases, manufacturing facilities may have been created, but some or all of the federal and provincial obligations for cigarette manufacturers are not being met.

There are also some unlicensed manufacturing facilities operating on First Nations territories. Taken together, licensed and unlicensed manufacturers based in Canada are not thought to be a major source of contraband tobacco.

Cigarettes manufactured in factories on First Nations territories on the American side of Akwesasne

The Royal Canadian Mounted Police estimate that “90 per cent of the contraband product is coming into Canada from cigarette factories on the U.S. side of Akwesasne.”⁴³ There are ten such factories, all licensed by the Saint Regis Mohawk Tribal Council, and all paying licensing fees to the Tribal Council.⁴⁴ An eleventh, MHP Manufacturing, had its tribal licence suspended by the Tribal Council in April 2006.⁴⁵ In November 2006, Patrick Johnson, the owner of MHP Manufacturers was charged with 50 cigarette smuggling and drug trafficking offences in Canada by the RCMP. The police dismantled the factory.⁴⁶

One of the ten factories is King Enterprises LLC. King Enterprises was also named in an RCMP affidavit as one of the companies involved in cigarette smuggling operations in the 1990s. At that time, King Enterprises imported and exported cigarettes; it did not manufacture cigarettes as it does now.⁴¹

Cigarettes made in the Saint Regis factories are transhipped through Akwesasne from the US side to the Canadian side. From there, they are distributed to other aboriginal territories in Ontario and Quebec and sold completely free of all taxes in hundreds of “smoke shacks” located in dozens of reserves throughout Ontario and Quebec. A great many find their way to cities and other locations far from reserves where they illegally resold to non-aboriginals. Some of cigarettes are sold in cartons with brand names. Some of the brand names of King Enterprises include DKs and Chiefs. The brand Native is made by Native Trading Associates and Expert is made by an unnamed manufacturer located on “Mohawk Nation Territory.” Others cigarettes are sold with no brand name at all and are packaged in plastic bags of 200 cigarettes each. The origin of no-name bags of cigarettes is uncertain. Some may come from Saint Regis; others may be manufactured in other factories in aboriginal territories within Canada or clandestine factories operating elsewhere. Retail prices in smoke shacks range from \$10 for a bag of 200 cigarettes to \$25 for a carton of 200 cigarettes. A bag of 200 grams of loose tobacco for making roll-your-own cigarettes can be had for \$7-10 at retail in a smoke shack. None of these cigarettes comply with the provisions of the Canadian Tobacco Act, Excise Act, Excise Act 2001, Excise Tax Act or Customs Tariff. Nor are they sold in compliance with provincial tobacco taxation requirements.

Factors sustaining tobacco contraband

The continued illegal sale of untaxed cigarettes to non-aboriginal Canadians challenges the notion of Canada as being a 'lawful' society. Various reasons are offered why contraband cigarettes appear to be tolerated by enforcement officials.

Canadian law enforcement officials are well aware of the situation and enforcement actions are taken from time to time (such as the November 2006 arrests cited above). However, enforcement of taxation laws on aboriginal territory throws up issues of aboriginal rights, centuries of injustice, native rights to self-determination and many others that prompt Canadian law enforcement officials to tread carefully.

The situation is further complicated by the fact that tobacco dealers in aboriginal communities assert that their businesses operate legitimately within the eyes of their own aboriginal communities, that engaging in the tobacco trade and selling cigarettes with no taxes paid is legal in their eyes and is an expression of their aboriginal rights, and that the money so raised helps create community self sufficiency and autonomy.

When one Saint Regis tobacco factory, Native Trading Associates, applied for and received a United States federal tobacco manufacturing licence in February 2006, it spawned a boisterous protest outside the NTA factory. Most of the protestors were employees of other Saint Regis tobacco factories. One protestor, speaking for many said, "We are here to stop taxation from coming into our land." Another said "We have been guaranteed our non-taxable status from the US Constitution. We do not pay taxes here. This is only the first step to bring one after another if this is allowed."⁴⁷

Assertion of native autonomy is evident in the public statement of native tobacco traders in Canada too. Here are some excerpts from the Policy of the Kahnawake Tobacco Association:⁴⁸

Preamble:

*"As Mohawk Peoples, our existence has been **from time immemorial**. We have survived **500 years** of murder, colonization, thievery, treachery and incarceration.*

*We will not fail – We refuse to exist on our knees –
We are strong and will stand tall and proud on our own two feet.*

We are Kanien'keha:ka – It's Time"

"1. The Kahnawake Tobacco Association consists of Kahnawake Mohawk Peoples. We are a legislative body; we make policy, enforce and control all aspects of trade and commerce of tobacco products on the

Mohawk Territory of Kahnawake for the benefit of our Mohawk Peoples and to protect our Mohawk sovereignty.”

“7. Mohawk Peoples are entitled to keep our own laws and ways without interference by Non-Mohawks.”

“13. Our trade and commerce in the tobacco industry in Kahnawake is a large economic force. We are exerting our right to self-regulate, as a legislative body of our industry, without interference from outside influence and will continue to grow for the benefit of our peoples.”

The Kahnawake Tobacco Association has provided financial support to 32 organizations and community events in Kahnawake. KTA announced in 2005,⁴⁹

“We are happy to inform the people of Kahnawake that we have contributed over \$272,147.59 to benefit various individuals and organizations and will continue to assist our people in the future.”

This is hauntingly reminiscent of comments made by tobacco industry executive to the Canadian parliament in earlier times. In 1987, Wilmat Tennyson, President of Imperial Tobacco said:⁵⁰

“In the case of Imperial Tobacco, we spent \$93.5 million on sports and cultural events over the last twenty years and we are now devoting in excess of \$20 million a year on sports and cultural events in terms of cash and support services and publicity.”

Similar assertions of sovereignty have been made in connection with the tobacco trade in Tyendinaga, another Mohawk Territory. Shawn Brant, of Tyendinaga Mohawk Tobacco said in 2006:⁵¹

“I know that the government of Canada takes a very particular position – and a very specific position – on the legality of the creation of tobacco products and their distribution certainly within the Canadian state. There is a framework of applications, processes and approvals that govern when and how a manufacturing company can exist, so I don’t disagree that the government assessment of what we do as not being legal. But that is not the same position that we’ve taken.” ...

“The tobacco industry within Tyendinaga is such that it’s the largest employer within our community now, that most of the new opportunities that are coming forward are being made available to younger people, who are paid a decent living wage – not a minimum wage”. ...

“When First Nations people have access to resources that we’ve never had, and when we’ve been shit on so much by government and society for so long, and they’re afraid because of what they’ve done to us in the past, that we should want to bite them in the ass and get even for everything that’s been done, they should be afraid of that, because they deservedly have that coming. I don’t believe its peoples’ motivation. It’s certainly

not our motivation to extract revenge. We simply see having the revenues as means of creation of infrastructure, of programs of our choosing on our terms and a government. They don't want that we can maintain and can stand up as being a legitimate opposition, not just to their government, but to the bigger government. In southern Ontario, Mohawks are the landowners; we exist on treaties that are pre-confederation – Canada wasn't a signatory to them.”

A possible way forward

If sales of untaxed and unregulated tobacco products continue, there will be no medium or long-term benefits to anyone. There will be negative health and economic consequences for aboriginal and non-aboriginal communities alike. In the short-term there will continue to be some economic gain for those who are currently profiting from the sale of these tobacco products. In the short term, aboriginal communities will continue to see the benefits of greater economic development in their communities, community development projects being undertaken with money realized from the sale of tobacco products, greater autonomy and self-determination for native communities. However, already high rates of tobacco use in First Nations communities will increase further still and no credible anti-tobacco effort can be mounted as long as cigarettes are easily available at bargain-basement prices.

It must be recognized that there are strong views held by many in First Nations communities that:

- Social and economic solutions proposed and/or imposed by governments on First Nations rarely work for the benefit of First Nations and a high degree of suspicion must be attached to all current and future proposals from governments.
- Self-government, political independence, social and economic self-sufficiency are all important values to First Nations and will be pursued with determination. In pursuit of these goals, Canadian law will be ignored when necessary.
- In spite of the known hazards of tobacco, the tobacco trade as managed by First Nations is seen, at least in the short term, to allow realization of goals of autonomy and self-sufficiency. By creating short-term autonomy and self-sufficiency, communities consider that they are at least creating a resource base from which longer term community autonomy and self-sufficiency solutions can be devised.

In addition, any attempt to solve the problem will face additional challenges:

- Any attempt to engage in dialogue with First Nations that was perceived as possible threat in any way to independence, autonomy and self-sufficiency would risk being refused.
- There are hundreds of First Nations in Canada, with many different views. While the Assembly of First Nations and other associations do bring First Nations together, ultimately formal agreements must be entered into on a nation by nation basis.

- Tobacco is a problem in all aboriginal communities. But less than half of Canada's aboriginal population is status Indians. Tobacco use is also very prevalent in Inuit, Métis, and non-status Indian communities. Unacceptably high rates of tobacco use must be addressed in all aboriginal communities.
- Tobacco manufacturing and distribution by aboriginals is largely centred in Iroquois communities of Ontario, Quebec and New York State. In many of these communities two and sometimes three groups compete for recognition as the community governing body, making the potential search for solutions even more challenging.

Any attempt to propose a solution must take the following considerations into account:

- Any attempt at implementing a tobacco control strategy that does not address the too-easy availability of untaxed and unregulated tobacco products will have limited or no success.
- No proposed solution to the too-easy availability of untaxed and unregulated tobacco to non-aboriginal populations will receive much serious consideration by First Nations communities unless there are serious and workable proposals that also increase in First Nations the symbolic value and perceived benefits of the sale of untaxed or lightly taxed tobacco products, namely:
 - a manifestation of historic and legal native entitlement to tax-exempt status
 - sovereignty
 - political autonomy
 - wealth creation capacity
 - economic and social well-being
 - economic and social self-sufficiency

CONTROL OF SECOND-HAND SMOKE IN FIRST NATIONS COMMUNITIES

The early years of the 21st century saw most Canadian provinces implement comprehensive bans on smoking in workplaces and public places. However, Manitoba legislation specifically exempted First Nations territories from application of this law. In New Brunswick and Saskatchewan, First Nations, in an assertion of autonomy, chose not to apply the provincial law on their territories. The federal government, which could have overturned these First Nations policies, expressly chose not to do so, thus becoming complicit in the decisions to deny basic health protection to workers in these First Nations communities. In other provinces, some First Nations have chosen to apply the provincial bans on their territories and others have chosen not to do so, or have established no policy on the issue. However, poor observance and weak enforcement of the smoking bans on First Nations territories is widespread, even in First Nations where the provincial bans on workplace smoking nominally apply. The consequence is that workers in bars, restaurants and other places of employment on First Nations lands are deprived of protection from second-hand smoke at work that is now enjoyed by most other Canadians.⁵²

Exemplary exceptions to this otherwise bleak situation exist in Nunavut and the Northwest Territories. Both territories have comprehensive tobacco control laws, including total bans on smoking in workplaces and public places. Both territories have substantial aboriginal populations – half in NWT and 85% in Nunavut, but no reserves and no legal access for anyone to tax-exempt cigarettes. In the case of Nunavut, 85% of the population is Inuit, most of the elected Members of the Legislative Assembly are Inuit, and Nunavut can properly be described as Canada's first post-treaty government.⁵³

In both territories, implementation of their comprehensive tobacco control laws is exemplary. These two territories led the way, implementing territory-wide bans on workplace smoking in May, 2004, well in advance of such bans in any Canadian province. In both territories the bans are well-respected by the entire population and provide a level of protection from second-hand smoke at work that is regrettably not enjoyed by many citizens of Canada's First Nations.

FIRST NATIONS AND INUIT TOBACCO CONTROL STRATEGY

History and description

As part of the Federal Tobacco Control Strategy that was implemented in 2001, substantial new resources to address the issue of tobacco use in First Nations and Inuit communities. Six million dollars was devoted to this purpose in the first year, ten million dollars in each of the next two years and twelve million dollars per year for the following two years. The main Tobacco Control Program with a budget in excess of \$50 million per year was in the Healthy Environments and Consumer Safety Branch, while the First Nations and Inuit Tobacco Control Strategy was part of the First Nations and Inuit Health Branch.⁵⁴ In 2006, the First Nations and Inuit Tobacco Control Strategy (FNITCS) was suspended by the government. Ineffectiveness was cited as the reason for suspension.⁵⁵

Merits of the strategy

The FNITCS certainly had a bold vision:⁵⁴

“Healthier First Nations and Inuit communities free of tobacco misuse and addiction.”

It also had a worthy mission statement:⁵⁴

“To promote and support policy, program and project initiatives designed to create healthy First nations and Inuit communities free of tobacco misuse and addiction.”

There can be no doubt that many of the projects that were supported by the FNITCS were worthwhile and helped to advance tobacco control. In particular, monies were provided to the governments of the Northwest Territories and Nunavut for tobacco control programming. Both of these governments have created comprehensive tobacco control policies, legislation and programmes and within these policy frameworks of their own creation, project funding from FNITCS was contributing in observable ways to more effective tobacco control, greater protection from second-hand smoke and decreased rates of tobacco use in the two territories.

Many other funded projects had considerable merit. For example, “Unfiltered: The truth about First Nations and addiction” is a British Columbia image-rich magazine that presents information about the dangers of smoking in culturally appropriate, innovative, powerful and graphic form.⁵⁶ Here are some examples:



Flaws and failings of the strategy

With at least some good work apparently being done, why was the program suspended for ineffectiveness? What were its flaws and failings? The decision to suspend the program was not without justification for, indeed, the program did suffer from some fundamental weaknesses.

Structurally, the Program was housed within the First Nations and Inuit Health Branch, and was therefore administratively separated from the Tobacco Control Program, which was housed in another Branch. While this administrative arrangement is not necessarily a bad thing, it did mean that it would be very easy for programming and spending strategies in FNITCS to follow a course that was independent of the HECS Tobacco Control Program. They did so. While the Tobacco Control Program set five objectives, four of which were measurable outcome objectives that were mostly met, the FNITCS set two unmeasurable process objectives, had no clear idea about how the

objectives might be met and in the end, had little useful knowledge whether the objectives were met or not. A comparison of the objectives and outcomes for the two programs is shown in Table 3.^{54,57}

Table 3: Objectives and outcomes of Health Canada's Tobacco Control Programme and its First Nations and Inuit Tobacco control Strategy

Tobacco Control Programme		First Nations and Inuit Tobacco Control Strategy	
<i>Objective - 2001</i>	<i>Outcome - 2005</i>	<i>Objective - 2001</i>	<i>Outcome - 2005</i>
Decrease average smoking prevalence from 25% to 20%	19%	To build capacity within First Nations and Inuit communities to develop and deliver comprehensive, culturally sensitive and effective tobacco control programs at a pace acceptable to those communities	?
Reduce the number of cigarettes sold by 30%	22%	To promote the health of First Nations and Inuit people by decreasing the prevalence of tobacco smoking and smokeless tobacco use among all age groups, but in particular among youth and pregnant women.	?
Increase retailer compliance with regard to youth access, from 69% to 80%	81%		
Reduce the number of people exposed to environmental tobacco smoke in enclosed public spaces	Reduced from 93% in 2001 to 73% in 2005 and 23% in 2006		
Explore how to mandate changes to tobacco products to reduce hazards to health	?		

The FNITCS collaborated minimally with the Tobacco Control Programme and hardly at all with the many Canadian non-governmental organizations that work on tobacco control. Despite several requests from the tobacco control NGO community for greater consultation and collaboration, consultations were few, formal and not very effective. FNITCS did inform the NGO community of its activities, but was unreceptive to suggestions for improvement in program strategy.

The FNITCS was particularly sensitive to its consultations with First Nations and Inuit communities and as a result of these consultations established the laudable “Guiding values” of “respect, trust, responsibility, freedom, holism, kindness and humility.”⁵⁴

However, by failing to be equally sensitive to the benefits of greater consultation with the tobacco control professionals in the Tobacco Control Programme and the tobacco control NGO community, FNITCS failed completely at constructing a program that would help build the only kind of tobacco control programme that is known to be effective – a comprehensive tobacco control program that incorporates legislative controls on tobacco, tobacco advertising and second-hand smoke exposure, a high price policy for tobacco, as well as smoking cessation and health promotion and education and smoking cessation programs.

Instead, in service of its flawed objectives, the FNITCS then funded projects that were mostly designed to deliver smoking cessation, health promotion and health education. It purported to be following WHO guidelines for best practices in service delivery. But these were best practices for health promotion and smoking cessation, not best practices for comprehensive tobacco control.⁵⁴ The latter have been easily available from the WHO Tobacco-Free Initiative in many forms, most notably the Framework Convention on Tobacco Control and related documentation.⁵⁸ Yet all of that experience and documentation was ignored in the construction of the FNITCS.

Little consideration was given to the context in which the funded smoking cessation, health promotion and health education programs would be delivered. Little was done to change the explicit low-price policy for tobacco products in First Nations to a high-price policy. Little was done to encourage band councils to ensure legislative protection from second-hand smoke. Little was done to limit the number of tobacco retail outlets on First Nations and little was done to stop the manufacture and sale of contraband cigarettes. Little was done to see that all the provisions of the federal Tobacco Act were observed on First Nations land. Little was done to discourage the granting of over seventy new tobacco manufacturing licences, mostly to members of First Nations. Little was done to speak out against efforts by some leaders of Saskatchewan First Nations to lobby for an increase in tax-exempt quota from 600 cigarettes per week for each community member to 1,000 cigarettes per week. Little was done to counter the efforts of many First Nations leaders in New Brunswick, Quebec, Ontario, Manitoba and Saskatchewan to ensure that provincial bans on smoking in workplaces and public places did not apply to their territories. In other words

the policy and legislative components of a comprehensive tobacco control strategy were nearly totally absent in FNITCS-funded projects. In the main, they just kept offering information sessions, smoking cessation programs and putting up posters.

These smoking cessation programs and health promotion efforts can be effective, but when undertaken in the absence of a supportive policy environment they have been repeatedly found in previous experience in Canada and elsewhere to be ineffective.⁵⁹ FNITCS chose not to learn from forty years of previous experience in tobacco control, much of which was acquired the hard way. Generations of Canadians endured ineffective tobacco control before it was learned and documented that comprehensive programs were needed. Regrettably, failure to learn from the mistakes of the past means that these mistakes were repeated, this time in First Nations and Inuit communities.

Consider the context in which many FNITCS projects were operating. Pamphlets and posters warning of the dangers of tobacco smoke were distributed, information sessions about tobacco control were held and smoking cessation programs offered, often in communities where cheap tobacco was available everywhere with no warnings on the packages, where the most lucrative businesses in the community were in the tobacco trade, where there was no protection from second-hand smoke in workplaces or public places, where sales of contraband tobacco flourished, where revenue from the tobacco business was funding community projects and where half or more of the population smokes. It should not be surprising to discover that the health education and promotion campaigns were ignored or even the objects of derision, and that it was not unusual for smoking cessation programs on offer to have few or no participants and therefore few or no successful quitters.

There were other problems too. No evaluation of the FNITCS was ever made public. Moreover, the whole process of awarding funds, expenditure of money and reporting on results of programs undertaken was decidedly non-transparent, making independent assessment of the worth of funded activities nearly impossible.

Because of the fundamental flaws in the construction of the First Nations and Inuit Tobacco Control Strategy, its suspension by the government should be seen as a useful first step in reconstructing the program so that it remains sensitive to the concerns of aboriginal communities while greatly augmenting its effectiveness.

Consequences of suspension of the FNITCS

Not all of the FNITCS is without value. There is no question that the loss of FNITCS funding stalled real progress that was being made in tobacco control in NWT and Nunavut. There the governments had already created the policy and legislative frameworks for comprehensive tobacco control. Additional funding from FNITCS would have been helpful in further advancing tobacco

control in the territories. Without this funding, further tobacco control efforts in these two territories have been unjustifiably stalled.

Nevertheless, suspension of the strategy has stemmed the outflow of taxpayers' dollars to projects of questionable value because they exist in a program framework of questionable merit.

Moreover, the suspension creates a pause in which the structure of FNITCS can be reassessed and redesigned to make it more effective. As detailed elsewhere in this report the Framework Convention on Tobacco Control presents a very useful framework upon which tobacco control in First Nations and Inuit communities could be constructed. A revitalized FNITCS could be very effective if it were designed to foster, encourage and support the adoption and implementation of the FCTC in aboriginal communities.

THE FRAMEWORK CONVENTION ON TOBACCO CONTROL

History

The Framework Convention for Tobacco Control (FCTC) is a new and valuable instrument in the global war against tobacco. It is the first and only international treaty administered by the World Health Organization.⁶⁰ The possibility of such treaty was first discussed in WHO in 1994. There followed several years of preparatory work leading up to six sessions of formal treaty negotiations from 2001 to 2003. It was formally adopted and opened for ratification in 2003. Canada signed it in that year and ratified it on November 27, 2004, the 38th country to do so. The treaty came into effect on February 27, 2005. Now 146 countries are party to the treaty. Most nations of the world take tobacco control seriously and have made the formal international commitment of ratifying the Framework Convention on Tobacco Control, signifying their commitment to the implementation of comprehensive tobacco control policies.⁵⁸

Description

The FCTC provides a clarion call for tobacco control at all levels of government – local, regional, national and international. It is not a long document, containing just 38 articles and a preamble. The preamble and articles 3, 4 18 and 19 offer general encouragement to implement comprehensive tobacco control programs and policies. Articles 1,2 and 7 offer explanation of what constitutes comprehensive tobacco control. Articles 23 to 38 spell out treaty administrative procedures. Articles 5, 6, 8 to 17, 20, 21 and 22 set forth obligations for comprehensive tobacco control that parties to the convention undertake to implement in their country. The subject matter of each of these obligations is listed below in Table 4:

Applicability of the FCTC to First Nations' Health Interests

The FCTC is a framework for tobacco control for 146 nations that have ratified the treaty – it can serve successfully as a framework for tobacco control for First Nations too.

Nation-states freely enter into ratification of international treaties. It is at once an expression of autonomy, sovereignty and responsibility as a member of the global community. In just a couple of years, 146 nation-states – most of the countries in the world – have ratified the Framework Convention on Tobacco Control. Among those that have ratified are Canada, most countries of the European Union, China, India and Brazil. Among the 49 who have not yet ratified the treaty are the United States and Russia. The United States hardly ever ratifies any treaties, while Russia is expected to ratify it eventually.

Table 4: Summary of Obligations under the Framework Convention on Tobacco Control

Article	Obligation
5	General obligations to develop comprehensive policies, establish a national coordinating mechanism, implement national tobacco control legislation, protect these measures from tobacco company interference and cooperate with other nations on tobacco control.
6	Use price and tax measures as public health tobacco control measures.
8	Protect people from second-hand smoke in enclosed workplaces and public places.
9	Test and measure cigarette ingredients and cigarette smoke.
10	Oblige tobacco companies to test and report on toxic constituents and emissions of tobacco products.
11	Require large health warnings (at least 30% of the package front) on packaging and prohibit deceptive packaging and labelling.
12	Health education and promotion about the health hazards of tobacco. Education about economic and environmental impacts of tobacco.
13	Comprehensive ban on tobacco advertising.
14	Run smoking cessation programs that are accessible and affordable.
15	Minimize illicit trade in tobacco with a view towards its complete elimination.
16	Prohibit sale to young persons.
17	Promote economically viable alternatives for tobacco farmers and tobacco workers.
20	Engage in research on tobacco control.
21	Report periodically on progress in treaty implementation to the Conference of Parties.
22	Cooperate with other parties on national and international implementation of comprehensive tobacco control programs, policies and legislation.

While First Nations are indeed nations, they are not nation-states and could not formally ratify the FCTC and expect such a ratification to be formally recognized by all the nation-states of the world. But Canadian First Nations could informally ratify the treaty by preparing written declarations that they would subscribe to the spirit and obligations of the FCTC. Many benefits would flow from such an undertaking. A closer examination of such benefits is warranted.

Implementing FCTC is just the sort of action called for by AFN charter

The Charter of the Assembly of First Nations is a bold assertion of sovereignty and international rights and responsibilities. Here are some salient excerpts:

“We the Chiefs of the Indian First Nations in Canada having declared:

...

That the Creator has given us the right to govern ourselves and the right to self determination; ...

That our governmental powers and responsibilities exist; and That our nations are part of the international community

ARE DETERMINED ...

To establish conditions under which justice and respect for the obligations arising from our international treaties and from international law can be maintained, and

To promote social progress and better standards of life among our peoples,

AND FOR THESE ENDS ...

To employ national and international machinery for the promotion of the political, economic and social advancement of our peoples.”⁶¹

Were First Nations to “ratify” and implement the Framework Convention on Tobacco Control, it would give real expression to the bold rhetoric of the Charter of the Assembly of First Nations. It would employ “international machinery for the promotion of the political, economic and social advancement of our peoples.” It would be bold act of self determination, a manifest exercise of governmental powers and responsibilities and a clear demonstration that First Nations are part of the international community.

Implementing FCTC is just the sort of action called for by the Report of the Royal Commission on Aboriginal Peoples.

The Royal Commission on Aboriginal Peoples worked for five years and published its five-volume report in 1996.⁶² It called for sweeping changes in systems of governance in aboriginal communities to correct centuries of injustice. The commissioners paid special attention to the relationship between self government and health. A critical element of the Commission’s findings was summarized by the Institute on Governance as follows:

“Aboriginal governments can exercise jurisdiction in ‘core’ areas through self-starting initiatives without the need for agreements with other levels

of government and in 'peripheral' areas through negotiated agreements; ... Health, according to the Commission is a core area of self-government."⁶³

It would be within the spirit of the Royal Commission on Aboriginal Peoples for aboriginal governments to seize the initiative, to exercise jurisdiction and to begin implementing the Framework Convention on Tobacco Control. There is no need for agreements with other levels of government.

The FCTC in First Nations – Current status and potential future benefits

The FCTC has the potential to help greatly improve tobacco control and public health protection in First Nations communities, but only if implemented. Currently, most First Nations communities are a long way from having even partial implementation of the FCTC. It is for this reason that overall Canadian aboriginal tobacco use prevalence is over 60% in a country where the national prevalence rate is just 18%. The following chart summarizes the operative provisions of the FCTC, the current status of tobacco control in First Nations communities with respect to each provision, and what we could expect if that provision were fully implemented in First Nations communities.

Table 4: Current status and potential future benefits of FCTC in First Nations

FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
5	<p>General obligations to develop comprehensive policies, establish a national coordinating mechanism, implement national tobacco control legislation, protect these measures from tobacco company interference and cooperate with other nations on tobacco control.</p>	<p>No comprehensive tobacco control policies are currently in place</p> <p>There is no national coordinating mechanism; and there is limited knowledge of current status of tobacco use and tobacco policy implementation in most aboriginal communities.</p> <p>Canadian national and provincial tobacco control legislation is poorly implemented and poorly enforced in First Nations communities.</p> <p>In the past, tobacco company involvement has been welcomed in some First Nations communities.</p> <p>There is poor cooperation with federal and provincial authorities on tobacco control in key policy areas</p>
	<p>Establishment of strong, effective tobacco control coordinating mechanisms through AFN, ITK, the Métis National Council and other aboriginal organizations could:</p> <ul style="list-style-type: none"> • Establish strong community desires and administrative mechanisms to implement the FCTC and monitor progress in tobacco control; • Improve monitoring of tobacco use and related health problems in aboriginal communities; • Productively channel calls for improvement in aboriginal tobacco control programs; • Improve collaboration in tobacco control with municipalities, provinces, the federal government, other national governments and international bodies; • Provide a platform from which aboriginal communities could seek more formal participation in the Canadian delegation to the FCTC Conference of the Parties, and participate in other ways in international discussions of tobacco control; • Provide a mechanism to control tobacco company interference in the public health policies of aboriginal communities. 	

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
6	<p>Use price and tax measures as public health tobacco control measures.</p>	<p>Approximately one-half of Canadian aboriginal population (status Indians) has historic right to purchase cigarettes free of GST, PST and provincial tobacco taxes.</p> <p>While the right to purchase tax-free cigarettes is jealously guarded in status Indian communities, it has a perverse effect on tobacco use. Long-standing availability of tax-free cigarettes to status Indians has contributed to persistent high rates of tobacco consumption in aboriginal populations.</p> <p>In recent years, contraband tobacco in various forms has become available through many First Nations communities. These tobacco products are sold with even fewer taxes paid on them than the taxes that are specifically exempted by the Indian Act. These cigarettes are purchased by aboriginals and non-aboriginals alike and compromise tobacco control policies in both aboriginal and non-aboriginal communities alike. The rule of law is also compromised.</p> <p>Limited tax-sharing agreements with First Nations communities, while promising, are too small in number to have a visible widespread effect on either smoking prevalence or a measurable increase in First Nations financial autonomy.</p> <p>Ready availability of untaxed or lightly taxed cigarettes makes effective implementation of other aspects of a comprehensive tobacco control strategy much more difficult. Health education and smoking cessation programs do not have high credibility when cigarettes are cheap.</p> <p>The potential of tobacco as a source of taxation for First Nations communities is largely unrealized.</p>	<p>If all of Canadian aboriginal populations, including status Indians, paid full price for tobacco, with all of the sales taxes and all of the provincial taxes paid became Band Council revenue, the following benefits would be realized:</p> <ul style="list-style-type: none"> • Declines in smoking prevalence in status Indian populations. In most populations around the world, every 10% increase in price is followed by about a 4% decline in consumption. • Repeated assertions of First Nations sovereignty could be given greater meaning if accompanied by the financial discretion and autonomy that taxation power brings. Taxation power and taxation revenue over cigarettes would bring First Nations greater sovereignty and greater autonomy. • Money raised from First Nations cigarette taxes could be used, to finance other parts of a comprehensive tobacco control strategy, as well as other worthwhile community projects. • If taxing all tobacco products were seen by most in First Nations communities as a worthy community project, there would be strong social pressure on suppliers of untaxed and lightly taxed tobacco products to put an end to these lines of business. • Illegal leakage of untaxed and lightly taxed cigarettes from First Nations to other populations would come to an end, thereby reducing the public health harm caused by cheap contraband tobacco to these communities. • Tobacco control programs would be seen to be more coherent. High prices to discourage consumption would be seen as coherent with other elements of a comprehensive tobacco control program, improving the likelihood of effectiveness of all elements of comprehensive tobacco control program.

FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities	
8	<p>Protect people from second-hand smoke in enclosed workplaces and public places.</p>	<p>First Nations communities are among the most poorly protected from second-hand smoke in Canada.</p> <p>Even in municipalities and provinces that have banned smoking in federal places and workplaces, many First Nations communities, disregarding the health protection of their own citizens, have passed their own laws to continue to allow smoking in workplaces and public places. A strong motivation to continue to allow smoking in workplaces is to gain perceived competitive advantage by continuing to allow smoking in casinos owned and operated by First Nations peoples. However, this policy disregards the health protection of hundreds of First Nations people that work in such casinos.</p> <p>Even though the federal government could disallow such legislation by First Nations, the federal government has explicitly chosen not to do so.⁶⁴</p> <p>Many workplaces in First Nations communities are under federal jurisdiction. Because the federal government has not acted to ban smoking in workplaces under its jurisdiction, the federal government is not leading by example.⁶⁵</p> <p>Even in provinces where smoking has been banned in public places and workplaces and First Nations have not written their own laws to exempt themselves from provincial laws, the bans on smoking are all too often poorly observed and poorly enforced on First Nations lands, thus needlessly exposing many First Nations peoples to a known health hazard.</p>	<p>Regardless of what is being done in federal or provincial jurisdiction, First Nations could act quickly to adopt, monitor and enforce their own laws to ban smoking in all workplace and public places under their jurisdiction. Such decisive action by First Nations would have a number of benefits:</p> <ul style="list-style-type: none"> • Provide to First Nations peoples the same level of health protection from second-hand smoke now enjoyed by 80% of Canadians, and the level of protection required by the FCTC. • Demonstrate sovereignty and responsibility by translating a clear requirement of an international treaty into First Nations laws. • Supply greater coherence to comprehensive tobacco control policies on First Nations territories, making other parts of the policy easier to implement. <p>Secondary benefits of second-hand smoke control:</p> <ul style="list-style-type: none"> • Cleaner, easier to maintain workplaces • Happier, healthier workers • Higher rates of smoking cessation • More effective programs of smoking prevention • Lower rates of tobacco consumption • Creates a greater incentive for people to make their own homes smoke-free
9	<p>Test and measure cigarette ingredients and cigarette smoke.</p>	<p>Untaxed tobacco products that are sold on and off First Nations lands do not comply with testing and measuring provisions of the <i>Tobacco Act and Regulations</i>. Therefore, we have no direct knowledge of what is in those products and their smoke</p> <p>First Nations could take decisive and independent action to ensure that only legally tested manufactured tobacco is offered for sale on their lands. At little cost, this action would move First Nations into compliance with Article 9 of the FCTC</p>	

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
		emissions	
10	Oblige tobacco companies to test and report on toxic constituents and emissions of tobacco products.	Untaxed tobacco products that are sold on and off First Nations lands do not comply with provisions for testing and reporting of the <i>Tobacco Act and Regulations</i> . Therefore, we have no direct knowledge of what the toxic constituents are in those products and their smoke emissions	First Nations could take decisive and independent action to ensure that only legally tested manufactured tobacco is offered for sale on their lands. At little cost, this action would move First Nations into compliance with Article 10 of the FCTC
11	Require large health warnings (at least 30% of the package front) on packaging and prohibit deceptive packaging and labelling.	Cigarettes conforming with Canadian tobacco laws which are available in aboriginal communities have large health warnings. However, none of the warnings presents images that would be culturally specific to aboriginal communities. Illicit cigarettes sold on and off First Nations lands typically do not have the required pictorial health warnings. Many have no health warnings at all.	First Nations could pass their own laws to require additional health warnings of their own design on packages that were in languages of First Nations or otherwise culturally specific. First Nations and aboriginal associations could also negotiate with the federal government, provincial and territorial governments for additional warnings that were culturally specific to aboriginal communities in the territories, in urban areas and other non-reserve locations. Such action would, in the eyes of the world, once again be a responsible exercise of national sovereignty, designed to improve the health of aboriginal peoples. It would put much more culturally relevant and effective health warnings in the hands of aboriginal smokers. The public health benefits of large, pictorial, culturally appropriate health warnings would be made available to all aboriginal smokers.

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
12	<p>Health education and promotion about the health hazards of tobacco.</p> <p>Education about economic and environmental impacts of tobacco.</p>	<p>Under the First Nations and Inuit Tobacco Control Strategy, a large number of health education and smoking cessation programs were funded in aboriginal communities. That strategy has now been suspended, so there are now few education and cessation programs in aboriginal communities.</p> <p>No formal evaluations are available by which the effectiveness of these programs could be judged.</p> <p>Nevertheless, experience has shown that education and cessation programs, offered in a pro-tobacco environment and in the absence of other tobacco control measures, are generally ineffective.</p> <p>However, smoking cessation, health education and promotion programs offered by the governments of Nunavut and the Northwest Territories, where comprehensive tobacco control laws, policies and programs are in place, were showing signs of working well. Regrettably, anti-tobacco education and promotion programs have also been curtailed in the territories due to the suspension of FNITCS.</p>	<p>The key to deriving community benefits from smoking cessation and tobacco and health education programs in aboriginal communities will be to revive them in such a way as to make them more effective. And that means that such cessation programs and educational and promotional campaigns should be constructed as an integral part of a larger comprehensive tobacco control program as called for by the FCTC.</p> <p>New systems could be devised to link smoking cessation, health education and promotion about tobacco to other aspects of comprehensive tobacco control policies and programs in aboriginal communities.</p> <p>For example, First Nations governments, having taken control of tobacco taxation and taxing on-reserve sales of tobacco at the full rate, could use part of the revenue so realized to:</p> <p>Establish smoking cessation, tobacco health education and promotion programs devised by First Nations peoples for First Nations peoples.</p> <p>Devise smoking cessation, education and promotion campaigns to support tobacco control laws and regulations such as higher taxes on cigarettes, bans on smoking in workplaces and public places, the importance of reduced ignition propensity cigarettes, health information and health warnings on packages and a ban on tobacco advertising.</p> <p>With restored funding for tobacco control territorial governments could also reconstruct smoking cessation, health education programs as integral component of their comprehensive tobacco control programs.</p>
14	<p>Run smoking cessation programs that are accessible and affordable.</p>		

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
13	Comprehensive ban on tobacco advertising.	Under Canadian law, the restrictions on tobacco advertising in the <i>Tobacco Act</i> also apply in all aboriginal communities. In practice, however, in some First Nations the required restrictions on advertising are not respected. For example, the January 2007 issue of the <i>Mohawk Nation Drummer</i> , a newspaper of the Tyendinaga Mohawk Territory features many tobacco advertisements that are not in compliance with the <i>Tobacco Act</i> .	<p>Article 13 of the FCTC calls for either substantial restrictions on tobacco advertising, or a comprehensive ban on tobacco advertising. The former option is available only to countries that have a constitutional impediment to banning advertising. It is not yet clear whether Canada has such a constitutional impediment or not. Absent such clarity Canada has implemented restrictions, but not a total ban on tobacco advertising.</p> <p>Some First Nations have chosen to allow more tobacco advertising on their territories than is allowed by the <i>Tobacco Act</i>.</p> <p>A more responsible assertion of sovereignty would be for First Nations to look beyond the real or imagined constraints of the Canadian Constitution and seek for their own communities high-level implementation of Article 13 of the FCTC. First Nations could go further than required by the Canadian <i>Tobacco Act</i> and enact comprehensive bans on tobacco advertising that would apply to their territories. Such a ban would be a key component of effective and comprehensive tobacco control in First Nations communities.</p>

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
15	Minimize illicit trade in tobacco with a view towards its complete elimination.	<p>In many First Nations, more tax-exempt cigarettes are sold than permitted to status Indians under Canadian tax law.</p> <p>It is also the case that they are often sold to persons who do not have the right to purchase them.</p> <p>In addition there is manufacturing in licensed and unlicensed factories and sales of contraband cigarettes from these factories both on and off reserve.</p> <p>Although research on the source of smuggled cigarettes is not well established, it is generally accepted view among law enforcement and public health authorities that the main source of contraband cigarettes in Canada is First Nations territories in Canada and neighbouring ones in the United States.</p>	<p>Were First Nations to enter into collaborative arrangements with the United States and Canada to put an end to the contraband trade in cigarettes where criminals are taking advantage of the geopolitical situation of First Nations territories, the full health and economic benefits of a high-price policy for tobacco products would be realized in First Nations, Canada and the United States. It would also increase the effectiveness of the rule of law in all three communities, and provide a basis for much more fruitful negotiations on contentious land claims and other issues that are the subject of on-going negotiations between First Nations and the governments of Canada and the United States.</p> <p>It is estimated that 0.5 to 1.5 billion dollars in tax revenue is currently being lost to tobacco contraband.⁶⁶</p> <p>In addition to the health benefits to First Nations peoples that would flow from adopting a no-contraband high-price policy for cigarettes in First Nations territories, First Nations could demand of federal and provincial governments and very likely get a significant part of the restored tax revenue as new tax revenue by First Nations for First Nations.</p> <p>Some cooperation along this line is already evident. The Akwesasne Mohawk Police Force cooperates with other police forces from Canada and the United States in Integrated Border Enforcement Teams. More such collaboration is needed as part of the effort required by First Nations to fully comply with Article 15 of the FCTC.</p>
16	Prohibit sale to young persons.	Canadian federal and provincial laws prohibit sales of tobacco to young persons. While compliance is not perfect (approximately 80%) in Canada, there is concern that young people gain even easier access to cigarettes in aboriginal communities.	Greater observance of the FCTC-mandated prohibition on sales of tobacco products to minors is a key part of a comprehensive tobacco control policy. Along with other elements of the policy, if implemented it would contribute to significant reductions in tobacco consumption in aboriginal communities.

FCTC obligation		Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
17	Promote economically viable alternatives for tobacco farmers and tobacco workers.	Currently, licit and Illicit tobacco sales are a source of income for many people in First Nations communities.	As part of comprehensive tobacco control strategy, consideration would be given to develop long-term and self-sustaining social and economic development strategies that would provide viable economic alternatives to continued reliance for income on licit and illicit sales of tobacco.
20	Engage in research on tobacco control.	Our current knowledge of tobacco use, tobacco-related diseases and other tobacco policy-related questions is incomplete and out of date. Many First Nations communities resist – with good reason – attempts to gather research data in their communities because little of the research that has been done has brought any observable improvement to First Nations communities.	Were First Nations to adopt the FCTC, including Article 20, they could engage in a revitalized research strategy that would be in the form of a tobacco control research program by First Nations, for First Nations. Some of the topics that could be addressed in such a program could include among many others: <ul style="list-style-type: none"> • Health hazards of tobacco use in aboriginal communities • Use and prevalence of traditional and non-traditional tobacco • Community benefits and health hazards of traditional tobacco use • Benefits of comprehensive tobacco control • Economic alternatives to tobacco commerce • Tobacco pricing policies appropriate for aboriginal communities
21	Report periodically on progress in treaty implementation to the Conference of Parties.		Comprehensive reports to international bodies on treaty implementation in Canadian aboriginal communities would be of great benefit to First Nations, other aboriginal communities in Canada, Canada as a whole, other aboriginal communities elsewhere in the world and all the nations of the world.

	FCTC obligation	Current status in aboriginal communities	Expected benefits of full implementation in First Nations communities
22	Cooperate with other parties on national and international implementation of comprehensive tobacco control programs, policies and legislation.	<p>Some progress has been made in cooperation on tobacco tax-sharing agreements between a few First Nations and federal and provincial governments. However, much more remains to be done to encourage cooperation among First Nations in Canada on tobacco control strategies. More remains to be done to further more cooperation with federal, provincial and municipal governments too.</p> <p>Currently, Canada's First Nations do not raise their voice on tobacco control in international fora, nor is there any evident cooperation at the international level.</p>	<p>Canadian First Nations have much to offer and much to gain from greater international cooperation on tobacco control. Exchange of knowledge and experience with other indigenous peoples on tobacco control issues would be particularly pertinent. Here are some ways this could happen:</p> <ul style="list-style-type: none"> • First Nations representatives could request participation in the Canadian delegation to the FCTC Conference of the Parties (CoP). • First Nations organizations could attend the FCTC CoP as representatives of NGOs, accredited by the Framework Convention Alliance, an international network of NGOs. New Zealand Maori participate effectively in this fashion. • First Nations organizations could raise concerns for tobacco control in indigenous communities through the United Nations Permanent Forum on Indigenous Issues.

CONCLUSION

Full implementation of the FCTC in Canada's aboriginal communities would result in many benefits for these communities. These would include:

Health benefits

Better protection from second-hand smoke for non-smokers

Greatly reduced smoking prevalence.

Over time, it could be expected to decline from current levels of over 40% to a level close to the Canadian average (currently 18%).

Reduced burden of disability and death.

Regrettably, this benefit would only be realized over a long period of time, because of the 30-40 year lag time between uptake of smoking and increased rates of disease and death. Nonetheless, rapid reductions in smoking prevalence now will most surely pay dividends in the future in terms of death and disease avoided in the future.

Community benefits

Increased community autonomy

- through acquired taxation power and use of revenue so realized for community improvement projects of each community's own design; and
- through First Nations controlled design and execution of tobacco control policies and programs modelled on proven international models of tobacco control policies and programs.

Increased sovereignty

- through symbolic ratification of the Framework Convention on Tobacco Control; and
- through greater participation and interaction with other nations in the ongoing management and implementation of the FCTC.

Improved social and economic well-being of aboriginal communities.

By capturing tobacco tax revenues in the short term and diverting resources from health-destroying tobacco commerce to healthier and more productive forms of economic activity, First Nations communities will, in the long term, improve their social and economic health of their communities.

This paper has outlined the potential benefits that would flow to aboriginal communities were they to symbolically ratify the Framework Convention on Tobacco Control and then seek to implement all of its provisions, just like all 146 Parties to the Convention.

One of the greatest virtues of sovereignty is that no permission is required to exercise it. At any time, aboriginal nations in Canada can take matters into their own hands, ratify the Framework Convention on Tobacco Control and begin implementing it in the interests of protecting the health of their own nations from the current and future ravages of commercial tobacco.

REFERENCES

- ¹ Skinner A. "Political organization. Cults and ceremonies of the Plains Cree." *Anthropological Papers of the American Museum of Natural History* 1914: 13(1); 1-105.
- ² Fecteau R. *A Preliminary Report on Plant Remains from Three Early Iroquoian Sites in Southwestern Ontario*. Report submitted to Archaeology Unit, Heritage Branch, Ontario Ministry of Citizenship and Culture, London, Ontario, 1983.
- ³ Quinn DB (ed.). *New American World: A Documentary History of the North America to 1612*. Volume 4, page 120. New York. Arno and Hector Bye. 1979.
- ⁴ Winter JC. *Tobacco use by Native North Americans: sacred smoke and silent killer*. Norman: University of Oklahoma Press. 2000.
- ⁵ Burch ES. "War and trade" in W.W. Fitzhugh and A. Crowell (eds.) *Crossroads of continents: Cultures of Siberia and Alaska*. Smithsonian Institution. Washington 1988, p. 235.
- ⁶ Sisson VA, Severson RF. Alkaloid composition of the nicotiana species. *Beitrag zur Tabakforschung* 1990: 14(6).
- ⁷ von Gernet A. "Hallucinogens and the origins of the Iroquoian pipe/tobacco/smoking complex. In Hayes CF III, ed. *Proceedings of the 1989 Smoking Pipe Conference. Research Records no. 22*. Rochester, NY: Rochester Museum and Science Centre; 1992: 171-185.
- ⁸ Wilbert J. *Tobacco and shamanism in South America*. New Haven, Conn: Yale University Press; 1987.
- ⁹ von Gernet A. "Origins of nicotine use and the global diffusion of tobacco" in R. Ferrence, J Slade, R. Room and M. Pope (eds.) *Nicotine and Public Health*. American Public Health Association. Washington 2000.
- ¹⁰ von Gernet A. "Hallucinogens and the origins of the Iroquoian pipe/tobacco/smoking complex. In Hayes CF III, ed. *Proceedings of the 1989 Smoking Pipe Conference. Research Records no. 22*. Rochester, NY: Rochester Museum and Science Centre; 1992: 171-185.
- ¹¹ von Gernet A. "Hallucinogens and the origins of the Iroquoian pipe/tobacco/smoking complex. In Hayes CF III, ed. *Proceedings of the 1989 Smoking Pipe Conference. Research Records no. 22*. Rochester, NY: Rochester Museum and Science Centre; 1992: 171-185.
- ¹² von Gernet A. "Origins of nicotine use and the global diffusion of tobacco" in R. Ferrence, J Slade, R. Room and M. Pope (eds.) *Nicotine and Public Health*. American Public Health Association. Washington 2000.
- ¹³ von Gernet A. "Hallucinogens and the origins of the Iroquoian pipe/tobacco/smoking complex. In Hayes CF III, ed. *Proceedings of the 1989 Smoking Pipe Conference. Research Records no. 22*. Rochester, NY: Rochester Museum and Science Centre; 1992: 171-185.
- ¹⁴ Tait L. *The Petuns – Tobacco Indians of Canada*. Port Burwell, Ontario: Erie Publishers; 1971.
- ¹⁵ Smylie J et al. A guide for health professionals working with aboriginal peoples: The sociocultural context of aboriginal peoples in Canada. SOGC Policy Statement. Society of Obstetricians and Gynaecologists of Canada, December 2000. -

-
- 16 Report of the Royal Commission on Aboriginal Peoples, 1996, Vol. 3. http://www.ainc-inac.gc.ca/ch/rcap/sg/sim3_e.html
- 17 Report of the Royal Commission on Aboriginal Peoples. Indian and Northern Affairs Canada. 1996. http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html
- 18 A statistical profile on the health of First Nations in Canada. Health Canada. 2000.
- 19 Canadian Community Health Survey 3.1. 2005. unpublished tabulations.
- 20 Canadian Tobacco Use Monitoring Survey 2005: Summary of annual results for 2005. Health Canada. 2006. http://www.hc-sc.gc.ca/hl-vs/tobac-tabac/research-recherche/stat/ctums-esutc/2005/ann_summary-sommaire_e.html.
- 21 Marrett L. Cancer in Ontario First Nations. Cancer Care Ontario. First Nations Cancer Research and Surveillance Workshop. Ottawa. 2003. http://www.cancercare.on.ca/documents/Day1_1_Marrett_OntarioFNCancer.pdf.
- 22 Status Indians and Taxes. Indian and Northern Affairs Canada. February 2002. http://www.ainc-inac.gc.ca/pr/info113_e.html.
- 23 First Nations Tax. Bulletin # RC4072 (E) Rev. 06. Canada Revenue Agency. June 17, 2006. http://www.cra-arc.gc.ca/E/pub/gp/rc4072/rc4072-e.html#P217_23662.
- 24 Budget 2007, Annex 5 Tax Measures: Supplementary Information and Notices of Ways and Means Motions. Government of Canada March 2007. <http://www.budget.gc.ca/2007/bp/bpa5ae.html#fairness>.
- 25 Fiscal Realities. Innovative Provincial Aboriginal Funding Programs. Presented to: Manitoba Aboriginal Justice Implementation Commission. Kamloops, British Columbia. April 23, 2001. <http://www.ajic.mb.ca/innovative.pdf>.
- 26 Kahnawake Tobacco Association Policy and Regulations. 2005. <http://www.kahnawaketobaccoassociation.com/policy.html>.
- 27 Unmarked cigarette allocation system for First Nations. Tax Bulletin TT 2-2005. Ontario Ministry of Finance. 2005. http://www.fin.gov.on.ca/english/tax/bulletins/tt/tob2_2005.html.
- 28 Policy for the distribution of tax-exempt tobacco products on the Tyendingaga Mohawk Territory. http://www.mbq-tmt.org/pdf_files/Tobacco_Policy.pdf.
- 29 Sandberg D. The Indian Smoking Debate. Aboriginal Voices from Ground Zero. January 14, 2007. http://fcpp.org/main/publication_detail.php?PubID=1646.
- 30 Information Bulletin. Saskatchewan Indian tax exemption for on-reserve fuel and tobacco purchases. Saskatchewan Finance, Revenue Division. April, 2003. <http://www.gov.sk.ca/finance/revenue/onreserve/bulletins/Indian%20Tax%20Exemption-over%20limit%20frm-March.pdf>.
- ³¹ *First Nations want more cigarettes, Cancer Society wants fewer.* CBC. January 29, 2007. <http://www.cbc.ca/canada/saskatchewan/story/2007/01/29/cigarettes.html>.
- ³² *Alberta Indian tax exemption program information circular: Exemptions under the AITE program.* Information Circular AITE-3R5. Tax and Revenue Administration. Alberta Government. June 8, 2006. http://www.finance.gov.ab.ca/publications/tax_rebates/aite/aite3.html.
-

-
- ³³ *Exempt sales made by retail dealers (ESRDs) – Tobacco Tax Act*. Bulletin TTA 001. British Columbia Ministry of Small Business and Revenue. February 2007.
http://www.sbr.gov.bc.ca/ctb/publications/bulletins/tta_001.pdf.
- ³⁴ GfK Research Dynamics. *Tobacco Product Illicit Trade Phenomena*. Imperial Tobacco. 2006.
- ³⁵ *2006-2007 Budget: Additional information on the budgetary measures*. Finances Quebec. 2006.
<http://www.budget.finances.gouv.qc.ca/budget/2006-2007/en/pdf/AdditionnalInfoMeasures.pdf>.
- ³⁶ Fiscal Realities. *First Nation Taxation and New Fiscal Relationships*. Prepared for the Indian Taxation Advisory Board and the Research and Analysis Directorate, Policy and Strategic Direction Branch, Department of Indian Affairs and Northern Development. Kamloops, British Columbia. 1997.
http://www.ainc-inac.gc.ca/pr/ra/fnt_nfr/ntltax_e.pdf.
- ³⁷ GfK Research Dynamics. *Tobacco Product Illicit Trade Phenomena*. Imperial Tobacco. 2006.
- ³⁸ Magapolensis J. A short Sketch of the Mohawk Indians in New Netherland. *Collections of the New York Historical Society*. 2nd series 3; 1857: pp 1337-60.
- ³⁹ Nickels B. Native American free passage rights under the 1794 Jay Treaty: Survival under the United States statutory law and Canadian common law. 2004.
http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/24_2/04_TXT.htm.
- ⁴⁰ George-Kanentiio D. Recent arrests will not end smuggling among Mohawks. *Cornwall Standard-Freeholder*. December 19, 2006.
- ⁴¹ *Information to obtain a search warrant*. RCMP. Montreal Court Office. November 22, 2004.
http://www.smoke-free.ca/eng_home/news_special RCMP Search Warrant Jan_05.htm.
- ⁴² GfK Research Dynamics. *Tobacco Product Illicit Trade Phenomena*. Imperial Tobacco. 2006.
- ⁴³ Lajoie K. Smuggling a provincial problem: Labour Minister says his riding hit hard too. *Cornwall Standard-Freeholder*. August 17, 2006.
- ⁴⁴ A new tobacco manufacturers' coop is forming. *Akwesasne Phoenix*. April 11, 2006.
http://www.akwesasnephoenix.com/index_files/Page2617.html.
- ⁴⁵ *Saint Regis Mohawk Tribal Council suspends cigarette manufacturer licence*. Press Release from the Saint Regis Mohawk Tribe. Onerahtokha. April 21, 2006. http://srmt-nsn.gov/press_releases/pr_042106-2.html.
- ⁴⁶ *The RCMP arrests 12 subjects allegedly linked to a cigarette smuggling and drug trafficking ring*. RCMP press release. November 20, 2006.
http://news.gc.ca/cfmx/view/en/index.jsp?articleid=256939&categoryid=9&do_as=true&view_as=search&departmentid_as=6690%7CRoyal+Canadian+Mounted+Police&df_as=17&mf_as=11&yf_as=2006&dt_as=21&mt_as=11&yt_as=2006&categoryid=9&do_as=true&view_as=content&departmentid_as=6690%7CRoyal+Canadian+Mounted+Police&df_as=17&mf_as=11&yf_as=2006&dt_as=21&mt_as=11&yt_as=2006&
- ⁴⁷ Mohawk women protest Native Trading Associates federal permit. *Akwesasne Phoenix*. February 24, 2006. http://www.akwesasnephoenix.com/index_files/Page967.html.
- ⁴⁸ Kahnawake Tobacco Association. *Policy and Regulations*. 2004.
<http://www.kahnawaketobaccoassociation.com/policy.html>.
-

-
- ⁴⁹ Kahnawake Tobacco Association. *Contributing to the future of Kahnawake*. 2005. <http://www.kahnawaketobaccoassociation.com/index.html>.
- ⁵⁰ Tennyson W. Transcript of *Dateline Ontario*. CTV. July 12, 1987.
- ⁵¹ *Shawn Brant Interview*. CBC News. 2006. <http://www.cbc.ca/sunday/brant.html>.
- ⁵² *Background on protection from second-hand smoke in Canada*. Physicians for a Smoke-Free Canada. June, 2006. http://www.smoke-free.ca/pdf_1/Q&A-smokefreecommunities.pdf.
- ⁵³ Sobol I. Public health law challenges and opportunities for aboriginal communities. Presented at the *Canadian Conference on the public health and the law*. Toronto. November 7, 2006.
- ⁵⁴ *First Nations and Inuit tobacco control strategy: program framework*. First Nations and Inuit Health Branch and the FNITCS Advisory Circle. August 6, 2002.
- ⁵⁵ Backgrounder: Effective Spending. Treasury Board Secretariat. Ottawa. September 26, 2006. http://www.tbs-sct.gc.ca/media/nr-cp/2006/0925_e.asp.
- ⁵⁶ unfiltered: The truth about First Nations and Addiction. Healing our Spirit. Vancouver, British Columbia. 2007.
- ⁵⁷ The Federal Tobacco Control Strategy: Summative evaluation of the first five years, 2001-2006. Tobacco Control Program. Health Canada. 2007.
- ⁵⁸ WHO Framework Convention on Tobacco Control and related documents. World Health Organization Geneva. 2007. <http://www.who.int/tobacco/framework/en/>.
- ⁵⁹ Cleary PD, Hitchcock JL, Semmer N, Finchbaugh JL, Pinney JM. Adolescent smoking: research and health policy. *Milbank Quarterly* 1988; 66(1): 137-71.
- ⁶⁰ World Health Organization. Framework Convention on Tobacco Control. Geneva. 2003. http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf
- ⁶¹ Charter of the Assembly of First Nations, April 2003. <http://www.afn.ca/article.asp?id=57>.
- ⁶² Report of the Royal Commission on Aboriginal Peoples. Indian and Northern Affairs Canada. 1996. http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html.
- ⁶³ Institute on Governance. Summary of the Final Report of the Royal Commission on Aboriginal Peoples: Implications for Canada's Health Care System. Ottawa. October 1997. http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html.
- ⁶⁴ Ottawa won't block smoking bylaw on reserve casino. CBC News. January 18, 2005. <http://www.cbc.ca/canada/saskatchewan/story/2005/01/18/casino050118.html>.
- ⁶⁵ The Non-Smokers' Health Act: A discussion document. Non-Smokers' Rights Association. Ottawa. 2006. http://nsra-adnf.ca/cms/file/pdf/NSHA_discussion_document_March_2006.pdf
- ⁶⁶ Warning signs about cigarette smuggling and actions governments can take to extinguish this problem. Physicians for a Smoke-Free Canada. December, 2006. http://www.smoke-free.ca/pdf_1/smuggling.pdf.