Chippewas of the Thames First Nation


Fall 2017

A Technical Discussion Paper
Executive Summary

This technical paper was developed to articulate an indigenous perspective on self-regulation for the tobacco industry and has been informed by research, community input and discussions with the Ontario government.

The focus of this paper is to generate discussion and a framework based on reconciliation, comptability and negotiation, in that indigenous people and their jurisdiction must be respected alongside other governments to create a working relationship and compatible laws. We aim to have this discussion paper become a foundational document that helps pave the way for self-governance envisioned in early alliances and treaty-making with newcomers.

Chapter 1 provides a summary of the tobacco project to COTTFN through three phases of work spanning the years 2012 to 2017.

Chapter 2 highlights the conceptual framework being proposed and how we might draw upon our collective experience in creating the Ontario First Nation Limited Partnership Agreement (OFNLPA) on gaming, as an example of how revenue sharing arrangements between First Nations, the industry, and other governments might be structured.

Chapter 3 highlights work undertaken in Phase II, and starts to shape COTTFN community context as we provide an overview of community survey results. With smoking levels as high as 50%, as (compared to 20 % provincially and nationally) Nation members supported reinforcement of youth and healthier lifestyle choices—which would be one outcome of enforced COTTFN tobacco laws.

Chapter 4, lists several policy think tanks and researchers in Canada that have called on governments to work with First Nations on tobacco. It also makes note of critics identifying our communities as complicit “cogs in the organized criminal machine”, demonstrating the need for community-based enforcement. Indigenous communities need to respond to this type of policy discourse and shift the dialogue away from criminalization towards rebuilding our jurisdiction.

Chapter 5, puts the spotlight on “Reconciliation-Based” discussion on tobacco self-regulation. Reconciliation is also an opportunity for other governments to embrace indigenous law making as COTTFN begins to identify the process for creating a “compatibility” of our own indigenous law within a s. 35, of the Constitution Act, framework. By using indigenous law-making and a financial structure and vehicle like the OFNLPA for tobacco, we strive for a partnership and an incentive and principle-based regulatory model that builds strength in community governance which results in community benefits for First Nations.
Overall, COTTFN has created a stronger foundation to begin to speak to a “relationship-based” perspective that we have as a pre-Confederation treaty signatory on the issues of taxation and tax policy. Our story as a treaty partner with the Crown is not reflected in the Canadian narrative. Outside of our communities it is not common knowledge that our people were never considered to be subjects of the British Crown. As such, we did not pay taxation to the King in early days of colonial history, and this was based on the different relationship that we had with the Crown than that of the settler population.

It is this relationship aspect of taxation that has not been documented and more research is needed on this topic of “taxation as a relationship” from an indigenous perspective. The absence of our worldview in tax laws and policy leaves us with the Indian Act as a poor narrative as to why our people do not pay taxes on reserve. Based on the Indian Act it would appear Status Indians do not pay taxes because of s. 87 of the Indian Act which speaks to tax exemptions. This is erroneous when we look at indigenous narratives and begin to see that the Indian Act was a product of a time within colonial history where indigenous people began to experience systematic loss of our own autonomy in the nation-to-nation relationship with the Crown.

Other historical events corroborate that we were not British subjects and therefore not subject to tax. Our people did not have the right to vote until the 1960’s and therefore did not participate in many Canadian institutions including representative government and the education systems. It is this experience that makes taxation a thorny topic for indigenous people. Nevertheless, by acknowledging history and examining where we have been, we can move forward in developing a tobacco self-regulation system that is community-based, in terms of law making and benefits, and supported by a broader regulatory framework on a government-to-government basis and where our communities benefit from that relationship.

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Introduction

As an outcome of the Chippewas of the Thames (COTTFN) tobacco pilot project, starting in 2012, COTTFN has developed its locally-based regulations and laws—a critical step in moving towards a larger framework that COTTFN has characterized as an indigenous licensing and revenue sharing framework.

COTTFN tobacco laws and regulations have been developed as a direct response to the need to create a broader, incentive-based regulatory framework for the tobacco industry on-reserve. Our conceptual framework for discussion in Chapter 2 is developed from a community-based perspective and could be useful or expanded to other Indigenous Nations in Ontario that are host to commercial tobacco activities. In the development of this framework we draw upon experiences in other parts of Turtle Island to promote movement that is long due in Ontario, and propose a system to give Indigenous Nations and governments a stronger and more coordinated voice to formally address market activities occurring on reserve territory.¹

It is our hope, through this discussion paper, that COTTFN can work towards:

**Short-Term (2 to 3 Years)**

- fair treatment of First Nation financial interests from all levels of government
- maintaining positive government-to-government relationships
- community dialogue to create the social responsibility components of the tobacco sector
- a 2 to 3-year transition plan to create an ongoing resource revenue sharing framework with indigenous governments based on an indigenous economy that has been built, but until now has not been formally regulated
- an MOU that initiates a formal negotiation process: to include capacity for data collection under OCAP® principles or other data governance best-practices to build a fair, economic-based, Revenue Sharing formula²

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¹ While this project was limited to developing a tobacco self-regulatory framework for on-reserve supply chain, similar approaches and ideas could be adapted and utilized to cover discussions in other regulated industries and products situated on-reserve such as, but not limited to: other forms of tobacco, e-cigarettes, craft brewing, wineries, abattoirs, cannabis etc.

² OCAP® stands for Ownership, Control, Access and Possession as principles that communities uphold as a standard when it comes to research and data collection in or pertaining to indigenous communities and comes out of national health research as it pertains to First Nations and Inuit Health.
Long-Term (3 to 5 Years)

- ongoing development of appropriate indigenous laws and governing institutions
- protecting public health and safety at COTTFN from the harms associated with smoking
- maintaining an indigenous market share of the tobacco industry that enhances community benefits
- greater capacity to engage in economic modelling, and monitoring of the sector
- creating greater market certainty in what is otherwise a heavily regulated industry throughout North America
- Reconciliation that is not symbolic but results in the systemic institutional development that reflects indigenous people as economic players and contributors
- indigenous administration of justice systems
- shifting the dialogue away from the idea that contraband tobacco is about indigenous people engaging in criminal behavior; and instead focusing on doing the work necessary to create a regulatory environment that is viewed as a long-term investment in the economies of First Nations, Canada and Ontario
- building a revenue-sharing, governing/flow-through model that is similar to the Ontario First Nations Limited Partnership as a Best Practice for a regulated industry model (gaming), and based on an independent case study of lessons learned and efficiencies that have been achieved through the partnership agreement

About this Document

This document is divided into the following Chapters:

- Chapter 1: Chippewas of the Thames Tobacco Technical Table 2012-2017
- Chapter 2: Concepts for a New Regulatory Framework Discussion
- Chapter 3: Community-Based Support for a Self-Regulatory Framework for the Tobacco Industry
- Chapter 4: The Practicality of Indigenous Governance and Law
- Chapter 5: Reconciliation-Based Considerations and Process for a Self-Regulatory Framework
- Chapter 6: Nation Work: Internal Considerations, Strategy and Action
- Appendices: A through M
Chapter 1
Chippewas of the Thames
Tobacco Technical Table
2012-2017
Chippewas of the Thames Tobacco Technical Table 2012-2017

In 2012, Chippewas of the Thames became one of two pilot-project communities engaged with the Ontario provincial government, to establish the Chippewas of the Thames/Ontario Tobacco Technical Table (hereinafter COTTFN/ON TTT). The other pilot community, in eastern Ontario, was formed with the Mohawk Council of Akwesasne.

The original COTTFN proposal for this initiative was submitted in 2011 to the Ministry of Finance and it was entitled “A Proposal to Undertake a Research and Negotiation Process Addressing the Regulation of Tobacco”.

The approval for the COTTFN/ON TTT was publicly announced in the 2012 Ontario Budget as Ontario made a commitment at that time to work with First Nations to explore ways to modernize the system for cigarette allocation and supply of untaxed tobacco on reserve, otherwise known as the allocation system or quota system.

The COTTFN/ON TTT pilot project can be characterized as an intergovernmental table that is focused on technical discussion and issues related to tobacco. To date, the Ontario ministries that have sat at the COTTFN/ON TTT are the Ministry of Finance and the Ministry of Indigenous Relations and Reconciliation, occasionally supported by other ministries (See Appendix A). Because the project has involved two governments, each with its own governing mandate, it has been important to ensure that there is an official Communications Protocol (Appendix B) for the COTTFN/ON TTT so that information in the public domain reflects the commitments and work being undertaken by the COTTFN/ON TTT.

TOBACCO TECHNICAL TABLES: TWO COMMUNITY PILOTS

“Since, 2009, the Government of Ontario has been in discussion with First Nations leadership at various levels and at different times regarding on-reserve tobacco issues. In and around the same time in 2011, to further the Ontario government’s understanding of the issues, the Ministry of Finance retained a facilitator to continue the discussion with First Nations’ leadership in the province by initiating a “process of listening” with leadership. One of the recommendations made to the Government of Ontario was to act on opportunities to explore community-based solutions, and to that end, support two live pilot projects. The proposal of COTTFN was one of those proposals to explore community driven solutions without prescribing the outcome for any one community.....

In the 2012 Ontario Budget, the Ontario government committed to working with First Nations communities to explore ways to modernize the system for allocating untaxed tobacco products as well as options related to First Nation self-regulation of tobacco on reserve...this was the first time that the Ontario government signaled its desire to look at options other than strengthening enforcement and to enter in to meaningful dialogue with First Nations”.

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The COTTFN/ON TTT, can be viewed as a follow-up to Ontario-wide “listening exercises” facilitated by Kathleen Lickers in 2011 on behalf of Ontario with indigenous leadership. The “listening exercises”, called for a “whole of government approach” in examining tobacco issues. This is an intergovernmental approach whereby Ontario brings together the necessary players with assistance from the Ministry of Indigenous Relations and Reconciliation (MIRR), that ensures that both Ministers and Senior Officials from various ministries, can engage meaningfully with indigenous nations to carry out the work of the tobacco research file with the appropriate response, action and follow up.3

To date, the COTTFN/ON TTT has been focused on the mutual exchange of information about each other’s processes, perspectives, concerns and interests with regards to tobacco self-regulation and research at the community level. This work has been undertaken in three separate phases and the breakdown of the three phases will be briefly described here.

**Phase I: 2012-2013**

The initial start-up of the project at COTTFN was focused on bringing governments together to discuss what a self-regulatory process might look like for First Nations. Early on, the partnership focused on a series of face-to-face meetings to begin the conversation about research, capacity development and the planning needed to explore a community-based regulatory approach for tobacco.

The first phase of the project laid the groundwork in terms of identifying the current cigarette allocation system that accommodates the Indian Act tax-exempt cigarette sales4 to Indians for sale on Indian reserves by way of formula as set out by Ontario Regulation 649/93.5 COTTFN was provided with an in-depth explanation of Ontario’s tobacco and tax regulations and the allocation system used for supplying domestic brand cigarettes to communities.

Domestic premium brand (DPB) cigarettes6, which are manufactured off-reserve, are not taxed by Ontario under Regulation 649/93 and so are not “stamped” or counted in Ontario’s tax revenue calculations because these products are intended for Status Indians who do not pay provincial tax on-reserve. This stream of DPB that is provincially “unstamped” or “unmarked” is sometimes referred to as “black stock” cigarettes in other jurisdictions. This process under Ontario regulation 649/93 forms the basis of the Ontario allocation system and is also referred to as the quota system because each First Nation is limited by the Province with regards to the

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4 Indian Act, s. 87 [Appendix C]. Note: under the Indian Act, personal property of an Indian is not taxable, and so cigarette products currently fall within this category and are not provincially taxable. This differs from the federal excise taxes because manufactured cigarettes are not necessarily personal property of an Indian, rather it is a commercial product, and so excise tax is treated differently on-reserve by federal authorities and Indians lands are deemed to be federally-based lands.

5 Ontario Tobacco Tax Act, Regulation 649/93 [Appendix D]

6 Domestic brand cigarettes in this document refers to cigarettes manufactured by large corporate manufacturers such as: Imperial Tobacco; Rothman’s, Benson & Hedges; JTI-MacDonald.
quantity of untaxed DPB cigarettes that it may have access to from provincial distribution systems on a yearly basis.

The key concern of Ontario was also presented in this phase of the project. Ontario respects the tax-free status of First Nation members on reserve and the Indian Act provisions.7 In Phase I, however, Ontario expressed concerns about First Nation vendors and individual Band Members with access to tax-free cigarettes selling to non-Status people who are not entitled to tax exempt cigarettes. This scenario is depicted in Figure 1.1.8 Ontario has said the system-wide trend of tax-free sales of cigarettes to individuals that are not tax exempt, and the lack of formal regulatory controls on-reserve, has created a permanent “price differential” and perceived “unfair playing field” between on and off-reserve retail sales.9 This, amongst other concerns, formed the rationale for Ontario to discuss modernizing the allocation system and/or the need to explore self-regulation with First Nations.

During Phase I, COTTFN/ON TTT shared research on other jurisdictions that have cooperative arrangements in order to overcome similar concerns regarding taxation and jurisdiction. This resulted in joint discussion and exploration in researching six Canadian models and six U.S. to look at tobacco self-regulation and how that might interface between a First Nation/tribal government and province/state.10 The researchers were also able to jointly identify the common elements needed for a more co-operative arrangement between First Nations and provincial or state governments. Researchers noted that no new institutions were created for the twelve models being explored and completed a scan of existing institutions that may be of some assistance or support to the initiative.

**Key Findings or Developments of Phase I**

A key finding of Phase I, and supporting documentation, is that all provincially regulated cigarette manufacturers account for all cigarettes that are produced at a given site. At these same manufacturing sites, products that are allocated to Status Indians under the cigarette allocation system, are accounted for but not included in the provincial revenue stream. Any discussion with the Province of Ontario, must then keep in mind that Ontario tax modelling is based on this approach.

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7 Supra at 4.
8 In Figure 1.1 we see the total supply chain in the top portion described as Cigarette Manufacturing, Wholesaling and Distribution Chain. This is basically a visual depiction of the process starting at Raw Leaf tobacco and going through to the point-of-sale at the retail sale level. For provincial engagement purposes, the supply chain of tobacco has no tax implications until the Manufacturing stage of the process and this is depicted in the lower half of the diagram as it pertains to Regulation 649/93, what is commonly referred to as quota or allocation cigarettes.
9 COTTFN does not endorse the position of Ontario or off-reserve retailers who will point to an unfair playing field, as reflected in the Ontario Cigarette Allocation Review, because this perception is based on a narrow and an ahistorical perspective that does not consider the unfair advantages that First Nations have experienced in society because of the Indian Act and other systemic disadvantages.
10 A detailed overview of the jurisdictional research conducted in Phase I, of the various regulatory frameworks in Canada and the United States, is discussed further in Chapter 4, and is in Appendix E. Case briefs related to these issues are also available upon request.
The summary of findings, in Phase I, informed by COTTFN/ON/TTT engagement as well as desktop research that examined the policy and legal approaches of other jurisdictions.

Some key findings:

- Legislative authority is needed to enter into a tax agreement (federal and/or provincial) and this would start with appropriate Cabinet Submissions and approval;

- First Nation authority is needed to create a law and to enter into a tax agreement (community vote/mandate; s. 83 Indian Act By-Law; Schedule 2 First Nations GST Act; First Nation Financial Administration Law);

- Whether it is called a Terms of Agreement, Taxation Agreement, or Compact, the document or final agreement between a First Nation/province generally addresses:
  
  - Federal/provincial government(s) retroceded from tax collection where there is an agreement
  - Licensing of retailers and wholesalers;
  - Rate(s) of tax or “community improvement fee”
  - Eligible consumers;
  - Point of collection
  - Collection authority
  - Remittance and details of required documentation;
  - Amounts/schedule of payments to First Nation
  - Compliance
  - Enforcement; and Dispute Resolution

**Key Documents of Phase I**

Key documents that were produced during this phase of the project:

- *Analysis of the Economic Potential of Tobacco Production at Chippewas of the Thames First Nation*
- Chippewas of the Thames Comprehensive Community Plan, *We Make the Path by Walking It*, 2012-2020, Chapter 5, Prosperity Development section refers to tobacco economy in the context of community development (whollistic and comprehensive)
Figure 1.1 Adapted from a COTTFN information slide deck produced in 2016 “Six Options and Tools for a COTTFN Self-Regulatory Code.”

Scenario 3: Domestic Brand Cigarette Sales Under Ontario Regulation 649/93
Allocation Sales to First Nations On-Reserve & Non-Compliance. Non-compliance = Loss of Revenues (to all levels of government, including indigenous government).
Phase II: 2014-2016

Phase II covered two fiscal years, from 2014-2016, and built on the work in Phase I. Because a key finding of Phase I research was that First Nation authority was needed to enter any cooperative agreement with another level of government, COTTFN then turned to the drafting of its community-based laws and authorities for those laws.11 This required further research and capacity development from the First Nation and is one of the reasons that this phase of the project spanned two fiscal years.

Other legal and policy developments occurring during Phase II also created uncertainty for COTTFN, in terms of the implication of the work being undertaken at the COTTFN/ON TTT. Changes to the Criminal Code under Bill-C10 were well on the way to becoming law and did become effective in January 2015.12 This meant that the unregulated tobacco trade on-reserve became curtailed, not through a regulatory process, but through criminal law mechanisms to create a new offence in trafficking contraband tobacco.

The changes to the criminal law entrenched a black-and-white approach limited to provincial authority, in creating a cigarette “stamping” system. This is to ensure the collection of taxes to both levels of government, with the federal government relying on provincial compliance to collect federal taxes; and with no provisions for First Nation stamping or indigenous tax revenue stream, despite a significant representation of cigarette manufacturing operations on-reserve. At the same time, the Ontario provincial government was making changes to the Ontario Flue-Cured Tobacco Growers’ Marketing Board.13 The province conducted a regulatory review of the raw leaf tobacco regulations during the timing of Phase II of the COTTFN/ON TTT.14

These changes on the part of both the federal and provincial governments were new challenges in an already-difficult discussion that we were having around the topic of indigenous law-making and licensing that would create First Nation self-regulation in Ontario. Under this new legislation, the manufacturing and sales of cigarettes were suddenly occurring in an area that was unclear for First Nations in terms of application of law, whereas it had previously been viewed as quasi-criminal regulatory offences that were almost inconsequential. The changes in the law in 2015 now list a new offence in trafficking in contraband cigarettes and tobacco, and

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11 In Phase I of the work, COTTFN did pass its own Financial Administration Law and this may provide ability for COTTFN to legally apply its own taxes for real property. However, the First Nation Tax Commissioner presented a proposal for cooperative development to Ontario First Nations in March 2017. [See Appendix F].
12 Criminal Code, RSC 1985, c C-46, s 121. [See Appendix G]
13 This agricultural-type of marketing board, prior to the raw leaf regulatory review, was a self-regulatory body in Ontario with regards to the raw leaf tobacco industry.
14 COTTFN did engage in correspondence and provided a response paper to the Ontario Raw Leaf Regulation review. [See Appendix H]
carry criminal sanctions with harsher penalties such as mandatory minimum sentencing that cannot be dismissed by individuals engaging in this activity.  

The criminal sanctioning of an indigenous tobacco economy without concessions or a process or dialogue with indigenous peoples on how to bring about a regulatory environment on-reserve has not been helpful. A more constructive dialogue on how to bring about a more strategic alignment between on-reserve and off-reserve sales would have made sense to pursue once the criminal sanctions came into effect. Such alignment should ordinarily fall within the realm of federal jurisdiction (this is elaborated upon in Chapter 3), however the trend of the federal government deferring to the provincial government for distribution systems is continuing.

Despite significant changes in federal law, COTTFN continued to meet with Ontario to look at the issue of self-regulation on-reserve, and by meeting regularly and producing project deliverables, the work continued. Through the research activity and dialogue, COTTFN has started to address the unease about the extent to which provincial jurisdiction may apply on reserve regarding taxation. While this may be of concern to COTTFN, the federal approach to this issue is not unusual. These same concerns have resulted in other jurisdictions, such as the United States, creating compact agreements between tribal governments and states.

Our research has shown, that in other jurisdictions, these negotiated solutions work. For instance, in Phase I of the COTTFN/ON TTT, the Muscogee Creek agreements were examined and it was the same scenario, as to whether state law and state taxes applied on-reserve. On the Muscogee Creek reserve, cigarettes were being sold, although not manufactured, and this led to a tobacco compact agreement between the tribe and the state. This is a more conciliatory approach that creates practical working arrangements that can benefit both tribal and state governments in the U.S. and have been instructive to the COTTFN/ON TTT.

During the Ontario-wide review of the cigarette allocation system under Regulation 649/93, which occurred during Phase II, COTTFN developed a position paper and voiced its concerns about a strict interpretation as to whether provincial law and taxation applies on-reserve. COTTFN has concerns that a narrow analysis of this issue, and application of Section 88 of the Indian Act, which allows for laws of general application within the Province of Ontario, does

15 Under the Conservative majority government, several changes had occurred under the Criminal Code as being tough on crime. In the case of Joseph Ryan Lloyd v. R, SCC 2016, minimum sentencing provisions were struck down against an individual because it constituted cruel and unusual punishment. Similar provisions in contraband tobacco have yet to come forward or be heard on this basis, although the current federal government did indicate in election speeches that they would repeal these types of provisions that were instituted by the Harper government. See also, “Supreme Court strikes down two Conservative tough-on-crime laws” https://www.thestar.com/news/canada/2016/04/15/supreme-court-strikes-down-two-conservative-tough-on-crime-laws.html <Accessed: June 8, 2016>

16 The latest research into cannabis legalization further emphasizes this approach on the part of the federal government. See: A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation, Her Majesty the Queen in Right of Canada, as represented by the Minister of Health, 2016

17 See Appendix I for COTTFN response to the Cigarette Allocation Review and accompanying report.

18 Indian Act s. 88. [Appendix C]
not extend to taxation. Rather, we insists that reconciliation between ourselves and the Province of Ontario requires that more weight be given to s. 35 of the 1982 Constitution Act, in developing a new approach to First Nations ability to make laws for on-reserve commercial activities such as tobacco.\textsuperscript{19} It is the view of COTTFN that most First Nations would agree that indigenous lawmaking is the only practical way forward, and we stated these concerns in the cigarette allocation review conducted by Ontario.\textsuperscript{20}

**Key Findings or Developments of Phase II**

Prior to the pilot project, Chippewas of the Thames did not have extensive capacity in terms of being able to engage a technical dialogue on this topic with government. Therefore, because of engaging in this process, one of the immediate outcomes of the COTTFN/ON TTT project is that we have capacity and research to strengthen “how we see tobacco”. This was also done through our indigenous knowledge research and was of great assistance to the Nation in terms of seeing the difference between ceremonial and personal use of tobacco versus large-scale production and operations for commercial manufacturing of cigarettes.\textsuperscript{21}

One of the activities undertaken by the COTTFN/TTT that added value to Phase II was COTTFN hosting a gathering of nations entitled, “Pathways to Prosperity: Learning from Each Other”, which was a tobacco-themed forum held in London, Ontario, in May 2014. The forum featured various tribal groups and nations from across North America. As a guest speaker, Grand Chief Mike Mitchell of Akwesasne, told the audience about the unique challenges facing the Mohawk community of Akwesasne given their geography on international and provincial state borders in relation to tobacco; and how community members’ entry into the contraband cigarette trade was due to the influence of big tobacco companies that were seeking to avoid cigarette taxation in Canada.

Other presentations at this forum included Squaxin Island and the Seminole tribe of Oklahoma who offered a glimpse of where COTTFN wanted to go in exercising jurisdiction with economic benefits, but also in providing real-life working models for cooperation between governments all throughout Turtle Island. Furthermore, these nations shared how negotiated solutions can create approaches that empower and strengthen the collectivity of tribal governments. Indigenous governments, through revenue sharing, reap the benefits of these new economic arrangements, and can build and finance the capacity needed to sustain community governance and economy. This contrasts with a passive approach, or one of disengagement, where this billion-dollar sector and its oversight is currently left to private individuals, and perhaps unwanted outsiders and investors, to shape the industry in the community with little thought to long-term socio-economic impacts on-reserve.

\textsuperscript{19} Constitution Act, 1982, s. 35 [Appendix J]
\textsuperscript{20} Supra at 14.
\textsuperscript{21} Because of the importance of tobacco to our Anishinaabeg culture, our values and practices are important to maintain and, so we want to continue to make efforts to educate and inform community about the role of traditional tobacco practices while respecting the health issues around smoking.
By the end of Phase II, COTTFN had better awareness of the various tobacco tax or compact models that exist, but also identified a need for a transitional stage, and a broader framework for sustaining a public policy debate on the issue. COTTFN ON TTT also began to realize that regional approaches are needed amongst First Nation communities that are tied together by geography in an interconnected and shared market. This was based on modelling activities undertaken on behalf of COTTFN and then adding proxy communities to create economic assumptions of a new pricing and regulatory framework that could be sustainable and remain profitable. This resulted in COTTFN developing its own preferred modelling first, and then looking at the self-regulatory “community laws” and external frameworks and strategies might be needed over the long term to transform this industry to create a preferred outcome.

At this stage, COTTFN began to step away from a minimalist approach to indigenous law making where indigenous authority is merely an extension of provincial authority. COTTFN, now becoming more aware of the range of possibilities, began to look at the current limitations in provincial law that reflect a more minimalist approach that did not contemplate an indigenous tobacco economy, particularly in the Tobacco Tax Act where states:22

13.5 (1) Subject to the approval of the Lieutenant Governor in Council, the Minister, on behalf of the Crown, may enter into arrangements and agreements with a council of the band with respect to tobacco. 2011, c. 15, s. 25 (1).

(2) The Minister, on behalf of the Crown, may enter into such arrangements and agreements with a council of the band as the Minister considers necessary for the purposes of the administration and enforcement of this Act on a reserve. 2011, c. 15, s. 25 (1).

(3) An arrangement or agreement entered into under subsection (2) may authorize a system for the sale of tobacco products and unmarked tobacco products to Indians who are exempt from the payment of the tax imposed by this Act, and the arrangement or agreement may provide for limits on the quantity of tobacco products and unmarked tobacco products to be sold to retail dealers for resale to consumers who are Indians. 2011, c. 15, s. 25.

(4) If a council of the band enters into an arrangement or agreement that provides for a system described in subsection (3) with respect to a reserve, a regulation made under clause 41 (1) (p) does not apply with respect to the reserve. 2011, c. 15, s. 25 (1).

COTTFN articulated these concerns and this narrow approach to regulating tobacco on-reserve, by not accommodating the governance and real economic interests of First Nations, when responding to Ontario’s cigarette allocation review process where we stated that tobacco self-regulation sits more clearly within the realm of self-governance.23 This view emerged because we were developing our own economic modelling of tobacco sales occurring at COTTFN, the cigarette supply chain, and we knew which components of the economy and trade would have

22 Tobacco Tax Act, R.S.O. 1990, c. T.10
23 Ibid.
to be regulated and that sits within a more robust self-regulatory framework that we began to map out because it currently does not exist. This is the value of the research to date, and is featured in Chapter 2 of this discussion paper.

Therefore, in responding to the cigarette allocation review, it was not practical for us to limit our comments to the cigarette allocation issues created by Regulation 649/93, and the current legislative and regulatory limits of s. 13 of the Tobacco Tax Act. For COTTFN, the larger looming issue is how to regulate a fully integrated tobacco industry that is thriving on First Nations territories as First Nations have become raw leaf producers, cigarettes manufacturers, wholesalers, retailers of domestic premium brand cigarettes, as well as native-brand cigarettes.

In this context, the Ontario cigarette allocation system represents only one stream of transactions and sits in contrast to an entire industry within our traditional territory where we would need to think about the indigenous raw leaf production, transport, processing, stamping and manufacturing. Other jurisdictions that we have drawn upon for examining tobacco compacts do not have this same potential, from an agricultural, transportation and market perspective. This understanding became a key turning point for the First Nation, in terms of our capacity, and how we assess the current allocation system for tobacco regulations on reserve; but more importantly in being able to generate new concepts of what would we need to self-regulate the on-reserve tobacco industry, that has now been criminalized.

We also began to develop visuals of the new reality post-2015 and criminalization of the on-reserve tobacco economy and this is depicted in Figure 1.2 with regards to an unregulated product referred to as “rollies”, which is unmarked/unstamped tobacco. These visuals were produced to assist COTTFN in communicating with community and leadership, the impact of federal law changes, and why we needed to continue with the work in tobacco self-regulation. More importantly, however, we wanted to begin to paint a picture of new possibilities where the on-reserve tobacco industry participants can be fully regulated, and not criminalized. The key of course, would be that we would be required to create our own laws and regulations that would have to be accommodated and championed by other levels of government to lead to a broader indigenous licensing and revenue-sharing framework.

In Phase II this resolve to pursue this opportunity was strengthened after COTTFN sent a delegation of Technical Team members, and members of Council, to Washington State to see the Squaxin Island and Chehalis tribe model in operation. The COTTFN delegation obtained more background information on these operations, the Washington compacts, and witnessed a regulatory framework in-effect.

COTTFN delegates observed that activities under the tobacco compact were only a means to an end, which was to further advance the strategic economic goals of the tribal groups. While regulating the industry is important for protecting community health and creating an own-source revenue stream for the Nation, it is not the end-game for a successful Nation: as any own source revenue from tobacco could be structured to finance economic diversification by the Nation and its tribally owned entities and corporations.
This economic theme was further emphasized as COTTFN also produced an economic diversification report in Phase II. This report established reasons and rationales for why it was important to see beyond tobacco, as we documented the risks associated with the sector, and noted the traditional tobacco and cigarette sector is changing. Members of the COTTFN team began to better understand the risks of being in this type of industry and communicated to leadership the need to make economic diversification a key strategic goal for moving beyond tobacco.

Towards the end of Phase II the community was surveyed and community members, along with Council, were open-minded to seeing options for how laws could help protect community health, with an emphasis on youth, and what, if any, beneficial arrangements could be struck with the provincial government on the possibility of tobacco revenue sharing. The survey and community-based support is presented more in-depth in Chapter 3.

24 These risks are highlighted in the COTTFN Economic Diversification Report, 2016.
Production and Sale of No Stamp “Rollies” is now within “trafficking in contraband tobacco” definition

(No federal provincial permit/yellow stamp or First Nation equivalency/stamp)

Point of Tax

Native Brand Manufacturer produces cigarettes

Native Brand Wholesaler buys cigarettes with NO STAMPS

Retailer buys cigarettes with NO STAMPS

First Nation Consumer buys cigarettes with NO STAMPS

Non-First Nation Consumer buys cigarettes with NO STAMPS

Point of Sale On/Off Reserve

Post 2015: Indigenous Nation Economy now criminalized without Provincial Stamping

Figure 1.2 Adapted from a COTTN Information slide deck produced in 2016 “Six Options and Tools for a COTTN Self-Regulatory Framework”
Key Documents of Phase II

During Phase II the following documents, presentations and reports were created by several different contributors:

- Business Models and Economic Impacts: COTTFN Entering the Tobacco Industry, Darrin Jamieson
- Overview of Tobacco Tax, Raw Leaf Tobacco Oversight, Ministry of Finance
- Traditional Uses of Tobacco Literature Review, Tonio Sadik
- Traditional Ecological Knowledge Resource List Policies, Protocols and Position Statements, Deb McGregor
- COTTFN Traditional Knowledge Forum, Deb McGregor
- Development of a TK Protocol for Chippewas of the Thames, Summary and Next Steps, Deb McGregor
  - Video documentation of the event
  - Final Report of the event, Kathleen Lickers
- COTTFN Marketing and Distribution Report, Darrin Jamieson
- COTTFN Economic Diversification Report, Rolanda Elijah
- COTTFN Tobacco Strategy and Slide Deck, Ryan White
- Considerations Framework, COTTFN/Ontario
- COTTFN Business By-Law
- COTTFN Smoking By-Law
- COTTFN Raw Leaf Regulations Submission
- COTTFN Cigarette Allocation Review Submission
- COTTFN Asset Mapping PowerPoint Presentation
- First Nations Land Management Act, COTTFN Verified Land Code with tobacco provisions
- COTTFN comprehensive law, Jaimie Lickers, Growling WLG
- Community Attitudinal Survey, Rolanda Elijah
- Vendor Survey, Darrin Jamieson and Mike Deleary
- Community newsletter updates, Greg Plain, Gabriel Haythornthwaite, Rolanda Elijah
- Community consultation work plan
- COTTFN Information Slide Decks: Ongoing project reports, Six Options and Tools for COTTFN Self-Regulatory Code, Rolanda Elijah
- COTTFN Project Charter, Gabriel Haythornthwaite, Rolanda Elijah
- COTTFN Field Research Report from visiting operations in Squaxin Island, Washington State, USA, in December 2015, Darrin Jamieson
**Phase III: 2016-2017**

In the 2016 Ontario Budget, it was announced that there would be a continuation of the two First Nation community pilots examining self-regulation for tobacco. Ontario also announced that the province was to be working with the Union of Ontario Indians in exploring a combined tobacco and gas card for tax exempt sales to Status Indians.

For COTTFN, in 2016-2017, earlier phases of the work brought COTTFN to the point where it can engage in a discussion on tobacco policy issues, highlight the work to date, and empower us to state how we want to move forward.

In the 2016-2017 work plan and activities resulted in:

- A discussion and communication amongst COTTFN leadership, administration, focus groups inclusive of youth and elders, and community to develop a better understanding of what our own law-making needs are

- Identification of what cultural shifts we may have to undergo to create the change needed for a self-regulatory environment with the idea of *compliance* being re-worked from a community and indigenous knowledge, custom-based perspective

- Consultation with community to enhance and pass our own law in 2017

- A conceptual map on how our initiative it could fit into a bigger picture beyond COTTFN and what the other intergovernmental, legislative or institutional supports may be needed to support the concepts and principles leading to a U.S. compact-like agreement in Ontario

- Outreach to other indigenous communities that may be interested in learning more about our initiative. This could also help identify where there may be opportunities to network and create linkages with a goal of creating a critical mass of indigenous partners showing an interest in this topic

- Ongoing engagement with our provincial partners to try to secure further political and resourcing commitments to continue with the work in moving towards a self-regulatory framework for an indigenous economy context that may lay the groundwork for other regulated industries
Chapter 2
Concepts for a New Regulatory Framework Discussion
A Regulatory Framework for Discussion Purposes

Indigenous communities on-reserve in Ontario need a broader regulatory framework to support the tobacco-sector activities that have been occurring on-reserve for quite some time. An immediate need for on-reserve regulations is to preserve the existing market which has been largely outlawed and stigmatized because of changes to the Criminal Code.

As of January 2015, large-volume sales of non-stamped product—cigarette production activities that were occurring in the unregulated market are now clearly defined as a criminal activity with significant penalties. Prior to these changes in criminal law, most indigenous communities may not have had any impetus to create a locally regulated environment for tobacco, or may not have seen the need to work with Ontario on an intergovernmental basis to create more cooperative arrangements.

We are proposing a larger First Nation discussion on the elements or components that we have identified, based on research, that may assist us in creating a win-win scenario and solutions. Further, a win-win-scenario is something that we cannot achieve by ourselves as a single First Nation, or with one level of government; which we learned through our market research and economic modeling.

While we were successful in developing a first draft of a comprehensive tobacco law in the 2015-2016 fiscal year, a broader framework is needed to support where we want to go with this industry. What we have depicted in Figure 2.1 is a diagram for what COTTFN would like to discuss with community, other indigenous nations, and other levels of government and to start to create a broader self-regulatory framework that supports community laws and governance here in Ontario.²⁵

The framework has five component parts for discussion and will be briefly described, not prescribed, and supported by rationales in the remainder of this chapter, as follows.

1. Revenue Sharing & Social Licensing Agreements
2. Community Readiness
3. Indigenous Law Making
4. Compliance
5. Administration of Justice
6. Wealth Distribution
7. First Nations Tobacco Commission

²⁵ While this framework is presented at a global level to cover all of Ontario, it may make more sense to start on a regional-basis with a few First Nations in the same geographically-based area, and COTTFN has done modelling to support this as well. This framework could be scaled down to suit those purposes.
1.0 Revenue Sharing Framework Agreement & Social Licensing Agreement

a) Agreement with Ontario (Revenue Sharing under Limited Partnership)
- Concept for a negotiated agreement covering tobacco, like the gaming agreement: the Ontario First Nation Limited Partnership Agreement (OFNLPA)
- Relationship and principles-based agreement
- Signing on to the agreement means that the community is going to create a self-regulated environment on-reserve for tobacco that addresses smoking and an agreed upon price point for cigarette sales on-reserve (negotiated)
- Implemented agreement creates market certainty for First Nations, other levels of government, and integrates First Nations into larger regulatory system, like U.S compacts for gaming and tobacco
- There are two entry points: Entry Level A-First Nations with no or limited law-making experience in the tobacco sector; and Level B-for First Nations with an existing law
- The framework recognizes existing regulatory efforts that communities have already made in this area, and the framework allows for those laws to be built upon for compliance and compatibility within Framework Agreement principles
- The framework will create the institutional supports for self-regulation
- A negotiated outcome could be to develop a solution on transportation issues that exist between communities wanting to trade, and transport operators would be able to produce equivalent documentation required by other jurisdictions
- The framework builds upon years of negotiations and lessons learned from the OFNLPA
- Revenue streams could be geared towards governance and institutional supports and/or community betterment that would be identified and negotiated into the agreement
- Revenue streams would not just be limited to one-source, it would look at all sources of tax revenue from tobacco charged by other governments to create a First Nation revenue stream in exchange for self-compliance on tobacco, see also Figure 3.6

b) Agreement with the People (Social Licensing)
- Social licensing for the tobacco sector, meaning community consent in addition to meeting the requirements of formal laws
- According to the website SocialLicense.com, “On occasions, the Social License can transcend approval when a substantial portion of the community and other stakeholders incorporate the project into their collective identity. At this level of relationship, it is not uncommon for the community to become advocates or defenders of the project since they consider themselves to be co-owners and emotionally vested in the future of the project, such is the strength of self-identification.”
- Agreement is between the Chief and Council and its membership, and makes the leadership and its administration more accountable to community versus focus on upward reporting to external governments
- Self-government based agreement is based on community strategies and priorities versus external policy and program priorities
- Gives community ownership for the law and the revenue sharing system as communal changes are necessary to support the entire process
- Ensures that businesses do not set up on reserve and extract profits to a limited group of individuals without protecting the vulnerable (youth) and community health
- Encourages an investment climate in community and the building of an indigenous economy
2.0 **Community Readiness (Entry Level A and B)**
- Level A: General starting point for most First Nations
- Level A: The stage where the community does the background work to identify how it is involved in the tobacco sector and which aspects it would attempt to regulate
- The community prepares itself for discussions about creating and sustaining a self-regulatory environment for tobacco
- Community transition and culture shift may be necessary to support a community-based law and this needs to be identified and worked on in the community
- Community readiness assessment and tools, would need to be developed: or external processes available such as ISO certification; First Nations Financial Management Law; etc.
- Level B: Community readiness would also have to be demonstrated by existing capacity, and community movement through: strategic planning documentation; comprehensive community plan; nation building process; existing draft of a tobacco law that has gone to a community consultation; any certifications such as ISO or Financial Law

3.0 **Indigenous Law Making**
- Identification of what aspects of the tobacco sector that the law would cover, raw leaf through to retail sale, and the process for getting the community and leadership to pass a final law
- This stage requires a work plan, human resources and budget allocations to ensure this work is completed to a high standard
- Outcome: a community ratified law that meets community values and framework objectives

4.0 **Compliance & Compatibility (Entry Level B)**
- Role of by-law enforcement officer, and/or other arrangements
- Identification of how community can support the law
- Identification of whether the law is compatible with surrounding jurisdictions to realize the benefits of the Framework Agreement, e.g. transportation on provincial highways
- Reconciliation: Revisiting the Pamajewon and Mitchell cases

5.0 **Administration of Justice**
- If there is a dispute about the issuance of licenses, or indigenous law, individuals will want to be able to appeal the decision
- A First Nations Tobacco Tribunal, administrative tribunal, could be created for the purposes of adjudicating on community laws and decisions pursuant to the law
- This body would require support of federal and provincial governments

6.0 **Wealth Distribution**
- Based on Agreement with the People: targeted funding for areas of: Health, Education, Economic Diversification; Infrastructure
- Reporting and accountability frameworks inclusive of communication strategy
- Agreement with the people: to offset new compliance measures and phase out or re-vamped allocation quota system
### 7.0 First Nation Tobacco Commission

- An institution, a First Nation Tobacco Commission could be created out of the agreement for the purposes of capacity development and oversight of the framework agreement
- See below for excerpts of CBC article on the importance of investing in First Nation governance and institution building

<table>
<thead>
<tr>
<th>Long-Term Investment in Institutional and Relationship Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Phase I of the COTTFN TTT we examined U.S. compacts with emphasis on those that did not create any new institutions to support the agreement; however, this thinking is being revisited by COTTFN.</td>
</tr>
<tr>
<td>In a CBC article titled, “How Quebec Cree Avoided the Fate of Attawapiskat”, the article notes the stark contrast of the life and living conditions between the Cree of the Quebec-side of James Bay and the Ontario-side. Cree leadership from the Quebec, Matthew Coon Come, is cited as saying that the ‘treaties are sacred’. Also, that the Quebec Cree were once like their relations in Attawapiskat but that in moving forward, compromises and new relationships have been made for self-government and resource revenue sharing since the 1970’s. This approach has resulted in leadership being accountable and communities becoming a part of the developments on their land, and beneficiaries, that results in a better quality of life for their communities. Further, that they do not want to rely on the federal and provincial governments for decision making that should rightfully rest with the communities and First Nation governments— Source: CBC News, <a href="http://www.cbc.ca/news/politics/how-quebec-cree-avoided-the-fate-of-attawapiskat-1.1301117">http://www.cbc.ca/news/politics/how-quebec-cree-avoided-the-fate-of-attawapiskat-1.1301117</a> &lt;Accessed: June 9, 2016&gt;</td>
</tr>
</tbody>
</table>
Chapter 3
Community-Based Support For a Self-Regulatory Framework For the Tobacco Industry
Community-Based Support for a Self-Regulatory Framework For the Tobacco Industry

COTTFN has presented concepts for an alternative regulatory system in Chapter 2 to create discussion on self-regulation for commercial tobacco. In garnering community input on key elements of the model, which addresses both community level law making and broader-based support, it is important to provide evidence of support from our own community for an overall framework and the elements of a regulatory system of this scale.

At COTTFN we are not questioning the scientific and medical studies that show a causal link to various cancers and adverse health effects due to smoking and tobacco consumption. Undoubtedly, these scientific findings apply to First Nations too. Other organizations, such as Cancer Care Ontario, Aboriginal Cancer Strategy, do have relevant information that conveys the difference between traditional tobacco usage and commercial tobacco usage and the impacts of commercial tobacco use on First Nation health.

Our focus, instead, is on community-based research that begins to capture our own attitudes, values and perspectives on the topic of commercial tobacco and the First Nation’s potential role in modern law making and governing authority in this economic sector. The primary rationale is that to create a compliance with our own self-regulatory system, it would require a community shift, and we need to build the internal momentum necessary for this shift to occur.

**Community Surveys**

During Phase II and Phase III, COTTFN developed two attitudinal surveys for community that were administered in December 2015 and June 2016.

The purpose of the community surveys were gauge community attitudes towards topical areas related to a local self-regulatory framework for tobacco and the broader-based elements such as negotiations and agreements with other levels of governments. Attitudinal surveys are generally used to gauge opinions and values or “attitudes” towards a concept or idea.

**December 2015 Community Survey**

In relation to the tobacco pilot project we wanted to measure attitudes towards the topic of tobacco with a focus on law making, taxation, community benefits, collectivity, community justice; and whether the community would support ongoing work in this area.

In November 2015, a community notice was issued to the community that their input was being sought during an upcoming event in the first week of December 2015. The survey team consisted of about five people to assist with administering the survey. Approximately 400 surveys were administered to the community and the survey team received back about 397 surveys. Not all survey questions were completed. Nonetheless, based on a high level of

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26 Cancer Care Ontario, Aboriginal Cancer Strategy, https://www.cancercare.on.ca/about/programs/aborstrategy/aboriginal
responses, meaningful survey results were achieved. The minimum age requirement to take the survey was 14, and minors aged 14 to 17 could take the survey provided they had a parent or guardian sign a consent form.

Questions on the survey were presented a series of statements. Respondents had the following options for response:

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

The survey was developed based on discussion of the COTTFN Tobacco Technical Table in late 2015. The focus areas for the survey are depicted in Figure 3.1, and a sampling of the Survey Questions is in Table 3.1.
Smoking & Protecting Public Health
- Laws for COTTFN
- Protecting youth

Taxation & Other Governments
- New laws and fines around contraband, and agreements with other governments
- Criminal code changes, Canada (federal)

Community Benefits & Collectivity
- Current community benefit through Band tax

Consultation
- Community openness to the topic and more information
- Methods for community information and engagement

Figure 3.1 “Overview of Selected Survey Questions and Results for December 2015 Survey”
## COTTFN December 2015 Survey Questions and Answers

<table>
<thead>
<tr>
<th>Questions Part A</th>
<th>Strongly Agree %</th>
<th>Agree %</th>
<th>Neutral %</th>
<th>Disagree %</th>
<th>Strongly Disagree %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. An official smoking by-law to limit smoking areas in public places (Band buildings, recreation areas) is a good idea for our community.</td>
<td>40</td>
<td>34</td>
<td>18</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>2. People should not smoke in front of the main entrances of Band Administration buildings.</td>
<td>46</td>
<td>34</td>
<td>14</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>3. Cigarettes should not be sold to any youth under the age of 19.</td>
<td>53</td>
<td>34</td>
<td>10</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>4. Anyone appearing to be under the age of 30 should be carded and require identification to buy cigarettes, and this is a guideline that should apply at Chippewa.</td>
<td>27</td>
<td>31</td>
<td>24</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>5. If quitting smoking before the age of 30 reduces a person’s chance of dying of lung cancer by 90%, then we should do a better campaign to discourage youth from smoking.</td>
<td>51</td>
<td>39</td>
<td>8</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions Part B</th>
<th>Strongly Agree %</th>
<th>Agree %</th>
<th>Neutral %</th>
<th>Disagree %</th>
<th>Strongly Disagree %</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. I am concerned about recent changes to the law that now make it a crime to sell contraband/unstamped cigarettes produced and manufactured on First Nation reserves (e.g. rollies or baggie smokes).</td>
<td>23</td>
<td>23</td>
<td>36</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>7. I feel that the new laws around cigarettes are targeting First Nations people and businesses.</td>
<td>34</td>
<td>42</td>
<td>20</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>8. Chief and Council should try to reach agreements with other governments on tobacco taxes or revenue sharing.</td>
<td>24</td>
<td>38</td>
<td>27</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions Part C</th>
<th>Strongly Agree %</th>
<th>Agree %</th>
<th>Neutral %</th>
<th>Disagree %</th>
<th>Strongly Disagree %</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. I think that the $2.00 Band charges for Allocation Quota cigarette cartons is working for the community because $64,000.00 now goes towards recreation costs at Chippewa.</td>
<td>23</td>
<td>23</td>
<td>36</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>10. If the $2.00 Band charges for the Allocation Quota cigarettes can be increased without hurting the businesses, it should be increased so that we can have more funds for recreation and youth.</td>
<td>34</td>
<td>42</td>
<td>20</td>
<td>4</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions Part E</th>
<th>Yes %</th>
<th>No %</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. I am a smoker</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

Table 3.1 “Overview of Selected Survey Questions and Results for December 2015 Survey”
Discussion of December 2015 Results:

- The sample size for the completed surveys, 397 surveys, means that a good cross-section of the community was represented in the survey.
- This sampling, as being representative for community, is further validated by part E of the survey results that show even distribution between all age groups (14 to 24 years, 11%; 22 to 34 years, 18%; 35 to 44 years, 18%; 45 to 54 years 19%; 55 to 64 years, 20%; 65 plus years, 14%) although there were about 10% more female respondents than male (60% female and 40% male). The lower youth numbers are likely due to the fact that the community engagement targeted heads of households.
- The response rates where COTTFN Nation members identify themselves as smokers at the level of 50% is high compared to the provincial and national averages of 20%.
- Community members were overwhelmingly supportive of anti-smoking measures and laws, especially where these are protecting or deterring the youth from smoking effects.
- A few respondents made qualitative comments whereby they: identified as cancer survivors; identified as smokers that wish they had never taken up the habit; identified as previous smokers that had successfully quit and felt that it was important to communicate that on the survey.
- Community members surveyed were not opposed to the idea of a Band-imposed levy on the tobacco industry, levies to be paid by vendors in this case, if the proceeds are to go to youth, recreation, health or some other community benefit; and this could be extrapolated to suggest that the same would apply to any aspect of the industry including cigarette manufacturers.
- Some community members made qualitative comments that they were not aware that the First Nation was even charging a levy on the cigarette allocation and this demonstrates that the Nation needs to ensure that all members are aware of any new guidelines and rules around tobacco.
- In Part D of the survey, on questions related to consultation and communications, majority of Nation members wanted more information on this topic and were in favour of regular updates, and the community newsletter was the preferred medium.
June 2016 Community Survey

In April 2016, COTTFN began Phase III of the tobacco project and in June 2016 conducted another survey. The survey coincided with Aboriginal Solidarity Day events with a focus on senior citizens and elders.

The June 2016 survey provided a brief explanation on revenue sharing and asked a series of questions were developed on this topic. It probed community attitudes toward COTTFN having the ability to create a law, enforce and implement laws in the community. Survey questions were suggested by the COTTFN Tobacco Technical Table.

In June 2016, approximately 30 community members filled out a survey that was attitudinal and gauged the ideas and attitudes around the idea of the First Nation as law maker, as well as ideas about community justice and betterment. The focus areas for the survey are depicted in Figure 3.2., and a sampling of the Survey Questions is in Table 3.2.
COTTFN Community Attitudinal Survey
Topics and Issues
June 2016 (Phase III)

Community Justice
• Fines for community offences
• Community service in lieu of fines for community offences
• Willingness to support community-based penal system

Taxation & Other Governments
• New laws and fines around contraband, and agreements with other governments
• OFNLPA for gaming as an example of what could occur in the area of tobacco revenues (formerly called Rama dollars at community level)

Community Benefits & Collectivity
• Revenue Sharing between the Nation and its Nation membership
• Individual willingness to promote awareness of and adherence to Nation laws

Figure 3.2 “Overview of Selected Survey Questions and Results for June 2016 Survey”
### COTTFN June 2016 Survey Questions and Answers

<table>
<thead>
<tr>
<th>Questions</th>
<th>Yes %</th>
<th>No %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. If Council has resource revenue sharing agreements with other governments, then the same principle or idea should apply to Council. Council should have a revenue sharing agreement with Nation membership where possible.</td>
<td>94</td>
<td>6</td>
</tr>
<tr>
<td>2. I agree with the idea of a per-capita distribution payments to individual Nation members, if the Band can get revenues from tobacco.</td>
<td>97</td>
<td>3</td>
</tr>
<tr>
<td>3. A person should be able to do community service hours for breaking a Chippewa law instead of paying a fine.</td>
<td>78</td>
<td>22</td>
</tr>
<tr>
<td>4. Someone should be watching over the community service hours to make sure that individuals are actually doing their community service.</td>
<td>96</td>
<td>4</td>
</tr>
<tr>
<td>5. I am agreeable to having a person complete their community sentence hours at my household or that of an elderly relative.</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td>6. As a community member I be willing to give helpful or friendly reminders to individuals that I see smoking, or my family members, about the smoking by-law of the Nation</td>
<td>89</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
<th>Strongly Agree %</th>
<th>Agree %</th>
<th>Neutral %</th>
<th>Disagree %</th>
<th>Strongly Disagree %</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. A $100.00 fine acceptable for a first offence under a Chippewa smoking by-law.</td>
<td>52</td>
<td>18</td>
<td>19</td>
<td>11</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 3.2 “Overview of Selected Survey Questions and Results for June 2016 Survey”
Discussion of June 2016 Results:

- The sample size for the completed surveys was around 32 surveys but not all questions were answered.
- This sampling was to gauge attitudes towards community law making. Results in Questions 3 to 6 in Table 3.2, demonstrate support for community law making around tobacco:
  - The statement around community service hours and the majority responses demonstrate consequences for violating a community law do not have to be financial. There is a sensitivity that individuals genuinely may not have the financial means to pay a fine. More research is needed on why 22% of respondents do not agree.
  - 96% of respondents agree that community service hours should be monitored so that the law is enforced.
  - Community members go so far as to say, on this survey, they would be agreeable to having people do their community service hours at their home or that of an elderly relative which again shows community support.
- Responses to Question 6, Table 3.2, demonstrate most community members would do their part to encourage compliance with COTTFN tobacco laws.

Industry Surveys

i) Late Fall 2015 Tobacco Vendor Survey

In late November 2015, correspondence was issued by a Chippewas of the Thames project consultant, Darrin Jamieson, regarding the tobacco research being undertaken in a pilot project. It was stated that a survey had been developed to assist the First Nation in examining how to enhance benefits from this sector to the Nation and its members.

It was explained that the previous tobacco pilot research for the Nation had been focused on raw leaf growing options and that it had now shifted to exploring ideas on marketing and distribution, and community input was being sought. It was stated that vendor input would help the nation develop a tobacco regulatory framework to help protect existing business interests and to dissuade intervention from outside governments and law enforcement agencies.

Participation was voluntary, and 7 of the 9 community tobacco vendors participated in the surveys. The feedback received from vendors was shared with consultant and Business Development Officer for COTTFN Development Corporation based on anonymity.

Questions for the tobacco vendors were in the realm of the “added value” of the tobacco sector, that goes beyond cigarettes. The survey aimed to identify ways the vendors are currently contributing back to the community; and what other, if any, economic spin-offs are occurring. Other questions were to start to gauge the level of openness to the idea of the First Nation
exercising governance authority in this area. For instance ‘What is already done by COTTFN for allocation?’ Allocation was the context from which we would be building on indigenous First Nation governance authority for tobacco.27

The vendor survey and interviews were open-ended, and vendors were encouraged to speak openly on the topic during the interviews. Interviews with vendors lasted, on average, about an hour. Due to the proprietary interests of the vendors, we are only reproducing sections of the interviews here, for the purposes of documentation and reporting. Parts are paraphrased as this information has already appeared in the “COTTFN Marketing and Distribution Report” Part 2. The focus areas for the survey are depicted in Figure 3.3., and this is followed by a sampling of the survey responses from existing tobacco vendors.

27 See Appendix J for COTTFN Allocation Guidelines.
Community Justice

- Enforcement and Compliance Issues
- Willingness to support community-based penal system

Taxation & Other Governments

- New laws and fines around contraband, and agreements with other governments
- Ideas around Nation-based taxation and other governments

Community Benefits & Collectivity

- Attitudes towards collectivity and community benefits
- Define or characterize the real dollar value of the economy
- Developing a discussion around compacts (similar to U.S. tribes)

Figure 3.3 “Overview of Selected Survey Questions for Vendors December 2015 Survey”
COTTFN Vendor 2015 Survey Questions and Answers

1. **Do you feel that you are informed about the recent changes in the laws around tobacco and cigarette sales? In particular Bill C-10 and the provincial law changes?**

   Most vendors stated they were informed about recent changes in the laws around tobacco and Bill C-10 and provincial law changes. Less than half or 43% felt their customers were aware of these law changes.

2. **Are you concerned that the Province of Ontario is considering changing the Allocation Quota system?**

   Most or 71.5% were concerned that the province would change the allocation system, and had strong opinions that it should be higher and left to market demand. They stated they felt the province was trying to squeeze them out with threats and charges to customers and shops.

   “Province shouldn’t have the right to change the rules for us.” “Government to government relations is needed” … “Location is a factor – other First Nations seem to get more quota…400 cartons/month vs. my 300 cartons.”

   The tobacco industry in retail is a significant source of employment. When asked “the number of jobs your business supports including owners,” it was estimated at 51 jobs for the 7 participating vendors. By extrapolation, we see this is about 66 full time jobs.

   Important to note here that apart from one vendor, most are diversified businesses with tobacco sales accounting for 60% or less of total revenues. These vendors have convenience, gas, food and other services they sell alongside tobacco products. While many customers are drawn to their business location to purchase cigarettes, they often purchase other goods and services.

   Total wages were estimated at $1,603,950 for the 51 jobs or an average wage of $31,450 per annum. Staff wages were more in the $25-30,000 range with owners at about $50,000. Again, by extrapolation the industry accounts for a wage economy of more than $2 M per year.

3. **Can you summarize the mix in product that you sell and average price per carton or unit?**

   Although there were variations, the average percentage of sales of quota cartons was 28.7% of total cigarette sales or 71.3% non-quota or “un-taxed” cartons. In all cases, vendors indicated the demand for quota brands was much higher and were concerned that some retailers received a higher quota with no set formula or rules to explain this. In one case, quota represented 12.5% of all carton sales but would be as high as 35% if the free market determined the sales demand.
4. **Modelling Questions on Product Mix Sold at COTTFN**

Cigarette & Tobacco sales/month as estimated by vendors (4 of 9 reporting):

<table>
<thead>
<tr>
<th>Quota</th>
<th>GRE</th>
<th>Non-GRE</th>
<th>Other Tobacco</th>
<th>Total Cartons/Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>800</td>
<td>720</td>
<td>1680</td>
<td></td>
<td>3,200</td>
</tr>
<tr>
<td>800</td>
<td>1000</td>
<td></td>
<td></td>
<td>1,800</td>
</tr>
<tr>
<td>185</td>
<td>540</td>
<td>480</td>
<td>400</td>
<td>1,605</td>
</tr>
<tr>
<td>185</td>
<td></td>
<td>463</td>
<td>278</td>
<td>926</td>
</tr>
<tr>
<td>1,970</td>
<td>2,260</td>
<td>2,623</td>
<td>678</td>
<td>7,531</td>
</tr>
</tbody>
</table>

With a total of 6,853 cartons sold across all brands per month, we can see that the quota sales represent 28.7% of all sales. Other tobacco includes tins, chewing tobacco, etc. Sale prices were consistent across all brands and the current $2 tax is being passed on to all customers.

5. **Would you support the idea of a First Nation “stamping” system versus a “provincial” stamp?**

86% or most vendors would support a FN stamping system, versus a provincial stamp on cigarette products provided there was an agreement in place that the province would not charge customers or vendors.

22% thought a gas + tobacco card would be a way to track sales.

6. **If the community could develop its own locally-developed and manufactured cigarette brand, would you support this idea?**

86% would support a locally-developed and manufactured brand.

7. **Should COTT consider regulating the market to protect your business and your customers from legal charges, there will be a cost to do this. It has been estimated at about $3-5 per carton on quota cigarettes only plus an additional $1 per carton community betterment fee on all cartons stamped and sold.**

This was supported by the majority at various tax amounts. There was concern expressed that passing on an additional tax (over the $2) would negatively affect sales and all thought an agreement with other FNs would be needed to ensure price competitiveness.

They would like to see their profit margins of $4 per carton preserved (ex. Players wholesales at $56 and sold at $60). Most thought that a carton of Players could be sold at $65 without a significant effect on the volume. They indicated that customers would feel better if they understood these additional fees were being retained in the community to address unmet community needs.
Provided there was a compact agreement with other First Nations participating, a $5 limit on both quota & non-quota was supported. This could be gradually introduced to test the effect on sales. If sales dropped, vendors wanted the Band to subsidize or preserve profitability for their business.

Another suggestion was a $4 tax for FN customers and an $8 fee for non-FN customers but once again, would need a compact agreement with other First Nations agreeing on minimum pricing. Still another suggestion was $5 to FNs and $20 to non-FN customers with a compact agreement with other First Nations and the province.

8. **How would you like to see the tobacco industry managed to enhance your business should COTT be successful in negotiating and limiting the negative impacts created by the province or through bill C-10?**

“Outside enforcement doesn’t work” …“Use OPP for policing/inspections”…

“If our own inspectors (creates jobs), can’t let anyone slide” …“vendors have to be licensed but at no fee”

9. **Other comments or concerns?**

“Should be same quota for everyone, some get 3 times as much”

“Need a committee in place to look at price increase/test”

“I donate to sports & clubs, toy bingos, etc. at $5K+/year and should be acknowledged”

“Concerned about province coming on reserve – we need to do something”

“Regulations should include loss of quota if vendor doesn’t comply”

“Customers come from Chatham, Alvinston, and London”… “Age group is 20-25” – a 45-60 minute drawing radius.

“We advertise tins on Strathroy radio – brings in people”
Discussion of Vendor Survey Results:

- Overall vendor input suggests that a regulatory system at COTTFN would require agreement on tax or price points with nearby First Nations due to their proximity to each other.
- The current market is more integrated and interdependent than current governance and inter-nation coordinating systems of surrounding First Nations; and so the First Nations’ governance and coordinating mechanisms would have to catch up with the industry relationships and networks.
- The integration and interdependence between nearby First Nations tobacco markets, on a more cooperative basis, could create the conditions for a joint Tobacco Control Unit/Commission possibly with shared stamping, distribution, inspection, compliance and licensing.
- A condition to implementing a local regulatory environment would require the province agree to not charge or threaten customers or vendors of participating First Nations (under the provincial Tobacco Tax Act).
- Based on COTTFN modeling, vendors concurred that the nation taxes could be passed on as uniform pricing for all customers at $3-5 or $5 for FN and $8 for non-FN; and other modeling showed that one tax as high as $20 for non-Status customers with the caveat that allocation quota limits be removed.
- Most COTTFN vendors would support a $5 tax across all brands and charged to all customers; and this is likely due to the vendors’ intimate understanding of the price differential between on and off-reserve cigarette prices and what the market will bear.
ii) **Field-Based Site Survey for Tribally-Based Tobacco Manufacturing Operation Under a Compact Agreement**

In December 2015, Chippewas of the Thames sent a delegation of representatives from the First Nation to conduct a field-based site visit to Washington State, Chehalis tribes. The importance of this visit is to give the First Nation an overview of several compact agreements around tobacco and taxation. Of course, there is not a one-size-fits-all for every jurisdiction and situation and that is why there was a need to see several of them to define and become familiar with the common elements of the agreement.

The tour to Washington allowed COTTFN delegates to operational aspects to a cigarette manufacturing facility operating under what is called a *compact agreement*, (which is common in the United States with tribal governments) and how “bigger picture” thinking has impacted the Chehalis tribes that are working under the compact; and how they have diversified their economy.

The methods used to gather information on the site survey used both an information exchange and a site visit and tour of the tribally owned and operated cigarette manufacturing company. All participants were briefed on the Tobacco Pilot project and received presentations and reports related to the following: COTTFN entering the industry as a Grower, Early stage processor, Marketing and Distribution report, Draft Economic Diversification, responses to raw leaf and the Cigarette Allocation Review and related legislation including the Tobacco Tax Act, Bill C-10, draft Tobacco laws, US compacts. This all occurred in a meeting in Washington between COTTFN and Chehalis representatives.

The COTTFN delegates were taken on a tour of Skookum Creek Tobacco Company to learn about the corporate structure of the economic arm of the tribal council as well as the manufacturing consortium model, and compact audit process. Delegates also visited related distribution companies and retail locations associated with the tribal council to see the economic diversification of the tribe. The focus areas for the survey are depicted in Figure 3.3., followed by a sampling of the survey responses from existing tobacco vendors; and this is followed by relevant excerpts and summaries of the COTTFN Marketing and Distribution Reports.
COTTFN Washington State Site Visit, Chehalis Tribe
Topics and Issues
Fall 2015 (Phase II)

Relationships

• To foster relations with the Squaxin Island and Chehalis Tribes as a follow up with individuals familiar with the compact agreement and negotiations for Squaxin Island and the Chehalis Tribes. Both Tribes have compacts and are partners in the manufacturing and distribution of tobacco products. (Objective 1)

Compacts

• To understand the mechanics of operating within a compact in terms of systems, staffing, governance, compliance, reporting and related issues. (Objective 2)
• To understand the economic impacts that has developed over time by virtue of entering into these agreements. This relates to economic diversification potential and rationale to continue negotiations with the province in the development of a regulatory framework. (Objective 3)
• To understand the market conditions both pre and post-compact and how each Tribe managed any market adjustments over time both strategically and operationally. (Objective 4)

Figure 3.4 “Overview of Selected Objectives for Field Site Survey at Chehalis Tribes, Washington State, USA”
Objective 1: To foster relations with the Squaxin Island and Chehalis Tribes as a follow up with our contact, Kelly Croman, who negotiated the compact agreement for Squaxin Island and is now working for the Chehalis Tribe. Both Tribes have compacts and are partners in the manufacturing and distribution of tobacco products.

Outcome:

Key exchanges occurred in Washington State with Kelly Croman, who also spoke at the Tobacco Forum in May 2014. Other details of this visit are documented into the COTTFN Manufacturing and Distribution Report, Part 2:

“The trip to Squaxin Island and Chehalis Tribes accomplished our mission objectives with the added bonus of fostering good relations with a progressive and successful tribe who has made a significant impact for their members and community as a whole.

The Chehalis Tribe is where Kelly Croman now works as legal counsel for compact negotiations and on-going in house legal for the tribe on treaties, and structuring business partnerships. She attended and presented at the Tobacco Forum hosted by COTT in May of 2014.

The mission of the Office of Tribal Attorney (“OTA”) is to support, defend and advance the interests of the Chehalis Tribe by providing quality legal services to tribal policy makers and staff.

The OTA serves as chief legal representative and advisor to the Chehalis Tribal Council. Under the policy direction of the Council, the OTA provides timely and efficient legal services to directors, officers, employees and staff of tribal government and tribal business enterprises, including subordinate tribal entities. The OTA also acts as liaison to federal, other tribal, state and local governments, court systems, officials, professional associations, and interest groups on matters of interest to the Chehalis Tribe.

Kelly has extended her assistance should we develop draft regulations and a compact agreement to ensure we are both technically comprehensive but also strategic going forward. Constitutional development to guide tribal governance and economic development needs to be in place. This ensures any agreement with the province and/or the federal government is sovereign.” (From the COTTFN Manufacturing and Distribution Report, Part 2)
Objective 2: To understand the mechanics of operating within a compact in terms of systems, staffing, governance, compliance, reporting and related issues.

Outcome:

“Not only did we understand the components of their cigarette compact better, but we understood the need to introduce any regulations or law rooted in the Sovereign right of FNs to enact and enforce their own laws, and the need to ensure the economy is enhanced should the implementation of any laws influence the market and the benefits accruing therefrom.

Draft regulations are being developed as part of the COTT Pilot Project and will be completed by March of 2016. These will be most notably informed by our recommended model presented in this report and also by a review of those laws adopted by the Seneca Indians, Squaxin Island & Chehalis Tribes, Fort Folly Nation in New Brunswick and the Cowichan Nation in BC.

If COTT or any FN was registered and licensed by the province as a wholesaler this would allow for direct purchase of products from manufacturers. GRE and Imperial Tobacco for instance are both manufacturers and wholesalers in Ontario. This would provide some additional profitability to the Band but would require new agreements to be signed and alter the flow of products to a COTT distribution center.” (From the COTTFN Manufacturing and Distribution Report, Part 2)

Objective 3: To understand the economic impacts that have developed over time by entering into these agreements. This relates to economic diversification potential and rationale to continue negotiations with the province in the development of a regulatory framework.

Outcome:

Based on the visit to Washington State, COTTFN could further refine its own economic own modeling for the purposes of the COTTFN strategy developed and accepted by Chief and Council in 2014. To summarize the economic aspects of the Marketing and Distribution Report, Phase 2:

- Develop the capacity and understanding of COTTFN by linking marketing and distribution to the growing of raw leaf and processing
- Identifying for COTTFN the scope of activities that would be covered under a self-regulatory framework and operational aspects of stamping as the site visit to Washington State demonstrated
• A real-world model that assisted COTTFN with economic modeling to develop a regional type of compact agreement with proxy modeling for other proxy First Nation participants to be viable from a business case perspective

• Identifying a cost-analysis to run a Tobacco Control Unit/Commission to have oversight of self-regulation which would be supported by on-reserve tobacco sales by participating First Nations in a regional model

• A need for risk mitigation through the development of a legal fund that all nations would contribute to

• The need for a licensing fee structure to help support the TCU/Commission

• Again, emphasizing the transportation and wholesaler licensing issue and having an agreement with the province where this becomes one of the pivotal points of discussion and negotiation

• Identification of an initial $5 levy, on a regional model-basis, as an initial transition stage into a negotiated price structure based on a minimum pricing amongst all participating communities and tobacco brands

• First 1–2 years establish licensing, stamping, monitoring and distribution of all products

• A need for penalties and consequences for non-compliance amongst licensees

• A need to research whether there could be one regional manufacturing operation under a compact-type agreement with multiple First Nation partners

• There is a real product mix, in terms of tobacco sales at COTTFN, and these sales are creating up to 66 jobs within COTTFN, and generating about $1.6 million in real wages that COTTFN could not replace should tobacco sales dramatically cease or be phased out
Objective 4: To understand the market conditions both pre-and post compact and how each Tribe managed any market adjustments over time both strategically and operationally.

Outcome:

- Similar to the outcome in objective 3: identification of an initial $5 tax, on a regional model-basis, and transition for 1–2 years to establish licensing, stamping, monitoring and distribution of all products
- Realizing COTTFN also needs to send the message out to other governments that tobacco and cigarettes sales is not the end-game of any movement towards a self-regulatory framework for COTTFN, rather they are a means of transitioning to a more diversified economy outside of tobacco. The larger goal is to lay the foundation for future business. In Washington State where there are several tribally owned businesses that are successful: A Great Wolf Lodge Hotel, a casino
Community Health

- Comprehensive Health Survey to document current health issues within community-based on self-reporting
- Gauging community willingness to support enhancement or advancement of health services in community-based penal system

Public Health and Safety

- Need for simple laws such as dog-by law and animal control
- Identification of who should be working within the nation to help set health priorities and strategies
- Tobacco use and addiction-related issues, such as age of exposure and usage of addictive substances

Figure 3.5 “Overview of Selected Survey Questions in Community Health Survey Spring 2016”
**COTTFN Spring 2016 Health Survey Questions and Answers**

<table>
<thead>
<tr>
<th>Questions</th>
<th>Health and Wellness</th>
<th>Yes %</th>
<th>No %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Do you think that we have a drug/alcohol (addictions) problem in our community?</td>
<td></td>
<td>89</td>
<td>11</td>
</tr>
<tr>
<td>2. Have you ever smoked?</td>
<td></td>
<td>75</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
<th>Health and Wellness</th>
<th>0-12 Years %</th>
<th>13-25 Years %</th>
<th>25-years + %</th>
<th>Other %</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. What age were you when you started smoking?</td>
<td></td>
<td>15</td>
<td>83</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
<th>Health and Wellness</th>
<th>Cold Turkey %</th>
<th>Doctor Assistance %</th>
<th>Other %</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. If you quit smoking, how did you quit?</td>
<td></td>
<td>70</td>
<td>11</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
<th>Health Programming – Community-Based</th>
<th>Healing Circles %</th>
<th>Mental Health Awareness %</th>
<th>Treatment Program %</th>
<th>Quit Smoking Program %</th>
<th>Detox %</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. What programs should be offered in the community? (Top five listed here, percentage based on box checked as a response, participants did not rank)</td>
<td></td>
<td>81</td>
<td>74</td>
<td>73</td>
<td>65</td>
<td>60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
<th>Health Programming – Community-Based</th>
<th>Youth %</th>
<th>Committee %</th>
<th>Elder %</th>
<th>Community Member %</th>
<th>Health Professionals %</th>
<th>Elected Council %</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Who should plan and direct health services in the community?</td>
<td></td>
<td>51</td>
<td>60</td>
<td>64</td>
<td>103</td>
<td>213</td>
<td>40</td>
</tr>
</tbody>
</table>

Table 3.3 “Overview of Selected Survey Questions and Results for Spring 2016 Health Survey”
Discussion of Health Survey Results:

- Due to the sensitivity of the data gathered, extensive information cannot be shared and only those sections relevant to tobacco are shared in part
- The current rates of addiction the community are problematic and that is acknowledged in this survey
- Based on survey data, we know that most addictive substances, such as alcohol, tobacco and drugs, had been introduced to the individual respondents when they were between the ages of 13 and 25
- Of those who identified themselves as having quit smoking was 43 of 230 respondents said quit cold turkey, which suggests that more cessation programming may be needed to assist those wanting to quit smoking
- Health programming needs are reflective of high rates of addiction that are indicated on this survey
- The results of this survey offer insight into the Nation’s health needs and what programming priorities should be. Health professionals and community members could provide quality direction on these topics.
Conclusion

The purpose of this chapter is to demonstrate, by way of evidence that there is viability, in terms of community support and economic modeling, for a self-regulatory framework for indigenous communities in commercial tobacco activities. Through community surveys, we know that many Nation members are smokers at rates higher than the general population. Despite this, COTTFN members appreciate and understand the health risks around smoking and want to prevent youth from taking up the habit.

Most addictions, including cigarette smoking, start when Band Members are between the ages of 13 to 25 according to our survey. The proposed tobacco law of COTTFN is going to address this issue by limiting sales of tobacco to minors. Carding practices that require proof of age may act as deterrents. Moreover, any increase in prices through community levy increases may also dissuade this group from smoking.

There is some recognition amongst Nation members that there is a need to work with other levels of government on this topic, but in a strategic and negotiated manner. Nation members want leadership to pursue the topic, but also to be cognizant of the fact that other levels of government generate significant revenues from tobacco sales and that the community economic interests should be protected.

Further, based on community survey results there is general agreement with the idea of the Nation being able to apply a levy of its own that leads to community betterment in areas of youth, recreation and health. Nation members also were not opposed to the idea of community-based by-laws to curb smoking in public and in areas where there are young people, which is especially important given that most people that identified as smokers or as having other addictions were exposed to these substances when they were primarily between the ages of 13 to 25 years old.

When speaking to industry, tobacco vendors were more cautious about the topic of tobacco and taxes than the general COTTFN Nation Members. Those in the industry were also somewhat informed as to the enforcement issues involving “contraband” tobacco and the need to pursue dialogue on this issue to protect or preserve the economic benefits of the industry. Based on survey results from the vendors, this industry does create jobs and First Nation and other levels of government cannot replace these jobs at COTTFN if they are lost.

**Vendors noted that if COTTFN were to go down a path of self-regulation, consideration needs to be given to a geographic-regional or compact approach consisting of several nations because the market is interdependent and any pricing structure changes across the board within the Nation could collapse the market at COTTFN. This is because consumers would simply turn to other First Nations within their geography that were not participating in price structure changes. Other considerations that vendors remarked upon was that if COTTFN did have laws and regulations, these needed to be applied consistently and no favouritism**
shown to any vendor in enforcement and compliance. There was also majority of vendor support for a First Nation cigarette stamping function that could be recognized and acknowledged by other governments.

There are examples of several compact agreements that cover tobacco all throughout North America. The COTTFN trip to Washington State, Chehalis Tribes, allowed Nation members to see first-hand, the results of a compact agreement, on an operational and community economic development level. The evidence was there, in terms, of the economic benefits to the tribal groups, and more importantly the Chehalis nations are not selling contraband tobacco, and this results in economically diverse ventures being pursued through Island Enterprises, which is the tribally-owned development corporation of the Chehalis people.

Through survey work, COTTFN does have some evidence to demonstrate there is no opposition to self-regulation if there are community benefits with accountability in spending and reporting; or possibly communal benefits on a per-capita-distribution basis. Community laws, enforcement and local administration of justice were also supported, for which there would be costs associated. For this reason, Figure 3.6 was developed to illustrate the scale and perspective that would be needed to go down the path of negotiations on the U.S. compact scale to support this type of transformation. This drawing shows that there is the potential for First Nations to negotiate the space to place its own tax on cigarette sales to consumers on reserve, and to revenue share for a percentage of the broader share of the Ontario-wide under a compact-type of agreement to create a compatible regulatory environment.

Finally, community and vendors do want to be involved and included on this discussion on a going forward basis, and this was also determined through survey. This communication would likely include general updates in the community newsletter. However, given the different levels of understanding between general community members and those with specialized knowledge and capacity, smaller focus groups should also be convened for the purposes of having a more technically informed discussion and should include people from the local First Nation tobacco industry.

28 There are social issues with Per Capita Distribution (PCD), in that it reinforces dependency, so perhaps wealth re-distribution may be a better way to capture the sentiment that individual community members cooperation will be key to any success in self-regulation.
Figure 3.6 “Potential Negotiations in Ontario for Tobacco Revenue sharing where value is > 1.2 $ billion per year”
Chapter 4
The Practicality of Indigenous Governance and Law
The Practicality of Indigenous Governance and Law

Public Policy Approaches

COTTFN has presented concepts for an alternative regulatory system in Chapter 2 to create a new discussion on tobacco. Communities may be able to develop their own local laws, but in most instances these efforts may need to be supported by a broader framework beyond indigenous communities. It is important to understand this issue from a public policy perspective to better appreciate the need for alternatives to the status quo, and to demonstrate the practicality of First Nations’ governance in regulating tobacco on-reserve with other levels of government playing a supporting role.

From the mainstream perspective, the issue of commercial tobacco and its proliferation as a substantial economic activity on Indian reserves in Ontario is both daunting and complex from a regulatory perspective. Furthermore, top-down and unilateral approaches of mainstream policy and laws on First Nation issues in general has proven disastrous when we look at matters such as the provision of indigenous education and the resulting Indian residential schools and policies.

As a people we have experienced public service gaps when policy and decision makers in federal and provincial governments, even when forced to respond, are not willing to push far enough for our communities to achieve better outcomes in terms of quality of life and access to services and programs. The antithesis to this poorly-developed public policy approach to indigenous issues then becomes embodied in Jordan’s Principle and the Canadian Human Rights Tribunal case regarding child welfare.29

Similarly, to date, too few resources have been used to address tobacco regulations as a public policy issue from an Indigenous governance perspective, as both levels of government are required to assist in resolving the issues to achieve a win-win scenario. At COTTFN we feel this approach is central to moving forward with a new model and to avoid intractable positioning between indigenous nations and other levels of government.

29 “Jordan’s Principle is a child-first principle named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba. Born with complex medical needs, Jordan spent more than two years unnecessarily in hospital while the Province of Manitoba and the federal government argued over who should pay for his at home care. Jordan died in the hospital at the age of five years old, never having spent a day in his family home. Jordan’s Principle aims to make sure First Nations children can access public services ordinarily available to other Canadian children without experiencing any service denials, delays or disruptions related to their First Nations status.” “In a landmark ruling on January 26, 2016, the Canadian Human Rights Tribunal ordered the federal government to immediately stop applying a limited and discriminatory definition of Jordan’s Principle, and to immediately take measures to implement the full meaning and scope of the principle.”

**Wicked Problem**

Indigenous nations and policy makers that wish to enter this discussion of tobacco governance will struggle as it has all the markings and characteristics of what is termed a “wicked problem” in public policy. This is because of the concurrent and macro-policy concerns that are raised as it intersects the following issues: constitutional law, jurisdiction, treaty relationships, governance, poverty, oppression, taxation, political economy, racism and stereotyping, free market, cultural identity, intergovernmental relationships, rule of law and economy.

In public policy theory:

Wicked problems are a variety of particularly complex, persistent and resistant problems in public policy. Although the term has been used in a variety of ways and in distinct areas, the origins of the concept are almost always traced back to a 1973 publication by Horst Rittel and Marvin Webber in their work on urban planning and design. Rittel and Webber argue that the sorts of problems encountered in policy and planning are qualitatively different from those of ‘science’ and must be treated as such.

The foundation of their argument is that wicked problems have no definitive formulation and therefore cannot be treated like the classic problems of engineering or mathematics, for example (Rittel & Webber, 1973, p. 160). In other words, the approach often referred to as the scientific (or evidence-based) method (define the problem – gather data – analyze data – propose and implement solution) is not the best way to approach them, and is likely to fail.

In the very first step of most evidence-based approaches, for example, the problem must be defined. But, as Rittel and Webber show, a wicked problem is not defined until a solution has been proposed (Rittel & Weber, 1973; Conklin, 2006) thus making most linear scientific approaches inappropriate for these types of problems.30

At different times throughout the first two phases of the Tobacco Technical Table, we engaged in the tobacco self-regulation issue in ways that were challenging, even internally. What is depicted in Chapter 2, Figure 2.1, is our vision. This is presented as a solution, versus a piecemeal approach that will likely result in protracted arguments and positioning.

It is not only important for us to present solutions on where we want to go, but to consider and examine what other policy actors and advocacy groups are saying about this same topic so that we can begin to re-frame the topic based on solutions and not one where indigenous people are the problem.

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This Chapter provides overview and comment of existing policy approaches and discourse of:

a) Government of Canada
b) Province of Quebec
c) Province of Ontario

And other non-governmental organizations:

d) Canadian Taxpayers Federation (CTF)
e) Ontario Convenience Stores Association (OCSA)
f) National Coalition Against Contraband Tobacco (NCACT)
g) MacDonald Laurier Institute
h) The Fraser Institute
i) C.D. Howe Institute
### Wicked Problem Checklist for Indigenous Nations in Tobacco

- ✔️ The Indian Act is not a modern tool of governance nor indigenous governance
- ✔️ The Indian Act legislates tax exempts cigarettes sales on-reserve, for Status Indians, but not necessarily in treaties
- ✔️ There is some uncertainty of pre-Confederation treaties and intergovernmental relations from a ‘jurisdiction’ perspective (Ontario/Canada)
- ✔️ No active endorsement of self-government from federal/provincial government
- ✔️ Addictions issues for First Nations
- ✔️ Adverse health effects of smoking
- ✔️ Limited “pie” perspective of other governments based on taxation levels that as prescribed in legislation that First Nations do not control
- ✔️ Unregulated interests have been criminalized with the most impact on First Nation communities
- ✔️ High youth population/High needs
- ✔️ Low level of resourcing for Indigenous government – Education, Health, Social
- ✔️ Limited ability to raise capital for infrastructure
- ✔️ Lack of education or knowledge in regard to modernization of indigenous governing institutions leads to fear (from both indigenous/non-indigenous perspectives)
- ✔️ Tobacco is a part of our sacred medicine bundles
- ✔️ An historical economic marginalization of indigenous people in Canada has been somewhat offset in certain communities by a thriving tobacco economy (66 paid jobs at COTTFN in tobacco sector in 2015)
Existing Public Policy Frames for Tobacco Discussion

For the most part, on-reserve tobacco related activity has been characterized as a “contraband market” or “black market” and in public debate, the words “criminal” and “organized crime” can become associated with entire communities. Moreover, it is alleged in mainstream discussion that there are other actors, besides First Nations or indigenous communities in Canada, involved in the contraband tobacco market which funds terrorism, drugs, and guns posing a threat to the average Canadian.

To date, First Nations have had little capacity to counter-argue this ideological stance that was wielded by the former Conservative federal government on the topic of tobacco control. Better tobacco control on-reserves is connected First Nations’ governance, law-making ability, and balancing of our own health and cultural objectives to be able to have a more socially responsible industry on-reserve. Therefore, it is important for First Nations re-engage on this topic from a public policy perspective under a different federal government because First Nations are a part of the solution if we want to move to something better.

The current framing of the issue, where First Nations are connected to contraband and criminality, does not empower First Nation people as policy and decision makers in need of fair incentives, options and alternatives, capacity, resourcing, and political support to create a new tobacco self-regulatory tobacco economy.

As indigenous people, we need to identify the need for systemic changes and approaches that will allow First Nations to build capacity and create positive business environments on reserve. We play a critical role in educating our Nation members, other levels of government, and the public on the advantages of investing in a positive business environment on-reserves to create sustainable businesses on reserves that are more diversified. It is this approach that will begin to create a more balanced picture on this topic. Our jurisdictional scan in Phase I demonstrates that throughout Turtle Island it is intergovernmental discussion and arrangements that creates the change and not characterizing First Nation reserves as illegal tax havens requiring a concerted effort of policing power.

Approaches that are enforcement-based, working against communities without bona fide efforts to seek cooperation, may only entrench differences and conflict. To illustrate, as a part of our December 2015 community survey, there were questions that were perception-based in regard to tobacco and recent legislative initiatives to combat contraband tobacco. Based on approximately 400 responses to the survey, First Nations people did feel targeted by outside governments with regards to recent changes to tobacco laws (Bill C-10 and Criminal Code changes).31

31 Criminal Code, RSC 1985, c C-46, s 121. [See Appendix G]
These survey results on this question, in Figure 4.1, and are shared here to illustrate the gap that exists between how indigenous community sees this issue and how that is in stark contrast to the mainstream framing of this issue by other levels of government and stakeholders.

Figure 4.1 “General Community Perceptions around tobacco trafficking and contraband laws” December 2015 Survey.
Government Approaches

While the primary purpose of the tobacco project was to address issues around provincial and First Nation dialogue, we would be remiss if we did not take note of the major changes that have occurred since we started the pilot. During Phase II of the tobacco pilot project at COTTFN, the federal government began to take a more heavy-handed approach to this topic in what we see as targeting First Nations tobacco economy through using command-and-control measures of the Criminal Code.32

Initially, the First Nation involvement in the more systematic and overt ways of avoiding tobacco taxes was in coordination with the large major-brand cigarette manufacturers taking advantage of the geography of First Nations straddling both Canada and the United States to avoid paying high tobacco taxes in Canada.33 Through this arrangement, a corporate smuggling operation was created. Yet, today it is First Nations, such as the Mohawks of Akwesasne that still carry the stigma of this smuggling scenario despite the involvement of major corporate and industry players in tobacco. Clearly there is some measure of bias when it comes to tobacco and First Nations, and perceptions can become reality. It is therefore important to see how the issue is being framed in a public policy context by various organizations.

a) Government of Canada

The Excise Act creates a tax that is applied to cigarette manufacturing activities and passed on to the consumer as a final cost on a package or carton of cigarettes. Legally manufactured cigarettes in Canada, must have a federal permit, pay the federal tax and bear the appropriate federal stamp, which is collected and applied to the cigarettes at the point of manufacturing. This is true even on native-brand cigarettes manufactured on Indian Reserves.

The previous federal government sent out a clear message under Bill C-10, Tackling Contraband Tobacco Act, which were Criminal Code amendments that took effect in January 2015. Prior to 2015, federal lawmakers did not take a hard position on whether taxation—which occurs at point of manufacturing and stamping—also applied on-reserve for cigarettes, and the uncertainty created a price differential between cigarettes sold on and off reserve.

Under the criminal code amendments, there are now legal sanctions to address the previous gap through a new offence of trafficking in contraband tobacco to address the previous gap. It now states in the Criminal Code34:

No person shall sell, offer for sale, transport, deliver, distribute or have in their possession for the purpose of sale a tobacco product, or raw leaf tobacco that is not packaged, unless it is stamped.

32 Criminal Code, RSC 1985, c C-46, s 121. [See Appendix G]
34 Supra at 28.
The *Criminal Code* has implications for the on-reserve tobacco economy because any tobacco that does not have both federal and provincial stamping, which means taxes paid, is considered contraband tobacco and high volume sales of this product fall within the offence of trafficking. This would be in addition to any provincial regulatory violations and penalties. Along with the legislative changes, “The Harper government has introduced legislation to set mandatory minimum prison sentences for trafficking contraband tobacco...a new 50-officer RCMP anti-contraband force is also being created to target illegal tobacco sales”.35

**COTTFN Comment on Federal Approach:**

A key concern that First Nations should have, in reframing this issue, is that the federal government has used criminal law to state that provincial taxation, stamping, applies on reserves to both raw leaf tobacco and cigarettes. This is a command-and-control approach, based on an analysis whereby the federal government views the issue as one of criminality due to non-conformance with taxation policy, and creates a mandate for provincial regulatory and stamping systems on-reserve. The federal government essentially “washes its hands” of the issue as the federal government has not indicated, to date, how First Nations and provinces are to reach an agreement or accommodation on compliance and whether there would be a federal role in that process.

COTTFN notes that by establishing the definition of contraband tobacco in this way, several federal obligations have been sidestepped, creating a new set of issues that the federal government cannot continue to ignore. Issues include: on-reserve enforcement, administration of justice and access to justice and the ability of First Nations to make laws, that addresses: the on-reserve tobacco-cigarette supply chain, smoking laws, and taxation.

To change this situation, advocacy is needed from COTTFN and First Nations. The tobacco framework, from a federal perspective, is primarily a criminal law framework. A policy diagram prepared by the MacDonald Laurier Institute clearly shows this, and we have adapted it in Figure 4.2. Tobacco, from the federal policy perspective, is within the same policy framework as narcotics. In this context, we have a lot of work to do, which is the primary reason why we address enforcement and the administration of justice in our proposed self-regulatory framework in Chapter 2.

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Policy Framework Governing Tobacco and Narcotics Enforcement in Canada and the US

Canadian Federal Policies

- National Crime Prevention Strategy
- National Agenda to Combat Organized Crime
- National Anti-Drug Strategy
- Federal Tobacco Control Strategy
- Measures to Combat Organized Crime
- Integrated Proceeds of Crime (POC) Initiative
- RCMP Contraband Enforcement
- RCMP National Safety Protocol with APN
- RCMP COGAYS
- RCMP CIP
- RCMP

U.S. Policies

- U.S. Strategy to Combat Transnational Organized Crime
- U.S. National Drug Control Strategy
- U.S. National Northern Border Counternarcotics
- ONDGP Drug Free Communities
- ONDGP National Youth Anti-Drug Media Campaign
- ONDGP High Intensity Drug Traffic Area
- DOJ OCDETF
- DHS Second Core Mission—Secure and Manage Our Borders
- DHS A-TCET

Provincial Policies

- Ontario Provincial Police Contraband Unit
  - Smoke-Free Ontario Law
- Quebec Provincial Police
  - ACCES
  - ACCES TABAC
  - Special Projects


Figure 4.3 “Policy Framework Governing Tobacco and Narcotics Enforcement in Canada and the US” Adapted from Border Integrity, Illicit Tobacco, and Canada’s Security—Macdonald Laurier Institute.
b) Province of Quebec

In 2009, the Quebec provincial government passed legislation to deal with the issue of contraband tobacco. This was done through Bill 59, *Loi modifiant la Loi concernant l’impôt sur le tabac et d’autres dispositions législatives principalement afin de lutter contre la contrebande de tabac*.

**COTTFN Comment on Quebec Approach:**

Bill C-59 and recent amendments to provincial legislation set a strong tone for law enforcement by providing concise definitions about what cigarette manufacturing is, what is taxed, and who can enforce the law through permits and registration. While creating greater certainty within provincial jurisdiction, the question and application of provincial law on reserves is a contentious question in Quebec as it has been in other jurisdictions.

Under this enhanced Quebec law, individuals caught transporting cigarettes without the appropriate provincial Quebec taxes and stamping, have been found liable under provincial tax law. For example, in February 2015, the Montreal Gazette reported that individuals of the Kahnawake and Akwesasne communities had been charged by the Sûreté du Québec in 2013 as part of a police operation involving both the RCMP and the SQ and the fines for these individuals ranged from: $373,000.00 to $159,500.00.36

Quebec’s stricter tone for contraband tobacco activity was strengthened and supported federally by the 2015 Criminal Code amendment which included minimum sentencing provisions. Since then, both provincial tax penalties and criminal law penalties apply to contraband tobacco in that province. What these penalties for contraband tobacco serve is to send the message that there are legal and financial risks for engaging in this activity.

Because each province pursues its own law enforcement on an individual basis, this creates uncertainty. To First Nations in Ontario, it may then be unclear whether various laws apply or do not apply on-reserve, and where there is an uncertain policing services structure. In Quebec, however, individuals possessing tobacco in amounts that meet the thresholds for trafficking, individuals are legally and financially liable for unstamped cigarette products and the law applies, when seized off-reserve.

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c) Province of Ontario

Ontario/First Nation relations involving law enforcement have been somewhat of a sensitive matter following the Ipperwash incident where protestor Dudley George was shot by a member of the Ontario Provincial Police in 1995. This centered on a land dispute between our treaty partner and relatives at the Kettle and Stony Point First Nation and the government of Canada which resulted in a land reclamation of a provincial park that occupied the disputed Chippewa lands. A judicial inquiry was held into this matter in 2004 with the launch of the Ipperwash Inquiry.\(^{37}\)

The Inquiry has helped to shape a better dialogue and understanding on First Nation-police/enforcement relations within the province as numerous experts offered their time and research on a variety of topics that are fundamental to most indigenous law and policy issues. In around the same time just leading up the Inquiry, the provincial government also created the Ministry of Indigenous Relations and Reconciliation (MIRR), formerly Ministry of Aboriginal Affairs, which has assisted the provincial government in addressing First Nation issues in Ontario.

Through the MIRR and the Ministry of Finance (MOF), and perhaps informed by a provincial Ipperwash Inquiry under Justice Linden, the efforts of the Ontario government have resulted in dialogue and an approach that has yet to be undertaken by the federal government. In the mainstream research on this topic of tobacco controls, as it pertains to contraband tobacco, Ontario and Quebec have been identified as having the highest levels of contraband being supplied to consumers.\(^{38}\) Ontario, from the perspective of the provincial government, would have support in its own laws, and now criminal law, to fully pursue the taxation aspects on contraband tobacco issues through increased enforcement as has occurred in Quebec and around First Nation reserve borders.

Ontario law does state, under the Ontario Tobacco Tax Act:

13.5 (1) Subject to the approval of the Lieutenant Governor in Council, the Minister, on behalf of the Crown, may enter into arrangements and agreements with a council of the band with respect to tobacco. 2011, c. 15, s. 25 (1).

(2) The Minister, on behalf of the Crown, may enter into such arrangements and agreements with a council of the band as the Minister considers necessary for the purposes of the administration and enforcement of this Act on a reserve. 2011, c. 15, s. 25 (1).

(3) An arrangement or agreement entered into under subsection (2) may authorize a system for the sale of tobacco products and unmarked tobacco products to Indians who are exempt from the payment of the tax imposed by this Act, and the

\(^{37}\) Ipperwash Inquiry. [https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/index.html](https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/index.html)

arrangement or agreement may provide for limits on the quantity of tobacco products and unmarked tobacco products to be sold to retail dealers for resale to consumers who are Indians. 2011, c. 15, s. 25.

Regulations

(4) If a council of the band enters into an arrangement or agreement that provides for a system described in subsection (3) with respect to a reserve, a regulation made under clause 41 (1) (p) does not apply with respect to the reserve. 2011, c. 15, s. 25 (1).

**COTTFN Comment on Ontario Approach:**

What we see from Ontario however has been a more measured approach to law enforcement in tobacco. We can see that there has been value placed on the relationship between the Crown and Ontario First Nations post-Ipperwash when it comes to the topic of enforcement. This new approach began to be implemented in a discussion of tobacco through the *listening exercises* facilitated by Kathleen Lickers in 2011.

The Ministry of Indigenous Relations and Reconciliation (MIRR) has been helpful in assisting Ontario with the “whole of government” approach under the lead of the Ministry of Finance (MOF) that was identified as necessary in being able to engage First Nations on this topic. The actions of the provincial government on tobacco to engage communities is also consistent with Ontario law, in trying to reach agreements, and this is what we have been actively exploring through all the phases of the Tobacco Technical Table pilots to date.

The creation of the Tobacco Technical Table has been an investment in capacity for Ontario to work in and alongside a First Nation community on a very complex topic. This will be very valuable in any future efforts to include the federal government or other First Nations in this dialogue, should that be a direction of First Nations and the Ontario government. Moreover, the discussion with Ontario –MIRR/MOF was possible due to the willingness of both governments to explore and research self-regulation for tobacco. It did not start out on a positional basis on the part of Ontario or COTTFN.

While Ontario has patiently pursued dialogue with Ontario First Nations, and pursued the COTTFN/ON TTT, the ongoing budgetary pressures did lead to a tax increase in 2017. Of course, the result is that as prices increased, consumers are pushed to purchase the non-taxed tobacco that is available on reserves.

In 2016, Ontario announced a $70 million-dollar commitment to support economic diversification. To date, since the tabling of COTTFN’s own Economic Diversification Report in 2016, we feel our own call for more diversified economic approaches for our First Nation has been met with positive response both internally and with external partners. To fully implement

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39 For a table of the Ontario tax increases over the past 20 years, please see Appendix L.
however, is going to require ongoing strategy and supports to achieve this goal within realistic timelines.

What is somewhat concerning however, is that in 2016 the Ontario Provincial Police announced they have a new unit, like the RCMP, which is dedicated to the issue of combatting contraband tobacco. According to the news release:

“Ontario is taking action to combat contraband tobacco and keep our communities safe by creating a new Contraband Tobacco Enforcement Team within the Ontario Provincial Police (OPP).

Located within the OPP’s Organized Crime Enforcement Bureau, the new team will be dedicated to investigating the smuggling and trafficking of contraband tobacco and will work closely with local, provincial, national and international enforcement agencies to combat and eliminate sophisticated contraband tobacco networks across Ontario.

The team will also work with the Ministry of Finance’s tobacco tax enforcement staff by sharing information and collaborating on contraband tobacco enforcement investigations. The Ministry of Finance will continue to provide tobacco enforcement through audits, inspections, and investigations.”

The enforcement approach of the provincial government may be strengthening, and therefore we need to be diligent to examine whether we can self-regulate in this area and if an agreement can be reached policing does not regress to the way it was done in the past: based on confrontation and lack of political movement towards reconciliation and negotiated solutions to issues.

Non-Governmental Organizations

d) Canadian Taxpayers Federation (CTF)

The Canadian Taxpayers Federation (CTF) is a not-for-profit citizens’ group dedicated to lowering taxes and government accountability. The CTF does cite high taxation levels on tobacco products as a creating the conditions for a “black market” and contraband tobacco. Most of the research is economic analysis-based and high-level aimed at provincial and federal government policy responses to the issues of tobacco. The CTF estimates that Ontario is losing between $750 million and $1.2 billion to the contraband tobacco issue.41

40 “Ontario Creating New Enforcement Team to Combat Contraband Tobacco”
In more recent CTF position papers there is a call to work with First Nation communities, but these suggestions are vague and brief in detail. Despite some helpful suggestions on what can be done in their most recent document, the concluding CTF remarks give way to the final solution of police enforcement, and do so quite erroneously in an area where protracted land disputes are aggravating the situation. This shows a lack of understanding of how land claim disputes are resolved, which is in the realm of the federal responsibility and response. However, for indigenous people these long-standing grievances then become enmeshed with other topics such as tobacco because for First Nations there is a larger relationship problem with government handling of First Nation interests that is not well-understood by mainstream.

“As this report has shown, the contraband tobacco trade that thrives from tax-free status on aboriginal reserves is a massive problem in Ontario. Bringing this underground industry to heel will require that politically correct sensitivities imposed on the police must be done away with.

Unfortunately, Ontario’s government has steadfastly refused to do anything that would spark a confrontation with systemic aboriginal legal violations. Most notoriously, the Ontario government allowed the Caledonia occupation to drag on for so long that those illegally occupying the land must believe - with cause - that they now own the land for all intents and purposes. The Ontario government even went so far in conceding defeat that it purchased the occupied land from non-aboriginal private citizens. It is on this land that illegal, contraband smoke shacks now appear.”

The CTF, in its 2016 Pre-Budget Submission to the Ontario Select Standing Committee on Finance and Government Services, stated that federation was still concerned about the Ontario tobacco taxes fueling a contraband market and about how the province was being unclear in terms of its policy direction and plans to address the issue. Their final recommendation, however, was surprising where it was stated in their closing remarks:

42 The Canadian Taxpayers Federation recommends the government make restoring lost tobacco tax revenue a priority, and recommends striking a new deal with tobacco manufacturers on native reserves to help promote economic development and legitimize markets. The government should also revisit the quantity of tobacco allocated on reserves.”

When one considers the source of this recommendations, it is quite positive, and as a First Nation studying this issue we need to build on the momentum of these types of recommendations where First Nations are viewed as being part of the solution.

42 This recommendation of cooperation with on-reserve tobacco interests is surprising because the CTF has previously characterized the contraband tobacco problem on reserve as an overall crime problem on reserve, which is more suggestive of stereotypical thinking that associates Indians or First Nations people with criminality.

e) Ontario Convenience Stores Association (OCSA)

This advocacy organization primarily takes the view that cigarette sales on reserves is illegal and criminal, and that this undermines legitimate convenience store operations that are complying with a regulated environment. The OSCA advocates for command-and-control options in the realm of more police enforcement. According to their website, a recent lobbying effort took place at Queens Park with MPP Nipissing MPP Vic Fedeli, who is stated to have accurately reflected their concerns:

“Speaker, illegal contraband tobacco products are easily accessible in Nipissing and indeed many other areas of Ontario. The RCMP recently estimated there are 50 contraband tobacco manufacturers operating in Ontario and Quebec. Moreover, the Canadian Taxpayers Federation estimates federal and provincial governments lose up to $1.1 billion a year in tax revenue from contraband tobacco sales in Ontario each year. That’s the cost of cancelled gas plants.

City Council in North Bay has recognized this is a great concern. In a January 2012 resolution, they noted 42 per cent of smokers in Northern Ontario purchased cigarettes from an outlet not paying full taxes in the past six months; and 53 per cent of Grade 7 to 12 students who smoke say they smoked contraband cigarettes in the past year.

The North Bay Council resolution was directed at the Health and Finance Ministers and encouraged those Ministries “to maintain a strong focus on tobacco control and to work with local law enforcement agencies in this regard.”

The lack of will by this government when it comes to enforcement is hurting us all – it hurts retailers, hurts our finances, but it also hurts our kids and their health, and that’s shameful.”

f) National Coalition Against Contraband Tobacco (NCACT)

The National Coalition Against Contraband Tobacco (NCACT) is an advocacy-based coalition group made up of businesses, organizations and individuals concerned about the growing danger of contraband cigarettes and emphasizes the role of organized crime in their messaging. The NCACT is not nuanced to First Nation issues and promotes the command-and-control approach of police enforcement, as the remedy for organized crime and dealing with contraband tobacco:

44 http://ontariocstores.ca/mpp-statement-on-contraband/
“The biggest challenge for tobacco control in Ontario is the contraband tobacco market,” …without real measures to address it, consumers will continue to have ready access to cheap and plentiful illegal cigarettes, free from any of the regulations that the government has put in place to protect Ontarians. Fortunately for Ontario, the required measures are apparent and proven. They include increased powers and resources for local police, following the model set out in Quebec through Bill 59 and Acces Tabac. They also include stricter controls on non-tobacco cigarette manufacturing materials, including acetate tow. NCACT and other groups, such as the Ontario Campaign for Action on Tobacco, have repeatedly suggested these measures to government, but it has yet to act.”

g) MacDonald Laurier Institute (MLI)

The MacDonald Laurier Institute is a public policy research organization and covers a breadth of public policy research that is not limited to contraband tobacco. They hosted a forum where they included members of the Mohawk Nation of Akwesasne in their proceedings and discussion about tobacco. The document produced from this gathering, “Tax and Enforcement: Tackling Ontario’s contraband tobacco problem”, gives credit to recent efforts to the Ontario government to take the issue of contraband tobacco more seriously.

The suggested MLI measures go beyond the anecdotal and calls for policy-based solutions to curb contraband tobacco, in addition to the use of police powers, and briefly these are:

- **A First Nations Excise Tax Act:**

  Acknowledgement that indigenous communities already are collecting a community tax on allocation cigarettes, and community laws in Akwesasne and Kahnawake call for a community tax, and that this is a viable approach across the board.

- **A Contraband Ombudsperson:**

  Acknowledgement of the unique geography of Ontario in an area where the entire supply chain of tobacco is sustainable—from raw leaf growing to consumer purchases—and that the current regulations are a patchwork created by provincial and federal bodies. This central agency would work on the enforcement and administration of justice side of things, and play a coordinating role in harmonizing systems.

- **Reductions in Quota Allocation:**

  MLI calls for a downward adjustment in Ontario’s allocation formula from an average of 2.5 to 2.7 cartons per person per month to 1.0 to 1.5 cartons per month with a maximum of 8 cartons per year. This is to prevent the “counted out” tax free cigarettes finding their way into the hands of Ontarians who are not status Indians. There is recognition that there will always be some sales and tax leakage and so a loosening of Bill C-10 is also necessary.
• **Better Raw Leaf Enforcement:**

More diligent enforcement in the registration of raw leaf tobacco is needed and the Ombudsperson would ensure interagency cooperation to achieve this. More criminalization of raw leaf non-licensing infractions.

• **Lessons Learned: Quebec’s Bill 59:**

MLI touts the Quebec approach as the best approach to date because it is comprehensively focused on inter-agency cooperation on the enforcement side, and resourced towards special operations and investigations such as “Project Bluette”; and enhanced police powers for search and seizures based on reasonable grounds that individuals might have contraband tobacco.

• **Input controls:**

MLI calls for better control mechanisms for “acetate tow” which is vital in the production of cigarettes. By controlling and limiting access to this material, the supply of cigarettes contraband tobacco can be controlled.

**COTTFN Comment on the MLI:**

A huge leap forward on the public policy research side, MLI is now beginning to accurately reflect First Nation concerns, which are worthy of noting here, and will be addressed in later portions of this COTTFN document:

“A major hurdle to progress on this issue is disagreement over the definition of “contraband” by federal and provincial governments on the one hand and First Nations groups on the other. These differences centre around the taxes that are perceived sufficient to render a tobacco product “legal”. Some First Nations people refuse to collect the provincial excise tax, while others believe that the federal excise tax is an infringement of their treaties with the federal government. First Nations and other levels of government will need to work together to establish a policy framework that balances the interests of First Nations in maintaining their cultural ties to tobacco and economic ties to the fledgling and profitable business with the interests of public health initiatives, other cigarette manufacturers, and government revenue during fiscally austere times.”

We agree with the MLI in that there is a need to develop a policy framework and we feel that this recommendation lends support to the concepts that we bring forward in Chapter 2.
h) The Fraser Institute

The Fraser Institute is a public policy research institute and has produced two major research reports on the issue of contraband tobacco. Its first report in the area of risk and regulation entitled “Contraband Tobacco in Canada, Tax Policies and Black Market Incentives” makes the correlation that high taxes produce the conditions necessary for a black market. High levels of taxation are favoured by both federal and provincial governments because they provide a revenue stream for government, and create price deterrents as a public health and tobacco control measure. There is good discussion about “The legal status and tax obligations of Aboriginal Canadian” and the Institute explains the historical issues involving First Nations and taxes. At the conclusion of this particular discussion report it states “….problems with jurisdictional authority extend far beyond cigarettes…a solution to the underlying problem must somehow reconcile Aboriginal territorial autonomy and treaty rights with Canadian law”.45

The Institute’s December 2011 report “Combating the Contraband Tobacco Trade in Canada” cited various measures for combatting contraband tobacco, including “tax partnerships and agreements with Aboriginal communities” and provided examples of these.46 What is rightly pointed out in this report is that there are numerous sources of contraband tobacco and that a multi-pronged approach would be needed to address contraband tobacco and that it would be a policy mistake to not try to bring the “Aboriginal tobacco merchants into the fold”.47 Again, the high taxation levels of federal and provincial governments were cited as the main drivers for a contraband market, and therefore addressing the problem means addressing high taxation.

i) C.D. Howe Institute

The C.D. Howe Institute (CDHI) is a not-for-profit public policy research group that uses evidence-based research to promote a better standard of living in Canada by promoting economically sound policies.

In its report, “A Taxing Dilemma: Assessing the Impact of Tax and Price Changes on the Tobacco Market”, the CDHI takes an economic-based approach to the contraband tobacco issue by examining the price structures of cigarettes and ways to create economic pressures on the illegal supply side, in addition to enforcement measures. The CDHI goes further to identify how mainstream taxation and smoking policies have taken shape in Canada to reduce smoking and health costs, and secondarily to create a tax revenue stream for the different levels of government.

47 Ibid at 33.
Up until 2017, the CDHI positively contributed to the contraband tobacco dialogue because it examined policy, and stated that there are implementation costs to high levels of taxation and health policy approaches that also require consideration. Right now, the “most disconcerting consequence of current high tobacco taxes in Canada has been the increase in illegal supply from First Nations sources that is not legally available to individuals living off-reservation and, more recently, an increase in counterfeit tobacco products from Asia.”

In a more recent publication however, in a commentary from Anindya Sen, entitled “Smokes, Smugglers and Lost Tax Revenues: How Governments Should Respond” the author uses an econometric method to develop an estimated market size for contraband tobacco and the estimated loss in revenues for both the Ontario and Quebec government. The author attributes a steep decrease in contraband sales in Quebec due to better law enforcement in Quebec than Ontario.

This econometric method does not contextualize indigenous/police/province relationships, but rather uses statistical modeling to demonstrate that stronger enforcement is the most effective course of action to combat the supply of contraband cigarettes. The role of cigarette smuggling as a source of supply is central to Sen’s argument, but this individual makes statements that attribute illegal contraband supply to the Ontario cigarette allocation system. The work of the MacDonald Laurier Institute is mentioned, by way of working with First Nations’ governments on reserves to create incentive based solutions to the issue, but only in passing and no further consideration is given to this option by Sen.

**COTTFN Comment on the CDHI:**

CDHI has at times promoted sound policy-making options but assumes that this is reserved for federal, provincial and perhaps even municipal governments. CDHI does not go further to distinguish a regulated market, that shows on-reserve manufacturing or supply, occurring in a valid “jurisdiction” where the local policy actors are indigenous governments and communities.

Further, we contend the reason for inadequate policy solutions is that indigenous policy actors do not have the resources and tools to address law making and governance issues. Indigenous communities, and their law-making abilities, are basically written out of the picture as the CDHI promotes a high-level, command-and-control, approach by posing, that if “the price of the illegal product could be raised by increasing the legal or enforcement pressure on its suppliers, then the market share of the illegal product could decline without increases in overall consumption.”

For indigenous communities, this creates a vicious cycle of top-heavy and heavy-handed policies that result in a negative portrayal of entire communities being linked to organized crime with little initiative of their own to address the issues; which CDHI admits is the result of these incidental or unintentional consequences of federal and provincial taxation polices as well
as health policy. Indigenous poverty and marginalization seems to also have no bearing in CDHI modeling.

This initial “out of sight out of mind” approach to indigenous governance has ballooned into what has become the tobacco economy on-reserve, with a geographic focus on southern Ontario communities which are very close to major Canadian highways and urban centers. This approach is rooted, in part, to systemic racism as enshrined in the Indian Act and reserve system, but also based on a very narrow analysis of jurisdictional powers of First Nations.

There is a failure to recognize, from a public policy perspective, that on-the-ground governance responsibilities shifts to our communities when the tobacco economy shifts to Indian reserves due to the lack of sophisticated regulatory regimes. This problem becomes compounded when First Nation governments, community justice systems, and community police are subject to federal and provincial policies, where there is little political will to support the development of indigenous institutions with real authority. This invisibleness of First Nation governments and institutions, in federal and provincial policy development and law making, is central to the wicked problem of contraband tobacco.

Without the appropriate levels of support from other governments, our communities then become the least equipped under the status quo to deal with the contraband tobacco issue and so the conditions are right for a snowballing effect. It has been has been suggested that for contraband tobacco a financial “core” is created for the black market tobacco purveyors to branch off into other financed and illicit activities, and hence the snowballing effect. So, this lack of public policy analysis, and support for indigenous governance, then becomes a self-reinforcing policy loop and contributes to the wicked policy problem in the area of contraband tobacco on reserves, where high-level policy solutions and police enforcement may seem easier than building long-term indigenous partnerships and shared governance-based solutions.

With advice that is more nuanced than the CDHI, MacDonald Laurier Institute researchers state, “It is a grave mistake to conflate the growing Aboriginal tobacco industry with contraband.” This is largely because some on-reserve manufacturers have complied with

49 COTTFN, under its regular 2015-2016 Contribution Agreement received just over $400,000.00 in Band Support funding from INAC and is not sufficient to cover costs for core positions such as a by-law officer for enforcement purposes; or a Justice of the Peace to hear cases or appeals on the by-laws. Also, on the policing aspect of enforcement, COTTFN police are exploring a human rights case because they are not funded at the same levels as other police, and so the First Nation does not have the same standard of police resourcing as off-reserve communities under its Canada/Ontario First Nations Policing Agreement which provides for community policing. Equivalent policing standards are currently guaranteed for First Nations, as a level of government, under the Nisga’a self-government agreements in Chapter 12 under the Administration of Justice
http://www.nisgaanation.ca/sites/default/files/Nisga%27a%20Final%20Agreement%20-%20Effective%20Date.PDF
<Accessed: March 30th, 2017>
49 Daudelin, Jean et. al “Border Integrity, Illicit Tobacco, and Canada’s Security” MacDonald Laurier Institute,
50 Ibid.
excise tax laws prior to 2015, although in 2017 intergovernmental solutions for provincial tax arrangements may now have to be sought.

In 2017, CDHI’s treatment of indigenous issues, tobacco taxation, and law enforcement must be called into question. When groups like CDHI can promote increased law enforcement in the name of the fight against contraband tobacco, it surely demonstrates that indigenous people need to take more control of the public policy debates on this topic. Through its research publications, the CDHI is advising governments to focus on law enforcement in a province, Ontario, to battle contraband tobacco to increase tax revenue for provincial governments based on statistical analysis. Indigenous people need to critically respond to these types of suggestions when significant efforts, in terms of both financial and human resources, have been made to repair and reconcile the relationship between indigenous people/Ontario/and police.
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| Canada                            | • Command and control through criminalization  
  • Unilateral and lack of dialogue  
  • RCMP unit was created to combat contraband tobacco  
  • No examination of policing relationships and funding arrangements for the OFNPA  
  • Lack of identification of First Nation partners in the federal strategy | • This approach needs to be revisited with a different federal government through an effective lobbying strategy  
  • Explore partnership opportunities with provincial government in approaching the federal government  
  • Regressive focus on criminalizing indigenous people and not using a multi-pronged approach despite having the federal responsibility for Indians and Indian lands |
| Quebec                            | • Command and control  
  • Received federal support for this approach through previous national government  
  • Negotiations not used or successful with First Nations | • Over time this may have to be revisited as this approach cannot be sustained for all regulated industries (e.g. alcohol, marijuana) and given that it is a wicked policy problem for First Nations in Quebec too |
| Ontario                           | • Created provincial tobacco law to create space for negotiations with First Nations  
  • Funded First Nation dialogue, (2) tobacco self-regulatory research projects for First Nations  
  • Has created an OPP contraband unit in 2016  
  • Funding provided for economic diversification for indigenous peoples | • Appears to consider the relationship aspects and risks; and results in not over-relying on enforcement  
  • Appears to be building a multi-pronged approach  
  • Has developed provincial revenue sharing for other regulated industries, e.g. gaming |
<table>
<thead>
<tr>
<th>Ministry, Department, Organization</th>
<th>Key Features of Approach</th>
<th>COTITFN Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canadian Taxpayers Federation</td>
<td>• Has, in the past, endorsed a command and control approach through calls for better enforcement</td>
<td>• Recently stated that the Ontario government should deal with native manufactures on-reserve: a demonstration that command and control approaches are not the singular answer</td>
</tr>
</tbody>
</table>
| Ontario Convenience Stores Association | • Command and control mechanism are endorsed  
• Uses fearmongering to build support for police enforcement | • This group may have biases towards First Nations and little tolerance for understanding issues around the Ipperwash inquiry |
| MacDonald Laurier Institute       | • In the past, has endorsed command and control mechanisms for more police enforcement  
• Has begun to develop a more nuanced approach to the issue and calls for several measures in their 2015 conference report where they were inclusive of the Mohawks of Akwesasne in their conference proceedings | • Accurately reflects the concerns of First Nations people around the issue of taxation itself  
• It is positive to suggest a cooperative policy framework involving First Nations and other levels of government; but further articulation of this argument is needed and there are recent detractors from this position |
| The Fraser Institute              | • Recognition that aboriginal tobacco merchants need to be brought into the fold in 2011  
• Understanding that there is work to be done in reconciliation between aboriginal territories and Canadian law | • Previous research of this organization, in 2011, would not support the outright criminalization of the First Nations tobacco economy |
| C.D. Howe Institute               | • Excellent research work on the pricing structure of cigarettes  
• Promotes the economic aspects of contraband tobacco, as a business case, and not a focal point on First Nations criminality  
• Excellent research to point out that high level policies have implementation costs, and these are not always well thought out, further these high-level policies, gaps and oversights become the grounds for a contraband market on reserves | • It would be excellent if the arguments used by this Institute would go farther to examine who bears the responsibility and costs for correcting implementation issues, of high-level policies, on reserve  
• Recent “advice” based on statistical analysis, and suggesting increased law enforcement as a contraband solution without examining jurisdictional context is unfortunate |
B. Opportunity for Re-Framing of the Issues from a Public Policy Perspective

Based on Part A of this Chapter we have outlined that unregulated tobacco is a wicked policy problem. This is particularly so if policy experts focus on one aspect of an issue, such as First Nations cigarette manufacturing and distribution, while also failing to engage First Nations governments on this issue. The outcome of that approach is a skewed picture where First Nations’ links to criminality and organized crime are the emphasis and not indigenous governance and capacity.

On the other hand, some policy experts are now citing the need to work with communities or on-reserve cigarette manufacturers. We summarize this range of views in Table 4.1, which is an overview of the various organizations and governments that have developed positions and or approaches on tobacco and First Nations.

The focus of our COTTFN pilot project was to examine how First Nations and the provincial government might approach a self-regulatory environment in discussion with the Ontario government. What we have observed, however, is that the federal government has played a critical role in setting the stage for First Nation criminalization and so have lobbyist organizations. Overall, however, it is the federal government that has used the power of its law-making authority to create a picture of indigenous criminality and an “out of sight out of mind approach” with regards to indigenous tobacco economy.

To put this into further perspective, according to Christian Leuprecht, of the MacDonald Laurier Institute, law enforcement and the federal government began to see the contraband issue in First Nations as having moved beyond a smuggling issue, to one where contraband tobacco is facilitated by a trafficking network. According MacDonald Laurier Institute leading research, Christian Leuprecht, in 2016, describes the situation in regards to how he sees the First Nation role in trafficking of cigarette contraband:

> Certain trends emerge: they showcase “off-site” distribution, involve one or more Aboriginal reserves, trafficking is usually not limited to cigarettes, profits and tax losses are substantial, and seizures usually include firearms. What may at one point have been “mom & pop” operations have, over the past 15 years, been taken over by professional networks that generate significant profits while victimizing Aboriginals and reserves early in the supply chain or after manufacturing is complete as a (albeit often complicit) cog in the organized criminal machine.51 (emphasis mine)

Also, the MacDonald Laurier Institute researchers provide data tables of RCMP and OPP operations, and these have been developed for analysis, after individuals have been charged because of police enforcement. One project named “LONDON 9”, which covered the southern

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Ontario geography and proximate to COTTFN does figure into the research, although COTTFN or other First Nations are not mentioned. According to the MLI, in May 2014, there were 9 arrests and the following contraband was seized, along with 2.5 million in lost tax revenues in the London area:

60 kg cannabis, 2 bricks of hashish, 950 cannabis plants, cocaine, ketamine, MDMA, $85,000 cash, $300,000 in raw leaf tobacco, 45 firearms

According to local media reports, the raw leaf tobacco and contraband cigarettes was the focus of the investigation, and that the raw leaf tobacco seized in the investigation had a street-market value of $9 million. News reports also mentioned the arrests and contraband seized was in relation to a situation where provincially licensed raw leaf producers and brokers were collaborating with unlicensed manufacturers and distributors.53

Because of the high dollar and street-value of untaxed tobacco facilitated by the jurisdictional uncertainty on-reserves, First Nation communities are vulnerable to organized crime. In fact, it was this same scenario and concern around high-stakes gambling that initially led to the United States gaming compact regime between states and tribal governments.

This was facilitated by federal legislation, passed by Congress, called the Indian Gaming Regulations Act.54 The U.S. common law cases that led up to these enactments is different from those in Canada, but the jurisdictional tension between states and the tribes parallels what we see in Canada. Some of that tension has been settled by the U.S. case law, which gives tribes sovereign immunity, which parallels state authority for some matters that pertain to civil law, albeit not criminal law.

In Canada, however, the jurisprudence has not been in favour of indigenous law making or jurisdiction as Canada relies on s. 88 of the Indian Act to import provincial law onto Indian reserves. This approach to tribal or indigenous law making is the key difference between the U.S. and Canada and is how we arrive at the current state of trying to regulate tobacco in southern Ontario where there are large First Nations with a land base and access to transportation networks to participate in most aspects of the chain supply of cigarettes.

We first identified that the regulation of this industry as a governance issue for First Nations in our response to the Ontario government, in its Cigarette Allocation Review. In the Cigarette Allocation Review, we have provided critical commentary and feedback in our response to the Province.55 By utilizing s. 88 of the Indian Act to attempt to regulate the tobacco industry on-

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52 Ibid.
54 Indian Gaming Regulations Act of 1998.
55 See Appendix I. The COTTFN response to the Ontario cigarette allocation review identified a failure of other governments to recognize the governance and administration role of First Nations in local tobacco regulation as the
reserve, First Nations are deprived a role in creating solutions of their own making, and it is this ability which lies at the heart of self-determination and self-government.

Therefore, the approach of the federal government is inadequate from a public policy perspective because it outlaws and criminalizes the on-reserve tobacco market or sector, and then creates a circumstance where tobacco products can only become legal with provincial oversight and stamping. To further antagonize, the federal government has made no effort, as far as we are aware, to engage a discussion with First Nations in Ontario about how to transition the on-reserve economy towards a regulated tobacco economy with the province of Ontario.56

What is also glaring, is that the federal government has not treated First Nation and non-First Nation economic interests the same. For instance, in 2008, when Canada wanted to begin to adopt more controls on tobacco, there was a federal buy-out for raw leaf tobacco producers in southern Ontario. No wide-scale efforts or similar gestures were made on behalf of the federal government in relation to First Nation business interests on-reserves prior to criminalization in 2015.

This lack of federal leadership in reconciling with First Nations has resulted in outlawing First Nation economic interests in the tobacco economy and created some vague notion of a provincial regulatory ability on-reserve. This lack of leadership and broad use of criminal law powers create a vicious cycle where special interest groups and their war-cries for even more police action against contraband tobacco and First Nations is counter-productive. Through this logic, a damaging view of First Nations follows: contraband tobacco is tied to guns, drugs, and other tying First Nations to organized crime.

In the Ontario context, where there have been confrontations such as Caledonia and Ipperwash, this misguided effort of special interest groups to instigate a command-and-control to policing of a contraband cigarette economy on-reserves is not a long-term solution. Currently, where there has been no political agreement for jurisdictional coordination on the matter, we have a situation where enforcement on this matter results in OPP and/or Ministry of Finance situating themselves on the borders of our First Nations territories and primarily pulling over non-First Nation individuals to check for contraband tobacco. This approach is ineffective and perhaps even dire in terms of what this means for First Nation/indigenous governance, police and government relations, and the portrayal of our communities and Nation members.

Terms of Reference document in that exercise explained that First Nations resented the allocation system, and we provided some context for that

56 In 2005-2006, the federal government did allow for a federal First Nations tobacco tax, but with no capacity development for First Nations to create a transition plan or strategy to create the cultural shift needed to fully realize the benefits of this approach. This taxation solution also does not create a First Nation licensing and stamping system to accommodate for an indigenous tobacco economy. See, Haché, Trevor “Commercial Tobacco in First Nations and Inuit Communities” Non-Smokers’ Rights Association/Smoking and Health Action Foundation (2009)
Too, if the threat of organized crime is real, then we should be turning to the foresight of the U.S. which recognized that tribal governments alone would not be able to adequately respond to the potential inundation of organized crime in the industry of tribal gaming. After the Cabazon U.S. Supreme court decision, and onslaught of Indian gaming afterwards due to the victory of the Cahuilla tribes, the federal government did get involved through the creation of new legislation. The National Indian Gaming Commission was created and eventually a framework was created, based on the tribes’ ability to legally engage in gaming for economic benefits on-reserve. Eventually gaming compacts were created between tribes and states. This contrasts with the status quo “out of sight out of mind” or prohibitionist approach to regulated industries on First Nation reserves in Canada; which leaves it to the provinces to figure out a way forward with First Nations whose law-making sphere of influence usually rests within federal jurisdiction.

Therefore, the COTTFN Tobacco Technical Table and its work has been invaluable. It has been an opportunity to examine self-regulation from our own perspective to reframe this discussion and focus on solutions developed by ourselves, and drawing upon examples from other jurisdictions and some of these are the United States. This type of research and analysis has been critical to COTTFN and understanding the mechanisms, both politically and legislatively, and ideally indigenous law making can be utilized to fill a perceived regulatory gap based on discussion and negotiation with other governments.

In a surprising turn of events, based on our brief scan of policy think tanks on this topic, First Nations are no longer alone in calling for a self-regulatory system or resource revenue sharing framework for tobacco for the on-reserve tobacco industry to address an unregulated market. In Part A of this chapter, summarized in Table 4.1, we also highlighted that there are a few NGO research groups looking at contraband tobacco issues and we understand to be suggesting, that:

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57 It has been alluded to in recent online articles in Indian Country Media Network, in commemorating the Cabazon decision, that these arguments were employed to overstate the actual threat of organized crime in gaming, to strategically minimize or hamper the potential of on-reserve tribal gaming. “On February 25, 1987, a little more than four years to the day after the Riverside County raid, the Supreme Court ruled in favor of Cabazon in a 6-3 decision. Associate Justice Byron White determined that California’s actions would “impermissibly infringe” upon the tribal government. ‘The State insists that the high stakes offered at tribal games are attractive to organized crime, whereas the controlled games authorized under California law are not,’ wrote White. ‘This is surely a legitimate concern, but we are unconvinced that it is sufficient to escape the pre-emptive force of federal and tribal interests apparent in this case.’” “Cabazon: The Raid That Changed Gaming History” Indian Country Media Network.


1. High-level policies for tobacco tax and smoking have implementation costs and little or no attention is given as to how this will be implemented on-reserve, thus creating a regulatory gap.

2. There is a need for a reconciling of indigenous territorial autonomy and treaty rights with Canadian law when examining tobacco control.

3. There is a need to develop and explore the creation of revenue sharing agreements with First Nations and/or native manufacturers for tobacco.

4. There is recognition that little good can come from increased enforcement for tobacco if as a society we are going to keep revisiting clashes between First Nations and provincial and federal police.

To create a better dialogue, we suggest that interested parties discuss what we have presented in Chapter 2, and expand or develop a discussion on broader themes in 2016/2017 and beyond to begin to re-frame this issue.

Again, the federal government has not been the focus of the Ontario/COTTFN Tobacco Technical Table, but a re-framing of this tobacco issue with the federal government needs to build a “whole of government” strategy at some point and we provide an example of how this might look in Table 4.2. This needs to occur through a commitment to develop working relationships to reduce barriers and obstacles so that First Nations can more effectively forge a path on being able to create community laws and regulations and economic development goals.

On a practical level, the federal government has long-established relationships with the various First Nation communities for a variety of purposes, including funding and administering programs and services, and with the political will the federal government would be able to support COTTFN or other First Nation efforts in moving towards self-regulation of tobacco.

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60 Table 4.2 presents an example of the type of analysis needed to move in this direction to form a comprehensive strategy that will help bring forward First Nations interests into the present from a federal perspective. However, based on recent developments to move to legalize cannabis or marijuana for recreational use, the federal government is still looking to provinces to develop distribution and retail sales systems for cannabis products. Therefore, efforts occurring in the tobacco discussions with Ontario, are relevant to the cannabis discussion in that comparable systems may have to be developed with Ontario and First Nations.
### TABLE 4.2
Example: WHOLE OF FEDERAL GOVERNMENT APPROACH TO SUPPORTING FIRST NATION SELF-REGULATION OF TOBACCO

<table>
<thead>
<tr>
<th>Federal Department</th>
<th>Area to Address</th>
</tr>
</thead>
</table>
| Indigenous and Northern Affairs Canada | • Economic Opportunities on Reserve  
- address the need to move beyond gas bars and convenience stores for on-reserve economic development, as this is primarily based on tax differentials for both gas and cigarettes\(^{61}\)  
- Land Management  
- federal permits for manufacturing should be supported by appropriate documentation for leases  
- federal permits for manufacturing should account for increases in tobacco production, through monitoring, to ensure that raw leaf resourced tobacco is from a licensed source (whether provincially or by a First Nation under a self-regulatory system)  
- federal capacity support for agricultural regulations by First Nations, for the area of tobacco, to ensure proper land stewardship practices (e.g. soil management, not clearcutting areas accessed for traditional medicine, or draining of wetlands)  
- ensure community land use plans for areas where there is tobacco land use occurring  
- limiting federal permits for manufacturing on-reserve where there is not a “carrying capacity” or appropriate infrastructure for the industry based on community planning documents (water, fire, roads, arable land)  
- Intergovernmental Support  
- support the development of a self-regulatory system for tobacco on-reserve, working with relevant federal partners, Ontario First Nations and the province of Ontario to lend necessary supports, e.g. resourcing, policy changes, legislative changes  
- by-law enforcement support  
- creation of an administrative tribunal support that would be able to adjudicate on self-regulatory laws for First Nations due to jurisdictional limits of provincial courts  
- Governance Supports  
- provide clarify on federal stance on communal law making for tobacco self-regulation through policy position statement and governance supports  
- increases to band support funding for by-law enforcement  
- producing analysis and research reports to examine and outline how the First Nations Commercial Industrial Act and Fiscal Management Act might be utilized in a self-regulatory environment |

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\(^{61}\)Note: In addition to cigarette sales thriving in an unregulated on-reserve environment, recent history has demonstrated that this same type of business environment had also created secondary issues for gas and diesel tank sites on-reserve that need to be properly decommissioned due to transient nature of some retail establishments on reserve. The INAC national Environmental Issues Inventory would have documented most of these instances. However, on-reserve gasoline and tank management has been brought into more conformance through technical standards and best practices; and First Nations generally comply at COTTFN as a cost of doing business but also because they are better informed on the need for regulations and this may be a possibility for cigarettes.
<table>
<thead>
<tr>
<th>Federal Department</th>
<th>Area to Address</th>
</tr>
</thead>
</table>
| Indigenous and Northern Affairs Canada (continued) | • **United Nations Declaration on Indigenous People**  
- assisting the federal government in developing its federal policy on UNDRIP and what it means for self-government, and economic development whereby First Nations benefitting from the land and natural resources that are covered by aboriginal and treaty rights |
| Industry Canada | • **Economic Strategy for southern Ontario First Nations**  
- FedDev, to be more supportive and inclusive of First Nations efforts and initiatives and to work with First Nations on an economic development strategy for the region  
- Creation of economic diversification funding envelope for First Nations moving beyond gas and tobacco  
- Positive re-branding for First Nations |
| Canadian Environmental Assessment Agency | • **Environmental Assessment**  
- Ensuring INAC policy and requirements for on-reserve screenings and environmental assessment is appropriate for the tobacco sector occurring on-reserve |
| Health Canada | • **Addictions and Prevention**  
- Ensure that the gaps in smoking cessation are addressed, vis-à-vis Local Health Units in the province and on-reserve supports  
- Funding to begin to “indigenize” the harm reduction model as it pertains to addictions, inclusive of tobacco  
- Ensure that First Nations wanting to self-regulate for tobacco have the resources to ensure the Tobacco Sales to Young Persons Act can be realized on-reserve and by First Nations in a self-regulatory environment |
| Specialized Task Forces and Commissions | • **Truth and Reconciliation Commission**  
- The Commission published an Action Plan and makes recommendations that might be relevant to the tobacco discussion such as the conflict of interest in Canada utilizing the RCMP in scenarios where there is a beneficial interest by the Crown, e.g., recouping tax dollars for tobacco sales  
• **Marijuana**  
- The federal government has indicated that they are going to be legalizing certain aspects of marijuana and will be bringing forth a law in early 2017; and this exercise led by the Honourable Anne McLellan and tabled their final advice to government in December 2016  
- The high-level approach of the federal government can create policy gaps that First Nations may be ill-equipped to deal with; and as a caution, an unregulated environment on-reserve can be incidental to any new national laws, as it has for tobacco,  
(Note: for First Nation territories tobacco discussion is occurring with impending legislation and both topics may become iterative for First Nations in terms of federal dialogue and on-reserve regulation) |
<table>
<thead>
<tr>
<th>Federal Department</th>
<th>Area to Address</th>
</tr>
</thead>
</table>
| Justice and Attorney General | • Administration of Justice  
- Supports to an administrative tribunal that specializes in tobacco laws and regulations for First Nations needs to be developed and supported by a tripartite agreement (Canada-Ontario-First Nations)  
- Or where there is a high level of community capacity to form a stand-alone administrative tribunal/court in a First Nation, to be supported and recognized by both levels of government  
- Along with the Public Safety Department adoption of the research findings, and recommendations of the Ipperwash inquiry to create legislation to support and better inform Canada’s participation in the Ontario First Nations Policing Agreement (OFNPA), versus a buildup of RCMP supports that have no interaction with community  
- Increased resourcing and supports to the Ontario First Nations Policing Agreement (OFNPA)  
- Repeal of trafficking in contraband tobacco and minimum sentencing provisions based on an analysis of Joseph Ryan Lloyd v. R, SCC 2016; and create an exception to include wording to the effect: “an exception to provincial stamping where tobacco products are First-Nation stamped by way of agreement with the Province of Ontario and an Ontario First Nation”  
- Amend the Criminal Code so that if any criminal trafficking activities are committed by organized crime members on an Indian reserve, and there is a conviction, that this should be identified as an aggravating factor upon sentencing, given the systemic lack of supports for policing and enforcement on Indian reserves that render these communities more vulnerable to syndicate operations |
| Agriculture Canada | • Soil Management  
- Identify capacity development for soils and farm plan management on-reserve  
- Promote agricultural diversification  
- Create a federal tobacco traceability program that is similar to efforts for the purposes of food traceability, especially on federal lands |
| Public Safety | • First Nation Youth  
- Target of First Nation youth demographic about changes in the law and the penalties for contraband tobacco and how it may affect them - Identify choices for First Nation youth  
- Along with the Public Safety Department adoption of the research findings, and recommendations of the Ipperwash inquiry to create legislation to support and better inform Canada’s participation in the Ontario First Nations Policing Agreement (OFNPA), versus a buildup of RCMP supports that have no interaction with community  
- Increased resourcing and supports to the Ontario First Nations Policing Agreement (OFNPA) |
Law Making Options for Tobacco Sector Activity

In Phase II of the pilot, 2015-2016, a slide deck was prepared for use within COTTFN to identify various regulatory options for COTTFN, in creating its actual community-based law.62 The leadership determined that a community-based law is most appropriate for regulating tobacco on First Nations land as First Nations are the local government.

COTTFN therefore needed to identify the various law-making options and tools that might be available to it; in terms of processes or tools that might be useful in getting other governments to cooperate with COTTFN exercise of law making authority.63 This is in contrast to current approaches of the federal government that have focused on First Nation criminality, and command and control approaches that sidestep First Nation law making authority. The better investment for both provincial and federal government is to include First Nation governments in law making to build relationships and partnerships utilizing existing law and policy tools and instruments; or creating new ones for tobacco sector regulation on-reserve.

In Chapter 2, we have provided an overview of the broader self-regulatory framework. The “Community Readiness” stage includes processes for getting the initial political and community buy-in for the making and passing of laws for tobacco.

What we propose in Chapter 2 is that an indigenous community would have to agree to create and pass its own law prior to entering the revenue sharing aspects with the Province of Ontario. The reason for this is the community-based law is the cornerstone of the framework as its general objectives are to obtain community compliance in the areas of promoting community health, reducing and eliminating contraband tobacco sales, establishing a First Nation industry and licensing process

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62 Available upon request from COTTFN.

63 In terms of community regulation, COTTFN already has customs and practices around the traditional use of ceremonial tobacco as part of its indigenous law and way of life, however this has been not the focus of the work under the tobacco pilot project. The tobacco pilot is focused on public health and the commercial aspects of tobacco: business registration, imposition of community taxes, business requirements and conduct of the industry in COTTFN.
for the industry on-reserve, and promoting community values and benefits as being a host community to the industry. This could be viewed as social licensing for the industry.

In examining the various options available to COTTFN, in terms of getting other governments to recognize COTTFN law and to create legislative compatibility, COTTFN leans to Option 5, which is to utilize our own indigenous law-making process to develop its Comprehensive Law. The central reason is that while some of the other law-making options might be available, on their own they do not capture the whole spectrum of the tobacco industry.

The rationale for choosing Option 5, is that while COTTFN has been engaged in the tobacco pilot to examine self-regulation, the First Nation has not utilized the Indian Act enactment process for many years. As well, the First Nation has recently worked on its Land Code, under the First Nations Land Management Act, and while the Land Code for COTTFN does address land management aspects of the tobacco industry it is still not comprehensive.

**Therefore, it was felt that the pilot afforded the Nation the chance to explore the law-making process for tobacco in a comprehensive way and that a comprehensive approach is what makes sense for a community situated in the tobacco growing-belt within 400-series highways for transportation, and proximate to large urban centres which would facilitate tobacco product for distribution purposes. While the other law-making options are valid, these could be used concurrently to support the COTTFN Tobacco law for issues such as commercial zoning on-reserve and/or issue around farming and growing raw leaf tobacco. Still, other legislative tools could be explored and developed to create other legislative options that could outright recognize the COTTFN Tobacco Law.**

COTTFN’s comprehensive law is simply entitled, the “COTTFN Tobacco Law”. This was first tabled with community in March 2016 at a community meeting. Other community consultation activities regarding the law and self-regulation activity took place for the remainder of 2016 and early 2017. These engagement activities have allowed for feedback, and suggested amendments and refinements to the tobacco law or process improvements to be made in the future with regards to COTTFN law making.

The draft law of March 2016 also served as a discussion topic with Ontario, as a real example of the possibilities for indigenous law-making processes from a governance perspective. Given that the Mohawks of Akwesasne were also a pilot community, and already had a law, we were furnished with a copy of their law which greatly assisted COTTFN in drafting exercise and arriving at law that incorporated several objectives. Some of these objectives were strategic considerations that would assist with the ongoing self-regulatory discussions and possible negotiations with Ontario on a revenue sharing arrangement for governance of this sector.

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64 In March 2017, the First Nations Tax Commission presented such a proposal at an Ontario-sponsored Tobacco Forum, in their presentation entitled “Supporting First Nations: the Role of the Tax Commission”. See Appendix F.
A central reason for advancing the COTTFN Tobacco Law is that our law is locally developed, and fits the unique circumstances of the First Nation and the industry. As well, it meets our stated objectives for an indigenous-based law-making framework that addresses our issues, and how the COTTFN Tobacco Law accomplishes this is presented in Table 4.3.

**Conclusion**

What COTTFN has also learned is that if other First Nations were to follow the path of law making in the way that COTTFN has undertaken it, each First Nation would have to do an assessment of what parts of the industry need to be regulated. If the community is in a more northern climate, where growing raw leaf tobacco is not an option, then the comprehensive approach of COTTFN may not be the path forward in developing a law that is practical and fits the circumstances.

Conversely, there may be similarities between many First Nations that are involved in retail sales on reserve, and perhaps the retail regulatory environment may become more uniform over time as we establish tried, tested and truly practical models for regulating tobacco sales on reserve. Perhaps these types of regulations could be templated over time and efficiencies could be identified.

In our view, it would be the work of a First Nation Tobacco Commission to oversee these types of regulatory processes and their development. A Tobacco Commission, with a wider self-regulatory mandate for the industry on-reserve is critical in moving the whole self-regulatory initiative forward. It is a Commission, that would help to create the institutional capacity to ensure success of indigenous self-regulation over tobacco over time.

More collaborative research between First Nations would have to occur in developing options for a Commission for a self-regulated industry of tobacco, but there are numerous examples of these types of governing bodies in both tobacco and other regulated industries. The Commission would also have to have the support of other levels of government, in terms of mandate.

Once developed, however, the Commission could examine a more robust and harmonious licensing system on the indigenous-side to create more certainty in the industry, keep abreast of regulatory trends that may impact the sector. The Commission could also develop processes for long-term engagement of the sector and assist in the development of the capacity of First Nations that would oversee education and awareness, enforcement and compliance of their own laws and document and communicate Best Practices.

The Commission, for now however, is a component being discussed within COTTFN and will take on a local format until such time that there is wider support for an industry-wide indigenous Commission that can help transform the indigenous economy in tobacco.
<table>
<thead>
<tr>
<th>COTTFN Objective Area</th>
<th>COTTFN Law &amp; Regulations</th>
</tr>
</thead>
</table>
| 1. Protecting youth and the public from the effects of smoking            | COTTFN Tobacco Law:  
   **Article 20** Sale of Tobacco Products through age limits and limiting the appeal of tobacco through marketing, signage, flavouring, ease of access, signage and creating tobacco sale reporting requirements.  
   COTTFN Regulation CFN 01/17:                                                                                                                                                                                                                                                                                                                                                       |
| 2. Creating an enforcement power to uphold the law                         | COTTFN Tobacco Law:  
   **Article 26** Creates enforcement officer capabilities with an outline for the powers of the officers as well as general guidelines for                                                                                                                                                                                                                                                                                                                                                           |
| 3. Creation of a licensing system for on-reserve businesses                | COTTFN Tobacco Law:  
   Article                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 4. Community-based administration of justice                              | COTTFN Tobacco Law:  
   Defers to community-based restorative justice systems, with potential to create a process for referral to provincial court system.                                                                                                                                                                                                                                                                                                                                                                          |
| 5. Development of a tax system to benefit community for hosting tobacco activities; and for creating and ongoing maintenance of a self-regulatory system (sustainability) | COTTFN Tobacco Regulations:  
   Regulations to be developed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 6. Legitimizing the First Nation economy and moving away from criminalization of the activities | COTTFN Tobacco Law and Regulations  
   The entirety of COTTFN provisions are a best attempt at filling any perceived jurisdictional gaps from a regulatory perspective, but provincial and/or federal mechanisms may need to be developed and/or amended to reconcile this on-reserve regulatory approach to commercial tobacco.                                                                                                                                                                                                                                                                       |
| 7. Exercise of law making authority and creating a precedent for self-regulation in a regulated industry | COTTFN Tobacco Law and Regulations  
   The entirety of COTTFN provisions are a best attempt at filling any perceived jurisdictional gaps from a regulatory perspective, but provincial and/or federal mechanisms may need to be developed and/or amended to reconcile this on-reserve regulatory approach to commercial tobacco.                                                                                                                                                                                                                                                                       |
Chapter 5
Reconciliation-Based Considerations and Process for a Self-Regulatory Framework
Reconciliation-Based Considerations and Process for a Self-Regulatory Framework

The tobacco project has created a space for us to engage with the province on the issues of taxation and tobacco; and to explore what cooperative arrangements could look like for the province and COTTFN to move towards a self-regulatory system based on what has occurred in other jurisdictions.

Through our work on the traditional knowledge side through a Tobacco Forum that we hosted in May 2014 with other indigenous communities, we realize that we are now talking about something quite different from the traditional use of tobacco and are discussing governance over commercial tobacco and an industry that is now in our presence.65

It is important to know and appreciate, from the perspective of leadership, how sophisticated the commercial tobacco discussion has become all throughout North America. For COTTFN, this is not merely an issue of black-and-white law, it is interconnected with other macro-issues that need to be approached based on Reconciliation.

We identify theme areas that form a part of the tobacco and reconciliation discussion.

a) Pre-Confederation Treaty Relationship

In 2016, the Ontario government commissioned an independent review of the allocation system of cigarettes under its tobacco tax regulations. This review was conducted by lawyers Kathleen Lickers and Peter Griffin who met with various First Nation individuals and participants in the tobacco economic sector. The authors of this report state that numerous First Nations brought up the issue of addressing the treaty relationship, and that in their view it was necessary to speak to this issue to build a constructive dialogue with First Nations on the issue of tobacco regulation in a modern context.

To begin addressing the relationship, it is important to understand the historical but modern context of the relationship:

- COTTFN views itself as having a treaty status that it terms “pre-Confederation” status, in terms of treaty relationship with the Crown that existed prior to Canada

- Our status as a Pre-Confederation treaty signatory allows for us to express our nuanced recollection of the Crown and treaty relationship:

  ➢ Since the Royal Proclamation of 1763, any direct conveyance of Indian lands to early settlers was considered contrary to the wishes of the Crown which

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65 Traditional Uses of Tobacco Literature Review, Tonio Sadik; Traditional Ecological Knowledge Resource List Policies, Protocols and Position Statements, Deb McGregor; COTTFN Traditional Knowledge Forum, Deb McGregor
established a protocol and practice of only the Crown making treaties with indigenous people regarding lands. Interestingly, it was the act of treaty making that allowed for settlement of our ancestral lands which enabled early settlers to engage in commercial activity; and facilitated taxation of British subjects in the colonies who then sent monies back to the British Crown.

➢ Indian monies that resulted from the treaty transactions and Indian lands set aside were not subject to taxation and this is what is at the heart of the treaty relationship that we have with the Crown.

➢ Indians, Indian monies and Indian lands existed within a trust-like status, not subject to taxation as the Crown considered the natives to be under its protection.66

➢ Early indigenous economic activity on the indigenous supplier side, whether it was furs or tobacco, was not subject to taxation. It is this early history that, in our view, resulted in the tax-free provisions that eventually found its way into the Indian Act legislation.

➢ Our rights to non-taxation stem from that treaty-based relationship history and not because of a single legislative enactment under the Indian Act that Canada can change at any time. Rather, the legislative enactment is what enables Canada and Ontario to continue to honour this ongoing tradition of non-taxation of our people, albeit now our tax exemptions are being interpreted in the narrowest way possible.

➢ Despite the tax-free status of our people in the treaty relationship, as a First Nation we already are placing a levy on tobacco67 for youth and recreation activities.

➢ Under the allocation system, COTTFN distributes the quota to vendors and is actively charging vendors a $2 levy on cartons of cigarettes through our Finance Department. This surcharge is then turned over to the community recreation program to pay for sports and recreational activities for the youth.

66 It is this trust-like, fiduciary relationship and the handling of Indian monies and reserve lands of the Chippewas of the Thames by the Dominion of Canada through various Indian agents that resulted in modern specific claims in which the COTTFN have been successful at settling, such as the Clench Defalcation Claim, Muncey Village Claim and the most recent Big Bear Creek Claim. COTTFN has a collection of archival materials in its possession, because of land claims research, that demonstrate that Indian monies and lands were not subject to taxation.

67 This First Nation, Cowichan, was brought forward as an example at the COTTFN Tobacco Forum in May 2014.
The ongoing process of maintaining a respectful relationship between ourselves and the Crown continues and even the courts have understood this and are beginning to reject the idea that the court and judicial system is the place to resolve our issues. It is logical that he courts that have been the arbiter of disputes would say that there is a need for Reconciliation between Crown and First Nations.

An area of disconnect for COTTFN is that the First Nation maintains a certain political stance, in that COTTFN never made treaties with Canada or the Provincial Crown as these treaties occurred prior to Confederation. The report from Lickers and Griffin also mentioned that for Ontario to move forward that the treaty relationship would have to be addressed.

b) Comptability of Laws

One area that COTTFN has begun to revisit with great interest since becoming a pilot community for the tobacco research is a willingness to engage with the Province of Ontario on the issue of compatibility of laws. The Nisga’a Final Agreement, under the “Administration of Justice” of that agreement speaks to compatibility of laws in the context of self-government.

This term compatibility is also mentioned in the Supreme Court of Canada in the case of R. v. Mitchell. COTTFN is interested in this concept of compatibility, in terms of law making and the potential of self-regulation for tobacco, versus use of the term “harmonization”, as compatibility is more fitting with the theme of reconciliation and comes out of the jurisprudence for indigenous law-making discussions.

We know that we never gave up our rights to govern ourselves, the same as many other First Nations, and so are interested in answering the question as to how do we reconcile that with other governments. While the full perspective of First Nations may have not stated this articulately in the Indian gaming case of Pamajewon, Justice Binnie clearly understood the concept in the Mitchell case and agreed that indigenous people can make their own laws. Because of the relevancy of this discussion at the Supreme Court in Mitchell, we want to explore what this may mean when we undertake tobacco self-regulation, focusing on s. 35 Constitution Act, not as the source of or our law-making power; but where we look to reconciling and creating compatibility of our commercial tobacco laws with federal and provincial laws to create win-win scenarios.

What reconciliation means to us is that we know we make laws and self-regulate where a provincial law would otherwise apply, and this was even discussed in the Sparrow decision. However, one of the hurdles is how other governments are going to respect and uphold us in

71 Supra at 18.
upholding our own laws. So, for us it is about tobacco self-regulation but connected to our role in self-governance, as noted by indigenous law professor Gordon Christie:

“pushing the envelope in relation to law around rights to self-government promises to open up a certain amount of space within which Aboriginal nations can hope to maneuver. The more expansively Aboriginal nations can push the law around self-government rights, for example, the more leverage they will have to negotiate reasonable self-government agreements, and the more they can hope that in the future some of this opened up space can be filled with fully functioning Aboriginal governance structures within Canada”.

While Christie was speaking about pushing the bounds of self-governance and law making in an adversarial context and process, this approach may apply to a negotiated process too. To date, we have utilized the space of the COTTFN/ONTT to create a space to create and conceptualize what functioning governance structures could look like for tobacco self-regulation as broadly depicted in Chapter 2.

c) Social Justice

As a First Nation, we can point to historical tragedies that have resulted from the policies and practices of both the Canadian and provincial government. In terms of worldview we can look to these external issues and continue to point to these issues as the basis for why our community has socio-economic issues that were identified in our Community Story.

Modern social movements provide an important platform to advocate for social justice to begin to correct the systemic disadvantages that our communities now experience because of institutionalized forms of racism and exclusion. It is the unrelenting lobbying and focus from leadership, families, and individuals that have led to social movements that have created the impetus for focused inquiries on social justice issues such as:

- Ipperwash Inquiry
- Murdered and Missing Indigenous Women and Girls Inquiry
- Chief Coroner of Ontario’s Inquiry in to the Deaths of: Jethro Anderson, 15; Curran Strang, 18; Paul Panacheese, 21; Robyn Harper, 19; Kyle Morrisseau, 17; Jordan Wabasse, 15; Reggie Bushie, 15 (Thunder-Bay area)
- The Truth and Reconciliation Commission
- Donald Marshall Jr. Inquiry
- Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair

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The Ontario government issued a formal apology for the residential school system, in 2016, in the Premier’s “Statement of Ontario’s Commitment to Reconciliation with Indigenous Peoples”, and touched on the need for social justice due to historic inequities brought about the schools and other colonial policies and actions:

“But we measure a person’s opportunity and security in life, a disturbing gap exists between the Indigenous and non-Indigenous population. It is the gap created by a country that abused and betrayed its Indigenous Peoples. It is a gap that swallows lives and extinguishes hope across generations. For a long time, Indigenous Peoples’ calls for justice could not be heard across this yawning gulf because Canada did not want to hear them. It is thanks to the resiliency of those who endured the abuses of the past that we are finally listening.

Thank you for finding the strength and courage to come forward and tell your stories -- and the stories of those who were lost. In opening our eyes, you have given us this chance to move forward as partners and the opportunity to say we are sorry. So before I go on, I want to show my respect for all the survivors and all the victims by offering a formal apology for the abuses of the past.”

There are inequities in society based on race, and any transformation of the tobacco sector must start to address those critics within society who characterize the tobacco issue as being an issue of criminality originating within the indigenous community. When groups such as the C.D. Howe Institute call for better policing efforts to retrieve tobacco tax dollars, more informed recommendations need to emerge from such groups so that it is explicitly clear that these efforts are not for the sole purpose of inflicting harm onto the indigenous community to raise tax revenues.

For many communities, tobacco is one of the only sources of income that is independent from the Nation administration offices, which is the primary employer in any community. As was discovered in our own community-based research the economic value of the tobacco sector is real and these jobs and income cannot be replaced by the Nation administration and/or its Chief and Council. Therefore, a Revenue Sharing model is endorsed by COTTFN and not an outright prohibition on this sector, as some competitiveness needs to be maintained due to the poverty levels that exist on-reserve; which can only be balanced out by a long term economic diversification strategy.

d) Social Responsibility

Smoking is harmful to human health, and it is well documented that the impacts of one smoker are not limited to the individual smoker. This is the reason for many modern smoking laws and by-laws that we have in society today.

As indigenous people, although our traditional indigenous spiritual practices involve tobacco, this does not negate the human health effects of smoking commercial tobacco. At a Tobacco Forum hosted by Ontario, in March 2017, elder Shirley Williams, from Wikwemikong First Nation, stressed the importance of not only looking at tobacco from an economic perspective, but also looking at the need to protect the health of our own people in indigenous communities with regards to this substance.

This elder echoes qualitative statements that were made in the COTTFN community surveys in 2015 where Nation members expressed concerns:

- When it comes to protecting the child in the community it is the nation’s responsibility
- Our youth deserve the same smoking protections that other people have (in other jurisdictions)
- I wish I never started smoking
- I quit smoking
- I am a cancer survivor

Our smoking rates at COTTFN, based on survey results, are at least at the level of 50% and these smoking levels and qualitative statements cannot be ignored. Social responsibility speaks to the issue where we must, as communities, balance the economic opportunities within this sector to address these high rates of smoking. There is a need to do more to prevent the uptake of this activity and protect public health and safety from the health effects of smoking and adapting or indigenizing harm reduction approaches to achieve this.

However, due to fears of jurisdictional encroachment of provincial law onto reserves, First Nations may again be reluctant to apply existing provincial laws on reserve, such as the Smoke Free Ontario Act and without question the Tobacco Tax Act. In the early days of the COTTFN/ON TTT, leadership expressed that it is somewhat of a hollow argument for First Nations to simply uphold provincial legislation on reserves and to expect that this alone will produce better outcomes in either reducing smoking or unregulated tobacco sales occurring on-reserve.

COTTFN leadership identified that any type of self-regulatory framework that involved straight application of provincial law, under Smoke Free Ontario Act is a situation where municipalities are also passing laws and doing enforcement to be compliant with provincial legislation. COTTFN leadership pointed out that the struggle would then be program and funding supports to make this approach successful as local First Nation health priorities and funding are

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75 Smoke-Free Ontario Act, S.O. 1994, c. 10; Tobacco Tax Act, R.S.O. 1990, c. T.10
set by Health Canada and First Nations do not have the revenue base to sustain compliance and enforcement needed over the longer term.76

COTTFN leadership was also aware that it was within its jurisdiction to pass smoking by-laws, but where the real difficulty lies is in the enforcement of those by-laws under the Indian Act. So, the COTTFN Tobacco Law does speak to the issue of smoking, but at various times leadership has stressed the importance of the resourcing needed for the enforcement and the local administration of justice under an indigenous legal framework, which would resonate with the community in terms of ownership, versus resorting to a provincial court.

In general, the way that smoking laws reduce smoking levels and promote public health is by limiting who can buy cigarettes, and reducing the amount of public and private spaces where smoking is permitted. Also, high taxation of cigarette products, through tax laws, also greatly alter consumption and reduce smoking rates and there has been significant research on this topic.77 Cigarette products are not taxed and regulated on-reserve the same way as they are off-reserve, so people on-reserve do not benefit from pricing structures that will alter smoking behaviours to assist in prevention and cessation in the short and long-term. This is a particular concern when it is the higher price points that discourage youth from uptake in this habit.

Conclusion

Ultimately, it is our youth that are not getting the health benefits because of the regulatory environment on reserve from both a public health and safety perspective and due to the price differential, that creates easier access to tobacco products. The answer to creating regulation, however, does not mean a straight application of provincial law to the reserves in an era of reconciliation with indigenous communities.

As a host community of one of Canada’s first residential schools, reconciliation is important. As our understanding of the impacts of the residential school are only being understood in recent times, for now, the COTTFN wish to emphasize that reconciliation means an upholding of the treaty relationship. We would like to see building on that foundation, what was supposed to be our true foundation in Deshkan Ziibing Territory, in the following ways:

- Supporting indigenous self-governance and jurisdiction and the basis of this in inherent rights and self-determination; although the modern navigation of these issues requires skill in navigating constitutional issues and the two levels of government (federal/provincial)

76 In 2001, $10 million had been promised to fund the First Nations and Inuit Tobacco Control Strategy. In 2006, the federal program supports needed to for smoking cessation and tobacco health promotion were cut. Source: Haché, Trevor “Commercial Tobacco in First Nations and Inuit Communities”, Non-Smokers’ Rights Association/Smoking and Health Action Foundation (2009) p. 9

Reconciliation, in the context of law making, should not mean the outright adoption of provincial law and taxes on-reserve and carte blanche use of the s. 88 of the Indian Act to create a compliant regulatory system on-reserve for every regulated industry. Each regulated industry is going to have to be approached on a case-by-case basis, and this is especially true when discussing economic matters related to taxation because s. 87 of the Indian Act also applies. It is more conciliatory to discuss a compatibility of laws, where a First Nations exercises its law-making authority and where there may be a mutual exchange of responsibilities between governments, so our laws and any agreements reflect our relationship and our individual and mutual objectives.

Ideally, reconciliation could involve the creation of a space and a process for mutual capacity building, with resourcing so that First Nations can articulate the social justice aspects of the tobacco industry, much like what the World Health Organization has called for in its tobacco control measures. The WHO has stated that tobacco control in underdeveloped nations may need time as economies may not be able to absorb the loss of this sector, much like we have seen throughout our research. It will serve no public good to further to economically destabilize indigenous communities. In its Preamble for the Framework Convention on Tobacco Control, it states:

“Acknowledging that tobacco control at all levels and particularly in developing countries and in countries with economies in transition requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities.”

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78 Indian Act, S.C. s. 88 (See Appendix C)
79 Indian Act, S.C. s. 87 (See Appendix C)
80 World Health Organization “Framework Convention on Tobacco Control”
http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1 <Accessed: March 10th, 2017>
And, in Article 17:

"Provision of support for economically viable alternative activities….. Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

Again, our 2015 community survey data demonstrates that community members feel that on-reserve businesses were unfairly targeted by changes in federal laws. Reconciliation, from a First Nation perspective, would result in more positive and less negative financial or economic ramifications, especially where this industry operated in impoverished communities with no regulatory leadership from our federal partners to create compliance prior to its criminalization. Through creating a more compliant environment on reserve, First Nations can have bona fide assurances that any economic displacement resulting from a self-regulatory environment will have positive offsets. That rationale justifies a revenue sharing component back to participating First Nations.

The revenue sharing component is exactly what is envisioned in Chapter 2 of this document, whereby there is an overarching revenue sharing agreement that could help support a new self-regulatory framework on-reserve. At a more macro level, this is where regional approaches to parts of the overall framework may be built with incentives, since cost savings and economy of scale could help create efficiencies in a self-regulatory environment that considers public education, awareness, compliance, enforcement and administration of justice capacities. It is these activities that will uphold a self-regulatory framework so that we can strike a balance between the economic aspects, and community health, while respecting traditional uses of tobacco on-reserve under First Nation jurisdiction.

Further development of a licensing and permitting system that is compatible with other levels of government would be best suited to a new Commission, to oversee the entire framework. The U.S. Indian Gaming Commission fulfilled this type of role in the U.S. by establishing a mandate that included a licensing system, based on classes of licenses for gaming, and this Commission may have useful work to draw upon by Ontario and First Nations in that regard. A province-wide Commission for tobacco would have capacity, beyond a local community-based format, that could carry out this work on behalf of the parties that want to proceed under a new a self-regulatory framework.

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81 National Indian Gaming Commission Website: https://www.nigc.gov/commission/about-us
Chapter 6

Nation Work: Internal Considerations, Strategy and Action
In Chapter 2 we suggest a framework for discussion and have identified a “community readiness” component as one of the official benchmarks for a community to be able to move through a process of self-regulation successfully.

Community readiness consists of both capacity and willingness of community to create change. Community readiness for tobacco self-regulation has meant, for COTTFN, that while we recognize there are external challenges that need to be addressed, we equally recognize and are prepared to deal with our own internal issues and capacity development needs to follow through on a self-regulatory process.

In this section, we briefly highlight some of the internal considerations, strategy and action for COTTFN that contribute to the area of community readiness; which can be facilitated by other community development and progression processes. Outside communities may look at what COTTFN has done and whether they have engaged in similar or equal work in terms of readiness; before they formulate a plan to move in this direction.
<table>
<thead>
<tr>
<th>Title or Community Development Area:</th>
<th>1. Community Levy for Allocation Cigarettes</th>
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<tbody>
<tr>
<td>Consideration, Strategy or Action:</td>
<td>Action</td>
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<tr>
<td><strong>Description</strong></td>
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<tr>
<td>The community levy for allocation cigarettes was introduced by the Band Council, independent of the federal and provincial government, since the early 2000’s. The levy is set at $2.00.</td>
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</table>

**Relevancy to Tobacco Self-Regulation**

The intention was to create a communal benefit from the allocation cigarettes as only vendors benefitted from the sales of the cigarettes, but the collective tax-free cigarettes are viewed as a collective entitlement. The levy was used to help create a recreation fund with a focus on youth.

This initiative has been helpful in consideration of the wider issue of taxation and the need for more research to examine taxation as a relationship, both at a constitutional and community level. The levy underscores the need to develop levies and processes in a way that reflects community values.

<table>
<thead>
<tr>
<th>Title or Community Development Area:</th>
<th>2. Community Allocation Guidelines</th>
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<tbody>
<tr>
<td>Consideration, Strategy or Action:</td>
<td>Strategy</td>
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<tr>
<td><strong>Description</strong></td>
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<tr>
<td>The community allocation guidelines were introduced by the Band Council, independent of the federal and provincial government, in the mid 2000’s.</td>
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</table>

**Relevancy to Tobacco Self-Regulation**

The intention was to create some rules about the allocation system as it was viewed as an economic development activity. What the Band Council did not want, because of the sales of the cigarette allocation quota by vendors, was a concentration of smoke shops as has occurred in other communities. Council made it a requirement for vendors to offer other products and services besides tobacco to be eligible for a cigarette allocation (quota).

This initiative has been helpful as an early pre-cursor to both a self-regulatory framework and economic diversification strategy at COTTFN, that began to be elaborated upon throughout the tobacco technical table discussions starting in 2012.
3. Comprehensive Community Planning

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<tr>
<th>Description</th>
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<tr>
<td>The comprehensive community planning processes that were started in 2011 was a re-invigorated process that the community had first started in 1985. The difference in 2011, from the first comprehensive community plan, is that there were more resources, both financial and human, as well as the use of technology in 2011 that allowed for this to be a more encompassing process; and with a view to creating systems and community institutions to make it a permanent process and document within the Nation.</td>
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Comprehensive community planning assisted the First Nation in identifying, early on, that the First Nation is geographically situated in some of best food and agricultural growing regions in Canada. While tobacco as a cash crop is now subject to sanctions and regulations, primarily due to the intersection of tax revenue, jurisdictional gaps, and unregulated cigarettes sales that have often been linked to first Nations, its regulatory examination within the tobacco pilot has been instrumental to the creation of capacity at COTTFN in several areas beyond tobacco. The CCP itself identified the need to complete a feasibility examination of tobacco manufacturing or processing at COTTFN.

<table>
<thead>
<tr>
<th>Relevancy to Tobacco Self-Regulation</th>
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<tbody>
<tr>
<td>As an agricultural product, tobacco has been tied to the geographic region of southern Ontario and indigenous identity, ceremony and trade for millennia. We would have been remiss not to include it within our CCP and align the Tobacco Pilot Project with our CCP objectives as a part of our original trade economy. We wanted to examine the feasibility of this economic activity beyond allocation, but in a way that is tied to long-term planning objectives which is what the CCP initiative was about, moving from reactive to proactive processes. By not engaging in better planning processes, COTTFN could have pursued this economic activity without being aware of the long-term SWOT analysis and impacts, including change to the regulatory environment, such as changes to the Criminal Code for tobacco activities.</td>
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### 4. Financial Administration Law

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<tr>
<th>Consideration, Strategy or Action:</th>
<th>Strategy</th>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td>The Band Council passed its Financial Law in 2013 and was added to the schedule for approved Financial Administration Laws by the First Nations Financial Management Board. This law enables the First Nation to begin further developing its processes and procedures to create internal financial controls for First Nations administrations. There is a certification process, and upon completion of the certification process, certified First Nations can achieve recognition for sound financial policies and procedures and the result being that the certified Nation can borrow capital from the First Nation Financial Management Board or other institutions.</td>
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### Relevancy to Tobacco Self-Regulation

Based the framework presented in Chapter 2, and the U.S. compacts, auditing forms a key component of the revenue sharing model as a certificate of an auditor for First Nations participating in a Revenue Sharing agreement with Ontario should be produced as part of the reporting requirements, as well as for Band Members who may want to have the assurances that these new sources of revenue are being managed in a sound environment where there are adequate financial controls in place. This will increase investor confidence, in terms of stakeholders to any revenue sharing process, whether it be individual Band Members, future lenders or other levels of government.

### 5. Treaty Council

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<tr>
<th>Consideration, Strategy or Action:</th>
<th>Strategy, Consideration</th>
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<tr>
<td><strong>Description</strong></td>
<td>The Chippewa Treaty Council is made up of Aamjiwnaang, Kettle and Stony Point, Walpole Island, Caldwell, and Chippewa of the Thames First Nations. The Treaty Council meets regularly to discuss issues of mutual concern to support collectivity in a way that does not interfere with each nation’s right and interests. The Treaty Council met in early 2012.</td>
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</table>

### Relevancy to Tobacco Self-Regulation

Engaging in the Treaty Council has enabled the Council to think outside of the Indian Act and get back to Anishinaabeg protocols and collective interests; and how those things should be pursued in a modern context, both internally and with external governments. For COTTFN, the Treaty Council has assisted the Nation in understanding that our actions and decisions may have an impact on others and that we belong to a larger community and families. The status quo approach to the tobacco economy on-reserve is largely a product of individualistic thinking, and so we view ourselves as moving away from that.
<table>
<thead>
<tr>
<th>Title or Community Development Area:</th>
<th>6. Land Claims</th>
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<tbody>
<tr>
<td>Consideration, Strategy or Action:</td>
<td>Strategy</td>
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<tr>
<td>Description</td>
<td>Specific claims processes in Canada are a means of resolving historical land grievances. COTTFN has settled three land claims with Canada, and the most recent one being the Big Bear Creek Land Claim in 2012.</td>
</tr>
</tbody>
</table>

Relevancy to Tobacco Self-Regulation Discussion
The Nation continues to have outstanding land claims and these have been an economic boon to the COTTFN. However, given the totality of all the Chippewa land grievances, large parcels of southern Ontario were not surrendered. This has caused inner reflection on the part of the Nation to question why comprehensive claims are not a reality for the COTTFN, and why land claims generally result in an Indian Act surrender of land. This has led the COTTFN to be more critical of the specific claims process, and wanting to tackle issues regarding jurisdiction in both conventional and non-conventional ways. COTTFN notes that comprehensive claims do deal with the issue of lands and resources, and has helped us to frame the placing of tobacco within that realm, as a natural resource as it is viable because of the unique geography, terrain and soils in southern Ontario and a part of indigenous trade.

<table>
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<tr>
<th>Title or Community Development Area:</th>
<th>7. Residential School Monument</th>
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<tr>
<td>Consideration, Strategy or Action:</td>
<td>Consideration</td>
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<tr>
<td>Description</td>
<td>In 2012, COTTFN hosted a large gathering as a host site for the Mt. Elgin Indian Residential School that was in operation for almost 100 years when it finally closed the mid 1940’s. The unveiling of the monuments helped to mark the place where the school once stood and formed a key part of colonial policy which was to eradicate the Indian from the child. Acknowledging the survivors and the school was part of the larger social movements of the Truth and Reconciliation Committee which was to initiate a Canada-wide healing journeys and processes to follow. The monuments also remind us of the Seven Grandfather teachings which is a part of our original ways of being and continues to inspire and inform us, these being: Love, Courage, Bravery, Kindness, Humility, Respect, Wisdom and Honesty.</td>
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Relevancy to Tobacco Self-Regulation
This monument unveiling and gathering helped to remember and celebrate our survival, but to also realize that we do have historical trauma in the community. In examining tobacco self-regulation, we could not just look at the financial aspects of this issue, but also had to consider regulations in the larger context of healing and wellness for our people and to reflect on our traditional values.
### Title or Community Development Area:
8. Revitalizing Our Indigenous Traditions

### Consideration, Strategy or Action:
Consideration

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<th>Description</th>
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<tr>
<td>COTTFN has been undergoing a cultural revitalization and restoration process beginning with the pow-wow in the 1970’s. The ceremonial lodges have followed as well as the community and family activities related to indigenous teachings, values, customs and practices.</td>
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At present, the COTTFN has hired a full-time Cultural Coordinator to work with the community on cultural revitalization as well as the Nation’s hiring of language instructors and building consensus towards a language strategy.

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<tr>
<th>Relevancy to Tobacco Self-Regulation</th>
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<tr>
<td>Tobacco forms a key part of indigenous identity, and despite Canadian government efforts to outlaw indigenous languages, spiritual practices and observances, which would have undoubtedly included tobacco, these are still being practiced within the community. COTTFN has included cultural considerations and determined that when we are speaking about tobacco for self-regulatory purposes, that we are speaking of the more commercial use of tobacco and not traditional uses which we still value as a part of our identity and s. 35 constitutional rights.</td>
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<tr>
<td>Title or Community Development Area:</td>
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<tr>
<td>Consideration, Strategy or Action:</td>
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**Description**
Governance relates to all the processes of governance, and primarily decision making in a way that has checks and balances on power, and ensures a fairer society.

**Relevancy to Tobacco Self-Regulation**
One of the areas that COTTFN has tried to address, since the re-invigoration of its COTTFN Business Development Corporation in 2012, is separating business and economic development from politics. COTTFN has also moved into the direction of limiting its involvement with its Business Development Corporation, with respect to Board Appointments. COTTFN Council also has limited involvement with its Trusts, by way of Council appointments to those Boards as well. Likewise, the COTTFN separation of day-to-day operations from Council occurred in 2012 when the COTTFN developed its senior management team and engaged in policy and law making for COTTFN.

COTTFN Council has developed a draft Matrimonial Real Property Law and a Land Code. Both processes have offered a lot of insight to the nation in terms of law making process and have created a better insight into the roles of Council and administration. Other documents such as the Leadership Manual, which was based on the INAC guide developed for Indian Act Councils, has also been developed and discusses the appropriate roles and powers of Council, and decision making and engagement processes which are based on Best Practices.

This experience has been invaluable in developing a process that utilizes Band Council authority to pass a law and develop processes for tobacco self-regulation; but to also ensure that operationally, these laws and mechanisms are developed at least arms’ length from the Council for effective governance.
**Title or Community Development Area:** 10. Quality Management  
**Consideration, Strategy or Action:** Strategy, Action  

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<th>Description</th>
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<tbody>
<tr>
<td>Improving service delivery to increase the efficiency against excellency standards as defined in that sectoral area. To date, the CCP has been used to help frame this longer-term organization goal and has focused so far on Health and Financial accreditation as focus areas; but other organization development work supports these overall goals of moving towards quality management for COTTFN.</td>
</tr>
</tbody>
</table>

**Relevancy to Tobacco Self-Regulation**

*Health Accreditation:*  

COTTFN has been re-certified for accreditation for quality management in 2017. By moving in this direction, operations in-health administration have been streamlined and organized to allow for more strategic collaboration at the senior management level. This meant that our health department could offer input, advice in how to regulate tobacco on-reserve and to create enhancements within the community in terms of understanding where our current resources fall short, especially in smoking cessation services and programming. In 2016-2017 the Health Department could do an in-depth health survey to offer more insight to overall community health and where addictions, including tobacco, fit within the bigger picture of health issues and determinants of health at COTTFN.

*Human Resources:*  

In 2011 the First Nation began to hire where possible our own Band Members and where possible members of the Anishinabek Nation and our brothers and sisters in other nations to begin using our own experts to carry out the work. It has long been touted within First Nations that our people should get educated to bring that skill and knowledge home, and the First Nation has started this process. Some of our own indigenous experts were called back to the Nation to assist with work plans and developing strategic approaches to the work under the CCP in 2011 on a going forward basis.

In 2016-2017 COTTFN made the long-term commitment to develop its Human Resources capacity to not only recruit, but improve employee retention rates, and developing responsive evaluation processes, salary grid and employee training plans and resourcing. For this discussion, tobacco self-regulation would require planning for more training to ensure that appropriate human resources are deployed to carry out the tasks that will move the First Nation to exercise more governance powers that will enable the community to self-regulate in tobacco.

*Leadership Training:*  

The Nation is currently undergoing leadership training to strip down siloed approaches to Nation issues. This has been very beneficial for the tobacco project so that cross-sectoral perspectives could be brought into the discussion.
Project Management Training:

Ongoing project management is one of the best means to keep moving forward with this initiative that is set out by leadership and community. The Nation is currently undergoing training for project management. By using project management, all the elements that are necessary for the continued success of the nation can be broken down into work plans, tasks and areas of responsibility with timelines and expected outcomes. The key is to translate these concepts outwards as community members are key participants in ensuring overall success on the topic of community law making and exercising jurisdiction.

Without active project management for the area of tobacco, and translating what the work means for community, the work would tend to get bogged down in dialogue that is more rhetorical versus action-oriented dialogue to move the Nation in the direction that it wishes to pursue. We are more action-oriented at this point, and will soon have several mid-level managers that have international accreditation in project management.

PLEESS:

COTTFN is looking to build internal planning processes for large capital and economic development projects. The COTTFN PLEESS group consists of several departments: Public Works, Lands and Environment, Economic Development, and Social Services. This department provides high level planning and screening services that have been templated to assist with Nation decision making. This function is separate from any Project Management Teams that may be established by the Nation. The tobacco project emphasized the need for the Nation to engage in higher level land use planning and to commission future studies such as a Best Use of Land study to examine sector uses such as tobacco on COTTFN lands.
<table>
<thead>
<tr>
<th>Title or Community Development Area:</th>
<th>11. Asset Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consideration, Strategy or Action:</td>
<td>Strategy, Action</td>
</tr>
</tbody>
</table>

**Description**

Shifting the singular mindset of the Band Administration and associated entities, where other governments have encouraged community spending to meet contribution agreement requirements, to one where own-source and other-source revenues are invested, leveraged, and managed to restore a seventh generation and investment mindset within community.

**Relevancy to Tobacco Self-Regulation**

An opportunity, from tobacco revenue sharing, to shift from spending to building our own institutions as re-investment as well as away from spending to long-term saving and re-investing in other areas. Relevant to tobacco because it promotes a way of thinking that re-conditions us away from business as usual.
Conclusion

In this discussion paper, we have outlined our research to date, a self-regulatory framework for consideration, and the need to reframe a public policy-based dialogue with indigenous communities that is reconciliation-based in key theme areas. While some changes that are needed to create movement to transition this sector are external to us, there are also internal changes that we need to undertake as indigenous communities.

The capacity issues for First Nations are challenging, primary because of the Indian Act legislation, and there are numerous academics, scholars, government and non-government organizations that have explored these issues in depth. We are attempting to overcome both capacity and legislative barriers and the tobacco project has been an excellent catalyst to think about these issues—and tobacco differently—and to realize that capacity is a step-by-step process.

We have observed a need for regional market-based approaches to these issues and future economic modelling is key to creating the buy-in for a new arrangement between First Nations and Ontario. This data would be necessary in negotiating a revenue sharing agreement and that is a capacity challenge for most First Nations and this must be addressed on a going forward basis. This is because what is at issue is existing dollars from tobacco sales within the community, whereas the OFNLPA was a discussion about new sources of revenue in gaming.

COTTFN also sees opportunities for better strategy to achieve capacity development that may have been missed in the OFNLPA, given the recent shift to privatization of the operation of casinos and how First Nations may have transitioned into providing some of those services some 20 years later. Too, in any new revenue sharing agreement we have higher accountability expectations from Nation members may require different reporting and monitoring methods than existing OFNLPA reporting. Nation members want to know that our smoking and tobacco laws and regulations are working, and that we are effective and efficient. This would require monitoring and evaluation, which again speaks to capacity and governance development.

In closing, there is much potential for this discussion when it is placed within the sphere of governance, collectivity and a more strategic and policy approach to the topic. We hope that is what our Nation members and our fellow First Nations can take away from this technical discussion paper, so that we can continue a dialogue and transition into something more positive for the future.

---

82 COTTFN was interested in seeing how its $2 levy fared over the years in terms of inflation and taxation changes and as a courtesy the Ministry of Finance provided this analysis. [See Appendix M] These types of analysis and modelling, on a macro scale, would have to occur if there were to be a revenue sharing agreement in place with First Nation taxes, levies or royalties in place to create more informed consent on behalf of First Nations prior to entering an agreement.
APPENDIX A

Intergovernmental Affairs
Structure of the COTTFN/Ontario Tobacco Technical Table
APPENDIX B

Communications Protocol
APPENDIX A
Chippewas of the Thames First Nation and Ontario
Joint Public Communications Protocol/Plan
Re: Tobacco Pilot Project

This document represents a protocol on joint communications between the Chippewas of the Thames First Nation and Ontario on the Tobacco Pilot Project.

Purpose

This protocol sets out how Ontario and the Chippewas of the Thames First Nation (CoTTFN) will work to co-ordinate communications planning and implementation on a joint basis regarding the research, capacity development and planning exercise to explore a First Nations community-based regulatory approach for tobacco within CoTTFN. The focus of this document is on communications with the general public, interested First Nations and third parties.

Guiding Principles

The Ministry of Finance, Ministry of Aboriginal Affairs and the Chippewas of the Thames First Nation agree to the following principles:

1. Mutual respect and understanding
2. Flexibility, co-operation and openness
3. Recognition of the need to maintain an open process for sharing information, without compromising the confidentiality of the negotiating process
4. A no surprise approach - through commitment to, wherever possible, timely consultation and sharing of information
5. Each party has the responsibility to communicate with its stakeholders and interested parties – agreed upon messaging and Questions and Answers will be used for this purpose
6. Communications to stakeholders, general public, interested First Nations and third parties should support overall objectives of the partnership
7. Parties will share information and consult on initiatives and products that require further development

Roles and Responsibilities

Working Group
The following outlines the composition of a communications working group (communications leads):

The following people will serve as leads on communication issues. Other people will be involved, as needed, and at the discretion of the leads below.
Ministry of Finance Contact:
Anne Bird, Senior Policy Advisor
416-212-1855
anne.bird@ontario.ca

Ministry of Aboriginal Affairs Contact:
Rachel Manson-Smith, Senior Policy Advisor
416-212-2286
Rachael.Manson-Smith@ontario.ca

Chippewas of the Thames First Nation Contact:
Raymond Deleary, Senior Policy Advisor
866-550-5539
rdeleary@cottfn.com

Reporting back to the Parties and Approvals

The following outlines the joint roles and responsibilities with respect to how the communications working group relates to the Parties:

The communications working group will report to the Chief of the CoTTFN and the lead Assistant Deputy Ministers for Ontario. Joint communications (internal or public) produced by the communications leads must be treated as "drafts for discussion only" until they are vetted by both parties (including Legal Counsel, where appropriate). Once a consensus on the text has been reached, all joint documents will then be put through the parties' respective approvals process. Each communications lead is responsible for coordinating internal approvals processes with their respective organizations.

Changes requested by either Party, during our respective approvals processes, will be brought back to the Parties, via the communications leads, for vetting and, if required, approval.

Joint Communications Strategy

A joint communications strategy may be developed if the need arises, particularly with respect to any subsequent phases of the pilot project.

Information Sharing

The following outlines ways the communications leads will share relevant information about media calls, and/or emerging issues in the public domain.
Develop corresponding processes to facilitate the timely exchange of information about media inquiries between the parties, striving, whenever possible, to provide a "heads-up" about the nature of the request and follow-up courtesy call about the nature of the response to the other party. Whenever possible, the Senior Media Relations Advisor of the Ministry of Finance or the Chippewas of the Thames Chief will act as a point of initial contact for media inquiries. The parties will work cooperatively on all aspects of the communications plan and co-ordinate third-party-focused activities on a joint basis wherever possible. However, the parties may consult separately as required.

The parties will also notify each other five working days in advance of any proactive communications being released/disseminated (e.g. news release) in relation to the project or the other party.

Key messages arising from the Group’s activities will be agreed upon for potential external and internal communication use. Steps will be taken to protect sensitive information.

Ontario’s Freedom of Information and Protection of Privacy Act

The Government of Ontario is subject to the Freedom of Information and Protection of Privacy Act (FIPPA). Though FIPPA allows a ministry to not disclose a record when certain specified exemptions apply, FIPPA requires that Ontario ministries notify CoTTFN and seek their representations before disclosing any proprietary or sensitive financial information that they supply to Ontario in confidence and without prejudice during the course of this project. Decisions made by a ministry in relation to an access to information request may be appealed to the Information and Privacy Commissioner (IPC) by CoTTFN.

Evaluation

The following outlines ways the sub-committee will record and monitor success of communications activities:

Develop and maintain a rolling chronology of communications/consultation activities. Conduct a media analysis and share copies of news articles or media reports about the Tobacco Pilot Project between the parties. Conduct a quarterly review, as appropriate, of the joint plan to determine if updating is required.

This protocol may be reviewed and updated as needed throughout the Tobacco Pilot Project.
Approvals/Signatures

Chief Joe Miskokomon
Chippewas of the Thames First Nation

John Andersen, Assistant Deputy Minister
Compliance Programs Division
Ontario Ministry of Finance

Alison Pilla, Assistant Deputy Minister
Strategic Policy and Planning Division
Ontario Ministry of Aboriginal Affairs

December 17, 2013
Date

October 29, 2013
Date

October 31, 2013
Date
APPENDIX C

Indian Act

Sections 87 and 88
Indian Act Excerpts

Taxation

Marginal note: Property exempt from taxation

87 (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the First Nations Fiscal Management Act, the following property is exempt from taxation:

- (a) the interest of an Indian or a band in reserve lands or surrendered lands; and
- (b) the personal property of an Indian or a band situated on a reserve.

Marginal note: Idem

(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.

Marginal note: Idem

(3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

R.S., 1985, c. I-5, s. 87; 2005, c. 9, s. 150; 2012, c. 19, s. 677.

Legal Rights

Marginal note: General provincial laws applicable to Indians

88 Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the First Nations Fiscal Management Act, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.

R.S., 1985, c. I-5, s. 88; 2005, c. 9, s. 151; 2012, c. 19, s. 678.
APPENDIX D

Ontario

Tobacco Tax Act

and Regulation 649/93
Tobacco Tax Act

Authority

13.5 (1) Subject to the approval of the Lieutenant Governor in Council, the Minister, on behalf of the Crown, may enter into arrangements and agreements with a council of the band with respect to tobacco. 2011, c. 15, s. 25 (1).

Same

(2) The Minister, on behalf of the Crown, may enter into such arrangements and agreements with a council of the band as the Minister considers necessary for the purposes of the administration and enforcement of this Act on a reserve. 2011, c. 15, s. 25 (1).
ONTARIO REGULATION 649/93
SALES OF UNMARKED CIGARETTES ON INDIAN RESERVES

Consolidation Period: From October 21, 1993 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

1. In this Regulation,
   “council of the band” has the meaning specified in subsection 2 (1) of the Indian Act (Canada);
   “Indian” has the meaning specified in subsection 2 (1) of the Indian Act (Canada);
   “off-reserve community” means all adult members of the band who are recorded as Nation members in the most current issue of the Indian Register, Population by Sex and Residence, issued by the Department of Indian Affairs and Northern Development, and who do not reside on the reserve;
   “reserve” means a reserve as defined in the Indian Act (Canada) or an Indian settlement located on Crown land, the Indian inhabitants of which are treated by the Department of Indian Affairs and Northern Development in the same manner as Indians residing on a reserve;
   “reserve community” means all adult members of the band who are recorded as Nation members in the most current issue of the Indian Register, Population by Sex and Residence, issued by the Department of Indian Affairs and Northern Development, and who reside on a reserve;
   “reserve retailer” means a retail dealer located on a reserve and who, in the ordinary course of his or her business, sells cigarettes to Indian consumers;
   “retail agreement” means an agreement entered into between the Minister and a council of the band by which the council of the band agrees to allocate unmarked cigarettes to reserve retailers and to monitor the sales of those cigarettes to ensure that sales are not made to non-Indians;
   “supplier” means a wholesaler who holds a permit to purchase and sell unmarked cigarettes under section 9 of the Act. O. Reg. 649/93, s. 1.

2. (1) The purpose of this Regulation is,
   (a) to ensure that there is a sufficient quantity of unmarked cigarettes available for purchase on a reserve by adult members of a band for their own consumption; and
   (b) to prevent the purchase of excess quantities of unmarked cigarettes that could be resold to non-Indians. O. Reg. 649/93, s. 2 (1).

   (2) This Regulation applies to all reserves unless a specific regulation is passed that exempts a reserve from this Regulation and sets out an alternative method for the distribution of unmarked cigarettes to reserve retailers by incorporating the terms of an agreement that may be entered into between the Minister and a council of the band. O. Reg. 649/93, s. 2 (2).

3. (1) Subject to subsection (2), beginning on April 1 of a year, the annual quantity of cartons of unmarked cigarettes allocated to a reserve shall be calculated using the following formula:

   \[ A = [(R \times 2.5 \times 0.423) + (OR \times 2.7 \times 0.423)] \times 12 \]

   where,
   \[ A \] is the annual quantity;
   \[ R \] is the number of individuals in the reserve community;
   \[ OR \] is the number of individuals in the off-reserve community.

   O. Reg. 649/93, s. 3 (1).

   (2) If a reserve is listed in the Schedule, the annual quantity of cartons of unmarked cigarettes allocated to it shall be the greater of,
   (a) the annual allocation indicated for the reserve in the Schedule; and
   (b) the annual allocation determined under subsection (1). O. Reg. 649/93, s. 3 (2).
With respect to the period between the date this Regulation comes into force and March 31, 1994, the annual quantity determined under subsection (1) or (2) shall be reduced to the proportion that the number of days in the period is of 365. O. Reg. 649/93, s. 3 (3).

(4) The council of the band may increase the annual quantity determined under subsection (1), (2) or (3),

(a) a maximum of 10 per cent for sale to Indian consumers who are not members of the reserve community or the off-reserve community;

(b) a maximum of 20 per cent if the council has entered into a retail agreement; or

(c) a maximum of 30 per cent where clauses (a) and (b) both apply. O. Reg. 649/93, s. 3 (4).

(5) The annual aggregate quantity of unmarked cigarettes allocated to all reserve retailers shall not exceed the annual quantity of unmarked cigarettes allocated to the reserve as determined under this section. O. Reg. 649/93, s. 3 (5).

4. (1) To facilitate the availability of unmarked cigarettes for purchase by Indian consumers, a council of the band may allocate the annual quantity of unmarked cigarettes as determined under section 3 among each reserve retailer based on the volume of the retailer’s sales to the reserve community and the off-reserve community for their own consumption. O. Reg. 649/93, s. 4 (1).

(2) The council of the band shall advise the Minister of any allocation it makes. O. Reg. 649/93, s. 4 (2).

(3) So long as the council of the band complies with this Regulation, the Minister shall provide to each reserve retailer to whom the council of the band has made an allocation an authorization to purchase the allocated amount of unmarked cigarettes from the supplier chosen by the reserve retailer. O. Reg. 649/93, s. 4 (3).

5. (1) If a council of the band has not made allocations as described in subsection 4 (1), the Minister may do so instead, in accordance with section 3. O. Reg. 649/93, s. 5 (1).

(2) If the Minister makes allocations under subsection (1), the Minister shall make such inquiries as the Minister considers appropriate to determine who are reserve retailers and what is the volume of their business, and the Minister shall make the allocations based on that information. O. Reg. 649/93, s. 5 (2).

(3) The Minister shall provide to each reserve retailer, as determined under subsection (2), an authorization to purchase an allocated amount of unmarked cigarettes from the supplier chosen by the reserve retailer. O. Reg. 649/93, s. 5 (3).

6. (1) Any annual allocation made to a reserve retailer by a council of the band applies for subsequent years until altered by the council of the band. O. Reg. 649/93, s. 6 (1).

(2) Any change in the allocation that the council makes for a reserve retailer shall be offset by an equivalent change in the allocation to another reserve or retailers. O. Reg. 649/93, s. 6 (2).

(3) If the council cancels a reserve retailer’s allocation and wishes to transfer it to another reserve retailer, the council may transfer only the unpurchased portion for that year. O. Reg. 649/93, s. 6 (3).

(4) If the Minister makes allocations under section 5, the Minister has the same powers as does the council under this section. O. Reg. 649/93, s. 6 (4).

7. (1) A reserve retailer may change suppliers only at the beginning of a month. O. Reg. 649/93, s. 7 (1).

(2) The changing of a supplier does not affect the reserve retailer’s annual allocation. O. Reg. 649/93, s. 7 (2).

(3) A reserve retailer may choose more than one supplier if,

(a) the reserve retailer notifies the Minister about the amounts that are to be purchased from each supplier; and

(b) the total amount purchased from all suppliers does not exceed the reserve retailer’s allocation. O. Reg. 649/93, s. 7 (3).

8. (1) If a council of the band has entered into a retail agreement and the Minister receives complaints that any reserve retailer to whom an allocation has been made has sold unmarked cigarettes to non-Indians, the Minister may investigate such complaints. O. Reg. 649/93, s. 8 (1).

(2) If, after an investigation under subsection (1), the Minister determines that a reserve retailer has sold unmarked cigarettes to non-Indians, the Minister may advise the council of the band. O. Reg. 649/93, s. 8 (2).

(3) If the Minister advises the council of the band under subsection (2) and if the council does not promptly transfer the unpurchased portion of the allocation to another reserve retailer, the Minister may suspend or cancel the retail agreement. O. Reg. 649/93, s. 8 (3).
(4) Before any retail agreement is suspended or cancelled, a representative of the council of the band shall be given an opportunity to explain why the retail agreement should not be suspended or cancelled, as the case may be. O. Reg. 649/93, s. 8 (4).

(5) If the Minister decides to suspend or cancel a retail agreement for the year, the Minister shall reduce the unpurchased portion of the annual quantity by the following formula:

\[ R = 0.2A \times \left( \frac{U}{T} \right) \]

where,

- \( R \) is the amount of reduction in the annual quantity;
- \( U \) is the unpurchased amount of the total quantity remaining on the date of suspension or cancellation;
- \( T \) is the total annual quantity for the year under section 3;
- \( A \) is the amount determined under subsection 3 (1), (2) or (3).

O. Reg. 649/93, s. 8 (5).

(6) If the Minister decides to suspend or cancel a retail agreement for a part or all of the following year or years, the increased quantity under clause 3 (4) (b) or (c) shall be cancelled or proportionately reduced, as the case may be. O. Reg. 649/93, s. 8 (6).

(7) If a reduction is made under this section to the annual quantity for a reserve, the Minister shall make the necessary corresponding reductions to the allocations given to reserve retailers. O. Reg. 649/93, s. 8 (7).

9. (1) If a reserve retailer chooses a supplier, the Minister shall inform the supplier of that choice. O. Reg. 649/93, s. 9 (1).

(2) After being informed by the Minister, the supplier may sell to the reserve retailer all or any part of the allocation of unmarked cigarettes without collecting an amount equivalent to the tax imposed by the Act at the time of sale. O. Reg. 649/93, s. 9 (2).

(3) The quantity of unmarked cigarettes sold by the supplier shall not exceed the quantity specified in the authority to purchase issued by the Minister. O. Reg. 649/93, s. 9 (3).

(4) The reserve retailer shall take delivery of the unmarked cigarettes only on the reserve for which the authority to purchase is issued. O. Reg. 649/93, s. 9 (4).

(5) The reserve retailer shall purchase the unmarked cigarettes solely for the retailer’s own use or for resale on the reserve to Indian consumers. O. Reg. 649/93, s. 9 (5).

SCHEDULE

<table>
<thead>
<tr>
<th>Band Name</th>
<th>Reserve</th>
<th>Yearly Allocation (cartons/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Couchiching</td>
<td>Couchiching I.R. #16A</td>
<td>15,554</td>
</tr>
<tr>
<td>Delaware Nation Council, Moravian of The Thames</td>
<td>Moravian I.R. #47</td>
<td>8,750</td>
</tr>
<tr>
<td>Ojibways of Batchewana</td>
<td>Rankin Location I.R. #15D</td>
<td>18,461</td>
</tr>
<tr>
<td>Beausoleil</td>
<td>Christian Island I.R. #30</td>
<td>15,092</td>
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<tr>
<td>Akwesasne Mohawk Territory</td>
<td>Akwesasne Mohawk Territory</td>
<td>90,000</td>
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<tr>
<td>Mississaugas of the New Credit</td>
<td>New Credit I.R. #40A</td>
<td>16,615</td>
</tr>
<tr>
<td>Walpole Island</td>
<td>Walpole Island I.R. #46</td>
<td>40,717</td>
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<td>Wahnapiate</td>
<td>Wahnapiate I.R. #11</td>
<td>2,538</td>
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<td>Ojibways of Hiawatha</td>
<td>Hiawatha I.R. #36</td>
<td>9,249</td>
</tr>
</tbody>
</table>

O. Reg. 649/93, Sched.
APPENDIX E

Jurisdictional Scan
JURISDICTIONAL SCAN

Tax-exempt tobacco approaches

- Provincial systems that address tobacco on reserve must take First Nation rights into account, specifically that the personal property of a First Nation or band is exempt from provincial tax on reserve pursuant to section 87 of the federal Indian Act.

- Following a legal challenge in 1989, Ontario’s system was revised and codified in the Tobacco Tax Act. The current system, in place since 1993, allocates an annual amount of cigarettes based on population and smoking patterns.

- This policy is meant to ensure that Indian Act rights are preserved. In Ontario, cigarettes within the allocation system bear a “peach” stamp (sometimes referred to as “black stock” product). Ontario’s system applies to cigarettes and fine cut but not to other types of tobacco like cigars.

Approaches in Other Provinces

- British Columbia: most of the province is covered by an allocation program. On-reserve retailers can purchase black stock tobacco and sell to First Nation purchasers without provincial tax. An allocation system limits the quantity of black stock available for any given on-reserve retailer. A qualifying purchaser may purchase a maximum of the equivalent of 2 cartons of cigarettes per day, to a maximum equivalent of 8 cartons per month.

- Alberta: black-stock tobacco is supplied on a tax-in basis and retailers can request a refund for sales to First Nation consumers. The refunds are limited by a personal allocation limit. All tax-exempt purchasers are required to show an Alberta Indian Tax Exemption (AITE) tax exemption card, issued by the Alberta Finance, Tax and Revenue Administration (TRA). The Certificate of Indian Status (CIS) card issued by Indian and Northern Affairs Canada cannot be used.

- Saskatchewan: applies an allocation and refund program, whereby tax is refunded to retailers selling to First Nation purchasers. As in Manitoba, the quantum of refunds is limited by a personal allocation limit of the equivalent of one carton (200 cigarettes) per week.

- Manitoba: 59 of Manitoba’s First Nation communities have signed agreements whereby the First Nation agrees to impose a band assessment on cigarettes equal to the province’s tobacco tax. The province then collects that tax at the wholesale level and remits to the First Nation the portion attributable to First Nation purchasers based on an estimated consumption formula. The province does not remit for purchases by non-First Nation consumers.
In communities without an agreement, there is a point of sale exemption for First Nation purchasers, and a refund to retailers.

- **Quebec**: a retailer who sells tobacco products exempt of provincial tobacco tax to First Nations individuals may claim a refund for the amount of tax paid to the wholesaler.

- **Nova Scotia**: An allocation system was developed in the 1990s. Agreements are in place with each band council establishing the quantities and designated retailers and wholesalers. The quantities are based on population and are increased for special events upon approved requests.

- **Prince Edward Island**: the province has agreements with each of the First Nations band councils whereby tobacco is sold on-reserve with provincial tax applied; the province then rebates to the First Nation government an amount equal to the tax on an amount of tobacco estimated to be consumed by First Nation consumers.

- **New Brunswick**: The province has Native Tax Sharing Agreements with 13 of their 15 First Nations. The government returns 95% of provincial tobacco, gasoline, motor fuel and sales tax collected on-reserve to the First Nation. Additionally, retailers are authorized to sell tax exempt tobacco to First Nation purchasers. Retailers can either buy tax-in or receive a rebate or in older agreements a quota amount is set aside for the community. The retailer must obtain a “certificate of Indian status” card before making the sale.

- **Newfoundland**: the province has three designated First Nation reserves and three unique systems for on-reserve tobacco. One community uses an allocation system similar to Ontario’s; in a second community, the band council establishes its allocation for the band-owned retail store; a third community in central Labrador uses a refund system. Retailers in that First Nation pay tax to the wholesaler, sell to First Nation consumers without tax and claim a refund from the province.
# Approaches in Other Provinces

<table>
<thead>
<tr>
<th>Province / Territory</th>
<th>Approach</th>
<th>First Nations Agreements</th>
</tr>
</thead>
</table>
| British Columbia     | • Allocation system with “black stock” markings.  
Retailers must hold an Exempt Sale Retail Dealer (ESRD) permit issued by the ministry. ESRD’s are required to keep records of all tax-exempt sales.  
A qualifying purchaser may purchase a maximum of the equivalent of 2 cartons of cigarettes per day, to a maximum equivalent of 8 cartons per month.  
One First Nation – Cowichan Tribes – has an agreement whereby the provincial tobacco tax is included on all sales on-reserve. The province remits all revenues from sales to First Nation consumers. | 1 First Nation |
| Alberta              | • Refund system. Retailers request a refund for sales to First Nation consumers.  
Black-stock tobacco is sold to First Nation consumers.  
First Nation consumers must have an Alberta Indian Tax Exemption (AITE) card.  
The amount of refunds is limited by an allocation. Purchasers may not purchase more than two cartons of cigarettes or tobacco sticks, or 400 grams of black stock fine cut tobacco per week. | n/a |
| Saskatchewan         | • Refund system.  
Tax is refunded to retailers selling to First Nation consumers.  
Amount to be refunded is limited by a personal allocation of the equivalent of one carton per week. | n/a |
| Manitoba             | • 59 First Nation communities have signed agreements with the province where the First Nation agrees to impose a band assessment on cigarettes equal to the province’s tobacco tax.  
The province collects the assessment at the wholesale level and remits to the First Nation the portion attributable to First Nations purchasers, based on an estimated consumption formula.  
For First Nations without an agreement, there is a point of sale exemption for First Nation purchasers, and refund system for retailers. There is a refund-limit for each retailer, based on population rates and smoking patterns. Chief and Council can allocate the refund limit amongst retailers.  
Manitoba markings. | 59 First Nations |
| Quebec               | • Refund system.  
Quebec markings. | n/a |
| New Brunswick        | • Mixed system.  
Tax Sharing Agreements with 13 of 15 First Nations. The government returns to the First Nation 95% of provincial tobacco tax collected on-reserve to non-First Nation consumers.  
Retailers sell black-stock tax exempt tobacco to First Nation purchasers through either a refund system, or in older agreements a quota amount that is set aside for the community. | 13 of 15 First Nations |
<table>
<thead>
<tr>
<th>Province</th>
<th>System/Agreements</th>
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<tr>
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<td>•</td>
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<tr>
<td>Newfoundland &amp; Labrador</td>
<td>• Individual agreements with each First Nation.</td>
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<tr>
<td></td>
<td>• One First Nation uses an allocation system;</td>
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<tr>
<td></td>
<td>• In a second community, the band council establishes its allocation for the band-owned retail store;</td>
</tr>
<tr>
<td></td>
<td>• A third community in central Labrador uses a refund system.</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>• Province has agreements with each First Nation.</td>
</tr>
<tr>
<td></td>
<td>• Tobacco is sold with provincial tax applied, the province then rebates to the First nation an amount equal to the tax on the tobacco estimated to be consumed by First Nations consumers.</td>
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</table>
U.S. Tobacco Tax Compacts

- A variety of U.S. States have reached tax agreements/compacts with federally recognized Tribes.

- Typically, these compacts require the Tribe to tax a tobacco tax equal to the State rate, and to require retailers only purchase for State-licensed wholesalers.

WASHINGTON STATE

- The majority of Tribes in Washington State have entered into tobacco compacts with the State whereby a tribal tax equal to the State tobacco tax rate is imposed on sales on-reserve. A tribal tax stamp is required for tobacco products.
  
  - Some compacts allow the Tribe to exempt its membership from the tribal tax.
  - In some cases, compacts had a phase-in period where the tribal tax rate began at 80% of the State rate.

- The tribe typically retains 100% of tribal tax revenues collected. Compacts require Tribes to use revenues for essential government services, and not to subsidize Tribal cigarette and food retailers.

- Compacts typically include self-regulatory measures, such as licensing and compliance requirements for on-reserve manufacturers, distributors, and retailers.
  
  - Measures such as third-party audits are included to verify compliance with the agreement.

- Compacts also include transportation components, including notification to the State when tobacco products are being shipped between Tribes.

- One Tribe in Washington State – Puyallup Tribe (an urban reserve near Tacoma) – negotiated a unique compact with the State where the tribal tax is equal to 80% of the state tobacco tax rate, and in return remits 30% of revenues to the State.
Models presented at Tobacco Forum

<table>
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<th></th>
<th>B.C.</th>
<th>Washington</th>
<th>Oklahoma</th>
</tr>
</thead>
</table>
| **Challenge**  | - Tax exempt cigarettes were being sold off-reserve or sold to non-First Nation consumers in large quantities.  
                  - Conflict with B.C. government.                                          | - Ongoing conflicts and litigation with the State around enforcement of tobacco. | - Litigation and conflict with State over selling tobacco to non-tribal members and collection of tax. |
| **Solution**   | - First Nation tax agreement with provincial and federal governments that retrocede taxes to the First Nation community. 
                  - Agreement contains a formula for amount of cigarettes available to each Band member. 
                  - Band also receives GST on alcohol and fuel.                                   | - Tobacco agreement with State (referred to as Tobacco Compact)                  | - Tobacco agreement with State (referred to as Tobacco Compact) |
|                |                                                                      | - State has agreements with 28 out of 29 tribes 
                  - 8 year term of compacts and automatic renewal                                     | - State has agreements with majority of Tribes                                    |
| **Taxation: Price Parity** | - No price difference of cigarettes on or off reserve.  
                  - Sales on reserve include amount equal to provincial tobacco tax        | - No tax exemption to Tribal members.  
                  - Tribe receives a portion of compact tax collected (Tribal portion 65% in 2015 and will drop to 60% in 2016) 
                  - State retains the balance.                                                    |                                                                              |
| **Tax Exemption** | - Ministry of Finance administers the tobacco tax amount, based on a consumption formula. 
                  - Province charges $10,000 annually for administration.                       | Tribe collects a tribal tax equal to State tax without State involvement. 
                  - Tax is collected via a Tribal stamp applied by wholesalers 
                  - Tribe retains all tax revenue                                               | The State collects the compact tax at the wholesaler level, and remits to the Tribe. |
|                | - Band also adopted a First Nations Goods and Services Tax, equal to HST. 
                  - Band collects taxes from businesses on reserve.                             |                                                                            |                                                                              |
| **Administrati on** | - Third-party auditor used to ensure compliance by Tribe (no accounting records are given to State) |                                                                            |                                                                              |
| **Other**      | - No additional self-regulation.                                      | - Licensing of retailers, wholesalers, and manufacturers.                     | - Licensing of retailers, wholesalers, and manufacturers.                     |
|                | - Record-keeping and compliance requirements.                        | - Record-keeping and compliance requirements.                                 | - Record-keeping and compliance requirements.                                 |
| **Regulation Model** | - Improved relationship with the state. 
                  - Revenue generated for the Tribe.                                           | - Improved relationship with the state.                                        |                                                                              |
|                | - Still approximately $20 a carton price difference between Tribal and Non-Tribal cigarettes. |                                                                            |                                                                              |
| **Impacts**    | - Black market seen to disappear when First Nations entered into agreement with province |                                                                            |                                                                              |
| **Retail model** | - Revenue generated for the First Nation.                            |                                                                            |                                                                              |
| **On-reserve Manufacturing** | - Tribal retailer on-reserve.                                        | Mix of Tribal and independent retailers.                                     | 2 independent retailers and 1 Tribal shop                                    |
|                | - Yes                                                                 |                                                                            |                                                                              |
|                | - Manufacturing owned by Tribe                                        |                                                                            |                                                                              |
|                | - 25 employees                                                        |                                                                            |                                                                              |
|                | - 3 Tribal brands of cigarettes                                       |                                                                            |                                                                              |
|                | - Buy raw leaf tobacco from South Carolina                            |                                                                            |                                                                              |
| **Revenue Distribution** | - Annual per capita distribution to Nation members. 
                  - Nation members determine where revenue is spent.                          | - No distribution of revenue to tribal members. 
                  - Revenue invested in other economic development projects. 
                  - Tax revenue cannot be used to subsidize cigarettes. 
                  - Tribal manufacturer sells at lower price than other brands and may subsidize from other resources (fishing). | - No distribution of revenue to tribal members. 
                  - Revenue invested in education and other social development projects for Tribe. |
| Distribution of Revenue | 2014/15 - $3 million; 37.5% General Distribution 
                  25% Housing; 12.5% Job creation and training 
                  12.5% Elders; 12.5% Youth 
                  - Concern that Nation members want a 100% distribution of revenue. 
                  - Band voted to stop funding economic development projects due to poor results. |                                                                            |                                                                              |
APPENDIX F

First Nations Tax Commission
Presentation
March 2nd, 2017
Toronto, Ontario
Supporting First Nations

Role of the First Nations Tax Commission

Tobacco Forum
Toronto, March 2, 2017

Presented by the First Nations Tax Commission

Introduction to the FNTC

• Established in 2005 (First Nations Fiscal Management Act or FMA) and began operating in July 2007.

• Ten member shared-governance federal Commission.

Overall responsibility of maintaining the integrity of First Nation taxation
Mission

To help First Nation governments build and maintain fair and efficient tax systems and to ensure those First Nation communities, and their taxpayers alike, receive the maximum benefit from those systems.

Objectives

- Support First Nation Jurisdiction
- Reconcile Interests
- Promote Transparency
- Support Sustainable Economic Development
- Promote Harmonization
- Educate and Promote Understanding
- Promote Training
- Foster Administrative Efficiencies
Functions and Service Areas

- Corporate Services
- Policy Development
- Law, By-law Review and Regulations
- Education
- Dispute Management
- Communications
- First Nations Gazette

Tools & Services

- Technical support
- Law development grant program
- Sample laws with annotations
- Guides & toolkits on FNTC.CA
- Education and Training (Tulo)
- First Nations Gazette
- Presentations
- Dispute resolution
- Negotiation support
Tobacco Taxation: Preliminary Concept

An Exploratory Proposal for Interested First Nations

Tobacco Forum
Toronto, March 2, 2017

Presented by the First Nations Tax Commission

A Preliminary Suggestion on Tobacco Tax Jurisdiction

Proposed Concept

• Part 1 Fiscal Management Act
  ▪ The FNTC will work with interested First Nations, Ontario, and Canada to explore the potential for tobacco taxation within the existing powers of the First Nations Fiscal Management Act.
A Preliminary Suggestion on Tobacco Tax Jurisdiction

Proposed Concept
• Part 2 Explore the Expansion of FMA Powers
  ▪ The FNTC will work with interested First Nations, Ontario, and Canada to explore the opportunity to include tobacco taxation powers within the First Nations Fiscal Management Act in the future.
  ▪ As a secondary option, the FNTC will work with interested First Nations, Ontario, and Canada on the possibility to design a mechanism to enable participating First Nations to collect HST on tobacco sales on reserve as well.

Proposed Next Steps
• If First Nations, Canada and Ontario are interested:
  ▪ The FNTC will develop a more comprehensive proposal for presentation to potential First Nation proponents and other stakeholders.
  ▪ The FNTC will begin working with interested First Nations, Canada and Ontario on the design of a tobacco tax under the FMA.
  ▪ Along with interested proponent First Nations, the FNTC will begin working on the potential option to specifically include tobacco taxation within an expanded FMA.
APPENDIX G

Criminal Code of Canada

Part IV

s. 121
PART IV Offences Against the Administration of Law and Justice

Selling, etc., of tobacco products and raw leaf tobacco Interdiction — produits du tabac et tabac en feuilles

121.1 (1) No person shall sell, offer for sale, transport, deliver, distribute or have in their possession for the purpose of sale a tobacco product, or raw leaf tobacco that is not packaged, unless it is stamped. The terms tobacco product, raw leaf tobacco, packaged and stamped have the same meanings as in section 2 of the Excise Act, 2001.

Exceptions — subsections 30(2) and 32(2) and (3) of Excise Act, 2001

2) Subsection (1) does not apply in any of the circumstances described in any of subsections 30(2) and 32(2) and (3) of the Excise Act, 2001.

Exception — section 31 of Excise Act, 2001

(3) A tobacco grower does not contravene subsection (1) by reason only that they have in their possession raw leaf tobacco described in paragraph 31(a), (b) or (c) of the Excise Act, 2001.

Punishment

(4) Every person who contravenes subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than five years and, if the amount of tobacco product is 10,000 cigarettes or more or 10 kg or more of any other tobacco product, or the amount of raw leaf tobacco is 10 kg or more,

(i) in the case of a second offence, to a minimum punishment of imprisonment for a term of 90 days,

(ii) in the case of a third offence, to a minimum punishment of imprisonment for a term of 180 days, and

(iii) in the case of a fourth or subsequent offence, to a minimum punishment of imprisonment for a term of two years less a day; or
(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than six months.

**Subsequent offences**

(5) For the purpose of determining whether a convicted person has committed a second or subsequent offence, an offence under this section for which the person was previously convicted is considered to be an earlier offence whether it was prosecuted by indictment or by way of summary conviction proceed
APPENDIX H

COTTFN Response

To Ontario Raw Leaf

Regulation Review
September 26, 2012

Ms. Anne Bird
Sr. Policy Advisor, First Nations Engagement
Strategic Partnerships and Program Policy Division, Ministry of Finance
7 Queen’s Park Crescent
#405
Toronto, ON
M7A 1Y7

Dear Ms. Bird,

I would like to thank you for soliciting the input of the Chippewas of the Thames First Nation in relation to the proposed regulations concerning raw leaf tobacco in Ontario.

As you know, we have stated in the past the regulation of all tobacco related trade in the province must accommodate the very specific and unique interests of the First Nation Peoples in Ontario. Our discussions to date regarding the downstream tobacco market (manufacture, distribution, wholesaling and retailing) have been positive and I am confident we can address the raw leaf issues in the same spirit of partnership we have enjoyed to date.

That said there are issues related to the proposed raw leaf regulations which I feel will require a substantial level of effort by all parties to ensure the interests of First Nations are addressed in those regulations. The following thoughts are my initial reaction to the question of the proposed raw leaf tobacco regulations and may further develop, evolve and/or change as more thought and research is committed and of course through the dialogue with your Ministry.

I would first like to address the traditional use of tobacco by the Chippewas and other First Nations in Ontario. Tobacco has been utilized for thousands of years in inter-Nation ceremonial objects and medicines trade, ceremonies, prayer, offerings and as gifts, and therefore the regulation of these uses would be inconsistent with our traditional ways. For that reason I would suggest these activities be exempted from the proposed regulations. I would be more than willing to discuss how the traditional use practices may be identified and if systems must be put in place to differentiate these uses from those that would be considered commercial, those systems must be developed and administered by our own People. Again I feel confident we could work together to address any issues or concerns the Province may wish to bring forward in relation to traditional usage.
In relation to the commercial aspects of raw leaf tobacco our understanding is the major thrust of the proposed regulations by Ontario is to ensure a tracking system is in place for said tobacco from the time growers are identified and product is harvested, through to the buyers of said product, the transportation of the raw leaf, and finally to the manufactures’ facility. Again I feel in the spirit of partnership we have developed over the last couple of years, such systems related to First Nations in all aspects of the supply chain should be administered by First Nations.

I would suggest these functions would be most economically administered through a central agency, acting on behalf of all involved Ontario First Nations and in concert with the Ministry, thereby eliminating the need for each First Nation to develop its own administrative arm. The development of such a centralized body would ensure a consistency of administration, agreed upon standards and protocols and a negotiated fee structure to underwrite the costs of such a body. Obviously the details related to the development of such a provincial First Nation organization would require much more effort than have to date been committed and the COTTFN would be interested in entering further discussions with the Province related to the development and implementation of such an organization and the requisite systems.

When we consider what might be required to develop an agreement leading to the launching of province wide First Nation raw leaf tobacco regulating body we can look to models previously developed in the Province and shorten our developmental learning curve. In the cases of both gaming and automotive fuel the Province and First Nations have a history and we can enjoy the benefits of lessons learned and best practices. There are of course many other examples of such joint initiatives here in Ontario, as well as other jurisdictions in Canada and again those should be examined as well.

I look forward to discussing in greater detail how we might work cooperatively to address First Nation interests which may be impacted by the proposed regulations and suggest we schedule time in the near future for such discussions.

Yours truly,

Chief Joe Miskokomon

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info@cottfn.ca www.cottfn.com
CHIPEWEAS OF THE THAMES FIRST NATION
Office of the Council

CHIPPEWEAS OF THE THAMES FIRST NATION RESPONSE PAPER TO
ONTARIO’S RAW LEAF TOBACCO REGULATIONS

OCTOBER 31ST, 2014

INTRODUCTION

In Chippewas of the Thames First Nation (CTFN) 2012 response to incoming Ontario regulations on raw leaf tobacco, Chief Joe Miskokomon posed two key propositions:

1) That First Nations traditional tobacco use be exempt from the regulations; and
2) The development and administration of regulations on First Nations commercial tobacco activity should be undertaken through the formation of a province-wide First Nations regulatory agency.

Our current response to Ontario’s incomings regulations and the related 2014 Ministry of Finance discussion paper is informed by recent research and discussion around the tobacco economy as well as the 1996 report of the Royal Commission on Aboriginal Peoples (RCAP), especially the chapter on economic development (Volume 2, Part 2, Chapter 5). We expect that further research and discussion will allow us to continue developing our perspective on this question. Our contribution to the debate on tobacco regulations focuses on the following features:

A. Our perspective on the historical and contemporary context that frames the First Nations tobacco economy;
B. Our aspirations to govern the future development of a CTFN tobacco economy; and
C. Questions posed in Ontario’s 2014 discussion paper on raw leaf tobacco oversight.

HISTORICAL BACKGROUND

The key starting point for CTFN in the discussion of tobacco is based on the understanding that this natural resource has been utilized by First Nations for thousands of years as part of ceremonial, medicinal, trade and personal use practises. We believe that the historical context is critical to understanding the current situation facing First Nations today as noted by the RCAP report, “We place strong emphasis on understanding the historical picture, which helps to explain how the economies of Aboriginal communities reached their present state.” (Volume 2, Part 2, Chapter 5, Section 2.2)
We also believe that any discussion or measures undertaken in relation to the current truncated nature of First Nations economies, including that in the tobacco sector, must consider the cataclysmic impacts of Canada’s suppression of indigenous governance and customary law, traditional and agricultural economics and cultural practises.

The RCAP report provides an overview of how political suppression contributed to economic malaise:

> Often the attempt to replace traditional governing structures with new ones created internal divisions that have lasted to the present day, and the ensuing disruptions interfered with the socio-economic development of communities for decades. (Volume 2, Part 2, Chapter 5, Section 1.1)

The Canadian public is more familiar with the assimilating mission of government-mandated residential schools but are much less aware of the stifling pass law system which forced First Nations individuals to have Indian agent permission to travel off-reserve or engage in a wide range of economic activities (RCAP, Volume 1, Part 1, Chapter 6).

The economic exclusion enforced by the pass law system was later reinforced by blanket discrimination against First Nations producers in the setting of sales quotas for their goods from Canadian marketing boards or in receiving public resourcing for their developmental needs. Aggravating this still further was the fact that Canadian education for First Nations students did not provide for the kind of vocational training that would allow them to successively participate in an increasingly competitive agricultural market. The broad outcome of these imposed circumstances was that First Nations were, over time, either entirely excluded from the agricultural economy or largely relegated to low-wage labour roles (RCAP, Volume 2, Part 2, Chapter 5).

CTFN also believes it is important to note that, as our people have been shut out of our rightful share of economic opportunities and benefits across the board, Canadian industry, governments and newcomers have reaped immense wealth from tobacco and the other natural resources of our traditional territory. The results of this economic activity carried out by private industry and individuals include the depletion of many natural resources leaving tobacco as one of the few remaining options from which First Nations can derive economic benefit. For CTFN, the context of suppression, restriction, discrimination and resource depletion frames the current First Nations tobacco trade which is limited in nature and scope as well as unrecognized and unsupported by Canada.

**PRINCIPLED APPROACH**

The starting premise for the legitimacy of First Nation governance and jurisdiction over tobacco comes from our long standing and diverse uses of the natural resource long before the arrival of Europeans. This premise is consistent with the broader principle of national self-determination for indigenous peoples as recognized in the United Nations Declaration for the Rights of Indigenous Peoples.

CTFN notes that this principle is reflected in Section 35 of the Canadian constitution which recognizes and affirms Aboriginal and treaty rights without defining them. CTFN is a treaty nation and so we believe it essential to highlight the RCAP report’s comments on the particular importance of treaty rights to the economic relations of First Nations:
Treaty nations regard their treaties...as the centre piece of their relations with the Crown...these treaties should encompass the economic and other issues that arise between governments, including matters of fiscal transfers, taxation, trade and assistance.

(Volume 2, Part 2, Chapter 5, Section 2.2)

CTFN is seeking Ontario’s recognition of First Nations treaty rights as they apply to the tobacco and wider economy. CTFN views the treaty relationship as key in the establishment of specific government-to-government agreements based on a nation-to-nation relationship. Such a relationship should affirm the equality of governing systems and laws in principle; this is especially important in a circumstance where immense political and economic inequality in material terms prevail between Canada and First Nations.

CTFN believes that current Canadian legislation and regulations on tobacco is contrary to the treaty relationship and set the stage for serious conflicts that could damage relations for years to come. We express this view with a sincere desire to avoid such conflict.

In broad terms, CTFN’s prescription for change is that the development of new government-to-government agreements based on an equal nation-to-nation relationship must be expressed in new institutional mechanisms connected with resourcing that can help First Nations determine their own path out of government-imposed economic dependence. Such new arrangements are the starting point for full First Nations participation in the economy and improved socio-economic outcomes and capacity development for all our members.

**Traditional Use Recognition**

Ontario has indicated that, while the province does not want to infringe on First Nations traditional uses of tobacco, they do want to ensure that traditional use will not serve as a cover for commercial activity.

CTFN calls upon Ontario to not pursue regulatory or enforcement measures that infringe on First Nations’ Section 35 rights or our broader governing aspirations to exercise jurisdiction over tobacco traditional uses. This is particularly important where such potential measures are not well informed of current on-reserve circumstances. In contrast to the broader rationale for the new regulations on commercial tobacco activity — responding to oversight failures — there is no compelling evidence that First Nations traditional use is being used as a cover for commercial activity. Nor is the concern cited by Ontario in this area consistent with the perspectives of those typically involved in diverse traditional tobacco use activities who are adamantly opposed to such a supposed subterfuge.

In response to the Ministry of Finance’s discussion paper question of whether Ontario should include a definition of First Nation traditional tobacco use in the incoming regulations, CTFN reaffirms its position that such a definition opens the door to regulation which is unacceptable to us. However, in light of Ontario citing traditional use as a potential regulatory ‘loophole’, legal silence on the question is also a danger if enforcement is oriented to dealing with the ‘problem’ identified by the compliance agency.
As a practical alternative to definition or silence, CTFN urges Ontario to recognize First Nations jurisdiction over traditional tobacco use. Such recognition would set the stage for agreements by which First Nations ensure that traditional use will not be utilized for commercial activity. The arrangements that result from such agreements should include communications protocols that mandate section 35 inquiries by enforcement agencies to First Nations governments preceding any move to confiscation or prosecution. Such arrangements should draw upon the cultural safety best practises of other Canadian regulatory agencies and result in education and training with the province’s compliance and enforcement staff.

**FURTHER CONSIDERATIONS**

CTFN seeks Canada’s (federal and provincial) recognition and affirmation of First Nations governance and jurisdiction over an expanding tobacco economy on our traditional territory. We are at the beginning stages of recovery from unjust political restrictions and economic exclusion from agricultural production and trade.

CTFN wants to see the unrecognized tobacco economy become recognized and supported through agreements with Canada and Ontario that assist in the transition to full First Nations participation in the economy.

CTFN wants Ontario to recognize and affirm First Nations governance and jurisdiction over the full range of tobacco economic activities—growing, processing, manufacturing, marketing, distribution and retail—through government-to-government agreements. These agreements should establish full First Nations authority on reserve and shared decision making in the rest of our traditional territory particularly in regards to transportation requirements for delivering to markets off-reserve both inside and outside Ontario.

CTFN is adamant that these government-to-government agreements must be enshrined in provincial legislation and properly reflected in all tobacco regulations. These agreements will undoubtedly include detailed definition of the workings of a tobacco governance system that establishes licensing, compliance and reporting elements under First Nations jurisdiction. We believe that recent experience in First Nations agreements in Ontario on gaming and automotive fuel can provide lessons for the development of such agreements.

CTFN also wishes to see the initiation of a dialogue between Ontario and First Nations on developing different levels of First Nations governance over our tobacco economies. This would include developing jurisdiction agreements and agencies at the local, regional and provincial levels.

**CONCLUDING COMMENTS AND INQUIRIES**

CTFN appreciates the opportunity to provide feedback on Ontario’s regulatory system of raw leaf tobacco. We are hopeful that our feedback can seriously inform changes to the current regulations as well as set the stage for government-to-government agreements on tobacco between First Nations and Ontario. We wish to conclude our response with some requests and inquiries to Ontario.

First, CTFN is requesting that Ontario provide us with a formal substantive reply to our response including the intentions that Ontario has in terms of potential changes to the regulations based on the concerns and feedback that we and other First Nations have provided.
Second, we want to inquire about when and how Ontario intends to review its tobacco regulations in the future. Has Ontario established a timeline to review the incoming raw leaf tobacco regulations? Are there any changes that Ontario would make to the process of soliciting feedback from First Nations in such a regulatory review?
APPENDIX I

COTTFN Response to Ontario Review of the Cigarette Allocation System
October 21, 2015

Electronic Delivery
info@allocationreview.ca

To the Facilitators:

RE: ONTARIO’S ALLOCATION SYSTEM REVIEW

We would like to thank you for soliciting the input of the Chippewas of the Thames First Nation and for visiting our community in August 2015 regarding this review.

As you are aware, this First Nation has had ongoing policy discussions through a Technical Table with the Province of Ontario. Our policy-based discussions with the Province of Ontario to date, regarding the tobacco market as it applies to cigarettes (manufacture, distribution, wholesaling and retailing), has been informative. We feel that we are moving towards developing a mutual understanding of our respective interests.

While this allocation review is separate from our technical table discussions with Ontario, we would like to take this opportunity to share our concerns and positively influence the recommendations flowing from it.

CEREMONIAL USE

Tobacco has been utilized for thousands of years in inter-tribal trade covering both ceremonial objects and prayer, offerings and as gifts and protocol to the spirit world, and therefore the regulation of these uses may be inconsistent with our traditional ways and subject to s. 35 of the Constitution Act.

While the allocation formula is limited to cigarette use, which it may be argued is a traditional use, we look to a liberal interpretation of our s. 35 rights. If other forms of tobacco are subject to the allocation, then these should also be subject to a liberal interpretation as well. We suggest, that in addition to a s. 87 application of the Indian Act on this matter, whereby it is a mere question of taxation on personal property of an Indian that there be due consideration given to our cultural practice, heritage and identity as Anishinaabeg people.

We have concerns that in this exercise that non-rights bearing communities and public interest groups will not understand how our rights are to be balanced against that of the general public.
We are also concerned that the level of understanding of our cultural traditions will be interpreted by groups and stakeholders that have not had any cultural sensitivity training. We are very interested in how these matters will be dealt with and how it will be brought forward in any recommendations.

**ALLOCATION FORMULA**

As noted by the Facilitators in the Discussion Paper 2.0 “Review of the First Nations Cigarette Allocation System in Ontario” there are obvious and outdated assumptions of the Allocation system and formula. There is a disparity of the Allocation System developed in the early 1990’s which was designed to deliver tax exemptions on cartons of cigarettes to First Nation consumers, and what we know today. Today, it is well established that that there are definite human health effects from smoking that are both direct and indirect; and that smoking can also impact non-smokers. Since the 1990’s, governments have had to be responsive to the negative human health effects of smoking, and so have attempted to discourage the habit by increasing taxes on cigarettes; and creating legislation and regulations to begin to limit smoking.

In arriving at the annual formula used by the Ministry of Finance in the Allocation System\(^1\) for cigarette consumption by status Indians on-reserve, we acknowledge that the assumptions and values used in the formula are variables that are dependent on legal, social and economic norms. We understand that there is a public health interest in smoking reduction, and that there may be some exploration through this exercise to adjusting the Base Allocation of cigarettes for each First Nation downwards, to match present societal norms around tobacco consumption.

Our First Nation, through ongoing capacity development, however has identified other problematic aspects of the formula. As a First Nation, we note that under the formula, that we can increase our total allocation by 20% if we enter into a Retailer Agreement with our on-reserve vendors. Our First Nation has historically steered away from these arrangements because the Retailer Agreement is actually a First Nation governance issue that is internal to the First Nation.

**GOVERNANCE**

What we focused on in our discussion in August 2015, were issues that pertained to governance and the Retailer Agreement aspect.

\(^1\) \([(R \times 2.5 \times 1.423) + (OR \times 2.7 \times 0.423)] = \text{BASE ALLOCATION (in cartons of 200 cigarettes)}\)
a. Human Resources and Data Collection

By itself, any First Nation may have a Retailer Agreement with vendors which may be of little use if it is not connected to on-the-ground implementation and human resources assigned to the oversight. First Nations need capacity in this area that does have a cost associated with it. This has largely been the disincentive for Chippewas of the Thames to enter into a Retailer Agreement system.

Beyond the human resources that are needed for this, and given the growth of the industry, doing this job would now be more difficult and so there does need to be some investment to create baseline data and data collection systems. Information systems for data collection are needed to measure whether or not public policy and practice are bringing about the desired result of smoking reduction; along with tax disincentives at the point of sale for non-Indian Status persons. Secondly, in our region of Ontario, there are advertising campaigns and attempts to malign First Nations for creating a contraband market and to identify this as a First Nation problem. We feel that this conclusion is misguided and premature, because without data there is no way to test this hypothesis of the groups that are advancing this idea.

Due to this lack of data, we also question the assumptions that simply adjusting the current allocation formula to create an overall downward adjustments in domestic cigarette volumes will result in a reduced supply of cigarettes on-reserve. There are also native brand manufacturers operating under a federal license; and there may be imported contraband suppliers that may also be contributing to the supply. The issues have become more complex than the formula and it speaks to governance and the need for better empirical data; and not resorting back to a ration-type of system, which is the allocation system.

b. Compliance and Safeguards

As has already been stated that there are real human resource costs to ensuring that vendors are complying with allocation system requirements by not selling to non-Indian status persons. We do resent that the incentive for First Nations to move towards self-regulation or compliance under the current system, is by increasing the allocation up by 20% as a bargaining chip or form of payment for ensuring these Retailer Agreements are being enforced. This approach is no longer be consistent with public policy.

In a sense, the governance costs are fictitiously recouped in the form of more cigarettes to the First Nation; and there has been no real relationship built on coordination or cooperation between the province of Ontario and ourselves. Ideally, the Retailer Agreement system should have had some supporting relationship with First Nations and together we could have built in an assessment or diagnostic of what works and what does not. In a sense, the current
CHIPPEWAS OF THE THAMES FIRST NATION

Our First Nation is aware of the practicalities of administering the allocation system as we felt that we needed better guidelines. This was signalled by our own governance needs, and in doing that we were not motivated by the 20% increase in the allocation and the Retailer Agreements. So, in 2006 we created administrative rules related to vendors and how they could qualify for allocation, versus just applying for it, as we were trying to promote more responsibility on the part of vendors.

In addition to creating conditions that had to be met by vendors to qualify for an allocation, we, the First Nation, also applied our own surcharge to the cigarettes purchased by vendors that would then go into a community fund for recreation. Vendors at COTTFN have been working with these arrangements for some time now and so the allocation has a dollar value associated with it that the Band now uses to fund recreational programs to promote healthy lifestyles for Band members.

On a larger scale, we realize that these actions that we have taken, are in principle, akin to some of the functions performed by the Ministry of Finance. A levy or surcharge is applied and re-distributed to another section of our government. However, we realize that in a new system that might apply similar concepts to First Nations on a wider scale, we would see a role for a more specialized and central agency that would work with First Nations to ensure a consistency of administration, agreed upon standards and protocols, and a negotiated fee structure to underwrite the costs of such a body.

Obviously the details related to this type of First Nation partnership, an organization with regional or provincial-span, is perhaps beyond the mandate of the allocation review, but COTTFN continues to be interested in entering further discussions about this with potential partners.

ENVIRONMENT & LAND USE IMPACTS

What has not been discussed in great detail is the cumulative effects of a non-regulatory system on-reserves for cigarette vending. One of these impacts is that there tends to be a correlation between cigarette vending and dispensing fuel at the retail level as well. As a land usage, these two activities have tended go hand-in-hand in a typical convenience store establishment.

In 2014, the Chippewas of the Thames did an extensive Phase I Environmental Site Assessment for its reserve lands. Under this assessment, a number of potentially contaminated sites were identified because of fuel storage tanks that had not properly been decommissioned. We know, at a general level, that some of the sites in question were also cigarette vendors that were located on Certificate of Possession (CP) lands.
These sites are still subject to Phase II Environmental Assessment and those studies for fuel storage tank issues are estimated in the realm of $200,000.00; and that does not include any costs for cleanup. This will only help us to make further determination of the contamination.

Again, these issues speak to the issue of governance and the need for First Nations to diversify their on-reserve economies because continual start-ups of gas bars and the associated activity of cigarette vending in the community do have an environmental impact. This becomes even more problematic if the vendors are not acting in a socially responsible way and are abandoning the facilities. At COTTFN we are taking small steps to address this situation, but it is going to take longer term planning, education and effective law making to create better community and environmental safeguards.

EQUITY

In the Facilitator's Report 2.0 there is some reference to the issue of allocation cigarettes being sold to individuals that do not have Indian Status, and are not entitled to the tax exemption; and that his has created an unfair advantage for on-reserve vendors.

We would like to state that, again, without any real data collection that the true extent of the problem is not known. However, this problem is more recent if it is occurring, when we start to examine the historic and disproportionate socio-economic indicators at Chippewas of the Thames, which is typical of most First Nations. The issue of equity, as it is presently characterized in the Facilitator's Report 2.0, does not adequately identify this and is of concern to us.

The larger social context of First Nation marginalization, and not having been integrated into the local economy, is what has helped set the stage for an unregulated industry on-reserve, as most individuals are responding to the need to survive at poverty levels. After the Band Administration, the tobacco vendors are a major employer at the First Nation level. The current tobacco allocations, then, do have an economic benefit beyond the dollar value of the allocation. Should there be a radical shift in the allocation system by the province of Ontario, we do have concerns about the economic harms that may come to First Nations people. Currently, there are very few options for employment at the First Nation, and there are associated activities with the vending such as the fuel sales, convenience store sales, and a local arts and crafts industry at these vending sites.

As a policy option, if there is going to be a monumental change that is going to affect First Nations, then we note that government needs to create options that will offset economic harms created by any possible government reforms. Despite its loopholes and being correct in
principle, we note the federal tobacco transition program, which was an attempt to discourage tobacco farming.

RECONCILIATION & RELATIONSHIPS

In the Facilitators in the Discussion Paper 2.0 “Review of the First Nations Cigarette Allocation System in Ontario” there is a statement that says, “First Nations leaders “resent not only the introduction of this system but the maintenance of it as well. First Nations characterize Ontario’s allocations as akin to “rations” founded on what they view as Ontario’s desire to stop gap the loss of tax revenue”.

First Nations have been marginalized and have at times had poor relationships with other levels of government. We feel that this has changed and can continue to change in a positive manner. What is promising, is that we continue to explore self-regulation at COTT and we note that there may be a more comprehensive way forward for First Nations and look to interim solutions towards the more fulsome responses that engage First Nations.

In August, we shared that we are one of two communities that are currently engaged in the Pilot Project with the Province of Ontario around the self-regulation of tobacco for First Nations. As has been stated by our representatives in August, the regulation of the tobacco trade in the province must accommodate the very specific and unique interests of the First Nation Peoples in Ontario. We have an historical and spiritual connection to semaa (tobacco) that is practiced and honoured in the community.

The legislation that covers most First Nations is the Indian Act, and it is very archaic. Until very recently, First Nations had no other alternative for their governance other than customary law and the Indian Act. Under the Act, First Nations have the power to make by-laws. However, the enforcement provisions are related to fines of $50.00 per day, and this will hardly be enough of a fine to create a disincentive for any on-reserve activities that are contrary to band by-laws.

First, what we wish to emphasize in the allocation review is that the Minister of Finance currently has the ability to enter into Agreements with First Nations for tobacco sales on-reserve. We wish to re-iterate that this should not be narrowly focused and that the approach of the Minister should not only be informed only by the Indian Act but by the larger developments in aboriginal policy and relationships, especially where cooperative approaches are contemplated.

In August, we mentioned the need for reconciliation-based approaches to regulation and in entering agreements with First Nations. We encourage an approach towards developing...
agreements, and not unilateral or formulaic-based solutions. We would like to see equal focus on the Reconciliation and Relationships perspective in these Agreements.

We note that in Canadian legislation and in jurisprudence, that First Nations are no longer restricted to the narrow confines of the Indian Act, as we have the power to move away from the Indian Act and enter into other legislative frameworks such as the First Nation Land Management Act, First Nations Commercial Industrial Act and the self-government and land claim agreements. These are factors that should be considered in any new framework or agreement.

We view these more modern arrangements as small steps towards Canada's acceptance of our right to be self-determining, although we understand that Canada takes the narrow view that our modern foundational document, the UN Declaration on the Rights of Indigenous Peoples, is merely aspirational at this point.

CONCLUSION

Tobacco has been utilized for thousands of years in inter-tribal trade covering both ceremonial objects and prayer, offerings and as gifts and protocol to the spirit world, and therefore the regulation of these uses would be inconsistent with our traditional ways. We also look at the Crown's Duty to Consult, as a more positive framing of the Crown-First Nation relationship in moving away from the Indian Act and so this is why we feel that any agreement on tobacco must be pursued from that perspective.

We are advocates for more progressive administrative arrangements and together we must develop these. We look forward to the draft and final recommendations emanating from this exercise. I can be reached at (519) 289-5641 ext. 225 if you have any other questions or comments.

Yours truly,

Rolanda Elijah
Chippewas of the Thames
Project Lead – Tobacco

C: Paul Devnich, Director, Ministry of Finance
   Matt Garrow, Director, Ministry of Aboriginal Affairs
APPENDIX J

Constitution Act, 1982

s. 35
PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of “aboriginal peoples of Canada”

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. (96)

Commitment to participation in constitutional conference

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the “Constitution Act, 1867”, to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item. (97)
APPENDIX K
COTTFN
Community Allocation Guidelines
Chippewa of the Thames First Nation

TOBACCO ALLOCATION GUIDELINES

The Chippewas of the Thames First Nation Finance Assistant will administer the Chippewas of the Thames First Nation non-taxable tobacco, under the authority of Chief and Council.

Administration fees are charged to administer the tobacco. It is our community’s consensus that these fees are to be donated to our recreation department; therefore 100% of all Tobacco Administration fees will be credited to the recreation budget.

Membership Orders
1. Members are eligible for a quota of tobacco of not more than five cartons per month.
2. The Administration fee for tobacco will be the cost per carton rounded up to the nearest dollar, plus $2.00.
3. Orders for tobacco are due by the 12th of each month. Orders should be in 5 business days after the 12th of the month. This will be the only order per month.
4. We accept Cash, Cheque or Money order.
   a. Please Note: Any NSF Cheques will be subject to a fee of $40.00 and no future orders will be accepted until the account has been paid in full.
5. Those members who have been suspended an allocation must reapply for their allocation; however, they may not be given an allocation.
6. All tobacco is to be picked up by the 24th of the month. As of the 25th of the month any remaining tobacco will be offered to vendors for purchase.

Vendor Rules
1. To be considered for a tobacco allocation for the purpose of selling non-taxable tobacco, vendors must first be recognized by council as an active community business.
2. Vendors must apply each year to be eligible.
3. The Administration fee for tobacco will be $2.00 per carton.
4. Vendors will be allotted their equal quota, at the beginning of the fiscal year.
5. Vendors will be allotted their quota, only after the fees per carton have been paid.
6. All eligible vendors must operate within Chippewas of the Thames First Nation Territory, no exceptions.
7. Vendors will not sell to any children under the age of 19. Suspension of the allocation will occur if this happens.
8. These allocations are to be sold to First Nation’s members only. If Council is notified of sales to non First Nations members in writing, Council may decide to put a freeze on the eligible quota remaining. Council will analyze the situation and decide if the vendor will be eligible to continue the allocation. Also, Council may revoke, unfreeze or continue the suspension.
9. The Chief and Council reserve the right to revoke, alter or redistribute the tobacco allocations.
10. We accept Cash, Cheque or Money order.
    a. Please Note: Any NSF Cheques will be subject to a fee of $40.00 and no future orders will be accepted until the account has been paid in full.
8. Those vendors who have been suspended an allocation must reapply for their allocation; however, they may not be given an allocation.
10. There will be no advances on quotas. No exceptions.
11. Any portion of your quota not paid will be redistributed among the other vendors.
Appendix L

Provincial Tobacco Taxation

Years 1981 to 2016

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<tr>
<th>Effective Date (Date d'entrée en vigueur)</th>
<th>Cigarettes $/unit (Cigarettes $/unité)</th>
<th>Cut Tobacco $/gram (Tabac coupé $/gramme)</th>
<th>Cigars ($)</th>
<th>Source: Ontario Ministry of Finance</th>
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### Ontario Tobacco Tax Rates (Les taux de taxe sur le tabac)

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<th>Effective Date (Date d'entrée en vigueur)</th>
<th>Cigarettes $/unit (Cigarettes $/unité)</th>
<th>Cut Tobacco $/gram (Tabac coupé $/gramme)</th>
<th>Cigars ($/)</th>
<th>Source: Ontario Ministry of Finance</th>
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<td>$3.10 per pack of 20 cigarettes</td>
<td>$3.10 S par paquet de 20 cigarettes</td>
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<td>$3.87 per pack of 25 cigarettes</td>
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<td>$30.95 per carton of 200 cigarettes</td>
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<td>Tax on cigars is 56.6% of the taxable</td>
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* Taxable price of a cigar defined:
  1. Taxable price = the price for which the cigar was purchased by its retail dealer + a prescribed percentage (currently 2%) of that amount; or
  2. Taxable price = the price paid for the cigar by the consumer where a consumer purchases the cigar directly from the manufacturer or importer.
Appendix M

COTTFN $2.00 Levy

On Allocation Cigarettes

A Quick Analysis
Chippewas of the Thames First Nations (COTT) requested a brief comparative analysis of the Ontario tobacco tax rate and the COTT tobacco levy.

Ontario’s 2002 tobacco tax rate was at $17.20 per carton and has increased up to $30.95 in 2016/2017. COTT has maintained a tobacco levy rate of $2.00 per carton since implementation in 2002.

In 2002, the COTT tobacco levy was proportionately around 12% of the Ontario tobacco tax rate and has decreased to 6% by 2016.
Inflationary Change

If Ontario’s 2002 tobacco tax rate was only tied to inflation and was not increased through regulatory change, it would have increased from $17.20 to $22.09 by 2016.

- In this scenario, COTT’s constant $2.00 tobacco levy would have decreased in proportion from 12% to 9% of the Ontario tobacco tax rate.
If COTT’s tobacco levy rate was tied to inflation, by 2016 it would have increased to $2.57.

- At $2.57, COTT's tobacco levy would have decreased in proportion from 12% to 8% of the Ontario tobacco tax rate.

To maintain 12% proportionality to Ontario’s actual tobacco tax rate, COTT’s tobacco levy rate would have to increase to $3.60 today.