
***Tobacco on
Reserve:***

***Perspectives Shared
from First Nations***

***Facilitator's Final
Report***

Kathleen Lickers

Foreword

Since 2009, the Government of Ontario (“Ontario”) has been in discussion with First Nations leadership regarding on reserve tobacco issues. To further the government’s understanding, in July 2011 the Ministry of Revenue (now part of the Ministry of Finance, “the Ministry”) retained a Facilitator to continue this discussion by initiating a “process of listening” with First Nations leadership in an effort to better understand First Nations’ interests and their views going forward.

The Facilitator has heard from First Nations leaders who were prepared to share their perspectives involving on reserve tobacco and the existing regulatory system including Ontario’s cigarette allocation system. This report summarizes these perspectives. The Facilitator was also asked to provide recommendations on potential strategies on how Ontario could further engage First Nations. To this end, this report provides a number of recommendations for consideration.

The work initiated by the Ministry to date has been an important step. While much has been done, there is still more work to do. Neither side clearly understands the other’s goals and objectives. To the First Nations that participated, First Nations have felt economically marginalized by the actions of government while they strive to create sustainable communities. Tobacco on reserve is a new economy that has brought employment and opportunities that they might not otherwise have. To Ontario, the unlicensed, unregulated, tax free environment that has emerged on reserve undermines its efforts to discourage smoking.

In April 2011, prior to initiating the process of listening, Ontario introduced amendments to the *Tobacco Tax Act*. First Nations do not believe they were consulted and consequently they mistrust what Ontario may be seeking to achieve. The complexity of issues surrounding on reserve tobacco prior to these amendments are now complicated by what First Nations see as a lack of transparency that is counter-productive to building positive relationships.

Seeing a way forward, together, will require good will to be restored and meaningful dialogue to take place. Each side must inspire confidence and trust in the other to continue. Parallel with the process of listening, Ontario has been in dialogue with at least two First Nations who have advanced approaches that may guide a new course. All sides have a potential place to start. The opportunity exists. Whether the parties capitalize on these opportunities will be a matter for them to decide.

1. Introduction

Launched in 2005, the Government of Ontario has a *Smoke-Free Ontario Strategy* aimed at educating its citizens of the dangers of smoking, protecting persons from second-hand smoke and encouraging people to quit. Ontario has created legislative, policy, program and service tools to implement its strategy. Multiple ministries including Health and Long-Term Care (formerly Health Promotion and Sport); Aboriginal Affairs; Community Safety and Correctional Services; Agriculture, Food and Rural Affairs; Transportation; Infrastructure; and the Ministry of the Attorney General are involved on numerous fronts in support of this strategy.

The *Tobacco Tax Act*, which is administered and enforced by the Ministry in collaboration with the OPP and local police services, is a component of Ontario's Smoke-Free Strategy. Ontario views its tobacco tax as an important tool for discouraging tobacco use.

On April 21, 2011, the Minister of Revenue introduced Bill 186, *The Supporting Smoke-Free Ontario by Reducing Contraband Tobacco Act, 2011*. This Bill introduced amendments to the *Tobacco Tax Act*, including provisions related to raw leaf tobacco, fine cut tobacco, arrangements and agreements with First Nations and enforcement. The Bill received Royal Assent on June 1, 2011.

Independently, a new tobacco industry including the manufacturing, distribution and sale of tobacco products has developed on some reserves within Ontario. Some of this activity has developed under federal authority within the *Excise Act, 2001* and some on reserve activity has developed entirely outside of any legislative authority – federal or provincial.

This environment has resulted in two different realities – a desire by Ontario to encourage a reduction in smoking (within its regulatory and tax regime) and a desire by First Nations to protect the economic prosperity and employment opportunities that some of their members have secured through this new on reserve tobacco industry.

Off reserve, tobacco is a licensed, regulated and taxed product both federally and provincially. Federally, the *Excise Act, 2001*, governs federal taxation of tobacco, and regulates activities involving the manufacture, possession and sale of tobacco in Canada. Some on reserve manufactures of tobacco products operate under this federal licensing authority. The Canada Revenue Agency administers the *Excise Act, 2001*. Canada Border Services Agency collects duty on imported tobacco products, controls imports, prevention and detection of smuggling. The RCMP is responsible for enforcement of the *Excise Act, 2001*. The Department of Finance controls legislation that imposes duty and supports tobacco control. Health Canada undertakes health policy, smoking cessation

and education initiatives. Provincially, tobacco in Ontario is regulated through a number of legislative instruments, including the *Smoke-Free Ontario Act* and the *Tobacco Tax Act*.

It is widely understood that the manufacture, distribution and sale of tobacco products is increasingly taking place on some First Nation reserves in Ontario and at low-cost. It is Ontario's view that all on reserve tobacco products that do not comply with the *Tobacco Tax Act* are illegal. Consequently, Ontario treats these tobacco products as it would any other product that is illegal under the Act, creating the power for police services to actively seize and impose penalties upon all persons found in possession of illegal tobacco products.

This approach has strained relationships and created great tension between the Government of Ontario and First Nations. Where tobacco operations on reserve are occurring under federal license, First Nations view the actions of Ontario as overreaching its jurisdictional authority. One on reserve manufacturer has taken the step of suing the Government of Ontario for what it considers to be interfering with legitimate, on reserve business. At the same time as Ontario is prepared to defend itself in litigation and actively enforce the *Tobacco Tax Act*, it is also interested in understanding how First Nations see a way forward.

For Ontario, the availability of unregulated, low cost tobacco products threatens to undermine what has been accomplished under its *Smoke-Free Ontario Strategy*. As a result, the Ministry has attempted to engage First Nations in exploring solutions to tobacco issues involving First Nations. Since 2009, Ontario has been in discussion with First Nations leadership regarding tobacco issues such as the cigarette allocation system and opportunities to address illegal tobacco.

To further the government's understanding of tobacco issues on reserve, and to continue the Ministry's effort in exploring solutions, the Ministry retained a Facilitator to meet with First Nations to hear their views and perspectives on tobacco issues and possible approaches to address these.

The Facilitator

On July 28, 2011, the Minister of Revenue wrote to the Ontario Regional Chief to inform the First Nations leadership of the Ministry's decision to undertake a "process of listening" regarding on reserve tobacco issues with the assistance of a Facilitator. The Minister introduced Ms. Kathleen Lickers as the Facilitator of this work and explained her role to gather perspectives and provide a summary by the end of the fall 2011.

The Terms of Reference for the process of listening were as follows:

The Facilitator will undertake an engagement with First Nations and report back to government on:

- First Nations views on tobacco issues, which may include social and economic impacts, and perspectives regarding possible approaches to addressing the issues identified; and
- Potential strategies on how to further engage First Nations

Following the Minister's letter, the Facilitator reached out to those First Nations identified by the Ministry as having an established relationship with Ontario regarding tobacco. Ms. Lickers wrote directly to First Nations leadership on August 3rd /4th and again on October 12, 2011 to invite their participation in sharing their perspectives. In response, she heard separately from First Nations organizations and some individual First Nation Chiefs representative of perspectives involving on reserve tobacco issues and the allocation system.

The Facilitator posed a range of questions to draw out topics for the listening process related to tobacco on reserve. These questions touched on community involvement, challenges, opportunities, impacts and public safety. First Nations unanimously placed emphasis on tobacco as a new economy on reserve.

2. What was Heard

The Facilitator has carried out this process of listening and what follows is a summary of the perspectives shared. All elements addressed in this report, beginning with their relationship with Ontario, were raised by First Nations, separately and unanimously. This section of the report outlines what was heard.

The Relationship

In listening to First Nations about the quality and character of the relationship with Ontario, the Facilitator heard the following comments.

The Government of Ontario and First Nations within the provincial boundaries of Ontario will always be in a relationship with one another. This is a certainty. What is less certain is the quality and character of this relationship.

First Nations throughout Canada, and Ontario is no exception, anchor their relationship with each other and with every other level of government in treaty. What does this mean? For First Nations, the treaties were entered into on a nation-to-nation basis; in entering into treaty, colonial governments recognized First Nations as self-governing entities with their own system of laws and governance and agreed to respect them as such. For First Nations, treaties

continue to be the instrument of defining intergovernmental relationships between First Nations and others living side by side on the same land.

In bearing witness to and experiencing the actions of other governments over time, First Nations in Ontario described their collective experience of being economically marginalized and severely disrupted in their strength and well-being. They view the actions of other governments as dishonouring the treaty relationship. This has not prevented them however, from asserting their authority and autonomy as individual First Nations in Ontario or discouraged them from their efforts to create healthy, sustainable communities. First Nations expressed that creating sustainable communities should be a goal shared by all governments.

Against this backdrop, there are many examples of First Nations and Ontario working together in a government to government relationship. As recent as the spring of 2011, First Nations and the Ministry of Revenue successfully worked together to resolve the point of sale exemption for HST in the Province of Ontario. First Nations want Ontario to build upon this experience. For positive relationships to be restored and maintained, First Nations said they will require Ontario to commit to work with them on a government to government basis.

At present, Ontario has heard directly from at least one First Nation and one First Nation organization on their respective vision for a future relationship based upon creating sustainable communities. While more dialogue is needed to fully understand and support the frameworks proposed, all sides have a place to start. In addition, one First Nation has advanced a proposed approach to the specific issue of self-regulation of tobacco; again, providing a starting place for all sides.

More generally, First Nations expressed that they are unclear about Ontario's motives regarding on reserve tobacco. They explained that this lack of clarity breeds mistrust and creates a reluctance to directly engage. To inspire confidence in the other side, First Nations said Ontario must be prepared to spell out its policy objectives shared across the multiple ministries that are involved in Ontario's tobacco control regime and smoke-free strategy.

First Nations said that reconciliation of Ontario/First Nations relationships and a shared commitment to find ways to support sustainable communities must be a priority for all sides. They said that to engage with each other more effectively, it may be necessary to consider new ways of creating the conditions in which a meaningful dialogue can take place.

Other Models of Success

First Nations wish to remind Ontario that Ontario/First Nation partnership type models exist on other issues within the province. While these models are primarily resource management based, together they demonstrate that

partnerships are achievable. Where they exist, First Nations were key participants to their development and their continued success and during the listening process expressed their willingness to share lessons learned from these experiences, if asked. First Nations suggested that these models be discussed across the relevant ministries, the First Nations and First Nation organizations involved regarding the lessons learned from these experiences.

First Nations identified a number of examples. Each example stands for an institutional arrangement whereby government and First Nations, by means of a formal agreement, set out their respective rights, powers and obligations with respect to the management of specific resources in a particular area. These examples included:

Anishnabek/Ontario Resource Management Council
Wikwemikong Community Forest Management Agreement
Anishinabek/Ontario Fisheries Agreement
Gaming Revenue Sharing and Financial Agreement (2008)

Communication between First Nations and Ontario

According to First Nations, each and every initiative of the government of Ontario that has the potential to impact First Nations in Ontario should be viewed from the perspective of relationship. More specifically, they feel that *how* the government of Ontario undertakes its efforts, on any issue affecting First Nations, is as important as *what* it is undertaking.

First Nations said that when the government of Ontario introduced Bill 186, it was required to allow for a reasonable period of consultation. The perspective shared by First Nations is that Ontario failed to do so. Bill 186 was introduced and proceeded to Royal Assent in five weeks. They said that while the government may have met the minimum amount of time required for debate of Bill 186, they questioned whether Ontario sacrificed an opportunity to further build a positive relationship with First Nations by proceeding so quickly. It was noted that only two First Nations witnesses appeared before the Standing Committee on Finance and Economic Affairs on May 19, 2011. The Grand Chief of the Association of Iroquois and Allied Indians and the Ontario Regional Chief, both stated the view that Ontario failed to consult and accommodate First Nations interests and concerns regarding Bill 186.

Ontario's decision to introduce Bill 186 without a period of meaningful consultation or to allow for potential changes to the legislation to be introduced and considered is not viewed by First Nations to be a positive step in the right direction. On the contrary, this decision was seen to add to the suspicion and overall mistrust of what the government of Ontario and more specifically, the Ministry is seeking to achieve through this legislation.

They said the decision of the Ministry to follow the passage of Bill 186 with retaining a Facilitator to hear the perspectives of First Nations positioned this listening exercise out of sequence. Many First Nations not only question the sequence of Ontario's approach as taken by the Ministry but also question what internal advice the Ministry sought, primarily from the Ministry of Aboriginal Affairs regarding consultation on the Bill. First Nations expected an integration of advice across the relevant ministries regarding appropriate consultation. They said that the decision to proceed quickly was seen to practically foreclose meaningful consultation, resulting in First Nations being silenced as to what accommodation of interests could have proceeded through legislative channels.

First Nations said that they are skeptical of the desire of the Ministry to hear their perspectives now, *after* the passage of Bill 186. They view Ontario's approach to tobacco as lacking transparency and being counter-productive to building positive working relationships. Consequently, First Nations see the need for Ontario to bring clarity to what it wants to achieve and to create the conditions in which a meaningful dialogue can take place.

Definition of "Contraband"

While Bill 186 was titled, *The Supporting Smoke-Free Ontario by Reducing Contraband Tobacco Act, 2011*, the term "contraband" is not defined within the legislation. First Nations are left wondering what is meant by this term. For Ontario, contraband is interpreted to mean illegal tobacco. First Nations noted that there is not a shared understanding of this term.

First Nations question whether Ontario's terminology is so broad as to include all tobacco products that are *unlicensed* by the Ministry, *unregulated* by the Ministry and where *taxes have not been paid* to the Ministry. If this is correct, then for First Nations, what Ontario describes as "allocation" cigarettes are the only legal tobacco products on reserve.

They say that this broad view fails to recognize the manufacture and sale of cigarettes on reserve produced under federal license pursuant to the *Excise Act 2001*. First Nations view these manufacturers as operating within the law of their license and in compliance with federal jurisdiction. By defining contraband so broadly, First Nations view Ontario's definition wrongly captures the lawful tobacco products of these on reserve operations. What role if any the Government of Canada has in reconciling the tobacco control environment on reserve is a question First Nations have raised.

At the same time, First Nations generally acknowledge that not every manufacturer operating on reserve does so under federal license and efforts may be needed to bring all manufacturers into alignment with the relevant jurisdiction but to cast everyone with the same brush misrepresents the challenges ahead.

Characterization of First Nations

First Nations unanimously express resentment towards public opinion that characterizes what they see as legitimate economic activity on reserve as being “illegal”, and their leadership as being irresponsible. First Nations view Ontario as doing little or nothing to mitigate this characterization. Rather, by so broadly defining “illegal tobacco”, Ontario is seen to be contributing to this characterization.

Some First Nations have either developed their own law-making instruments or are prepared to explore community based regulatory approaches that respect their jurisdiction. For First Nations, community-driven solutions are the only way forward. This view suggests that solutions driven by First Nations have a greater likelihood of being implemented since community support is critical to success. Community solutions are also reflective of the needs of that First Nation. These perspectives suggest an opportunity to further explore such solutions wherever possible.

Enforcement

First Nations’ discussed their firsthand experience with the increased enforcement measures Ontario has introduced through the seizure of tobacco products manufactured on reserve during transport and at various points of distribution and sale by authorized retailers on numerous reserves throughout Ontario. First Nations spoke of enforcement actions involving confiscation of tobacco products that have been undertaken on reserve retailers.

First Nations have strong views about the actions of law enforcement in stopping, searching and seizing tobacco products during transport and from customers of on reserve retailers through patrols strategically placed at the borders of their reserves. Some First Nations leaders have expressed their concern that police enforcement on reserve may lead to confrontation. They also asserted that because of present action and the prospect of future actions, their relationship with Ontario has suffered.

First Nations view actions by law enforcement in seizing tobacco products as unilateral and heavy handed. They see these actions as interfering with business on reserve, and encouraging confrontation. First Nations view this conduct negatively and question why law enforcement would take steps they perceive as placing members of their communities and the public at risk. They asked the Facilitator to remind Ontario of the Honourable Justice Sidney Linden’s Final Report into the Ipperwash Inquiry which stressed improving relationships between First Nations and Ontario, and between First Nations and police, as independent law enforcement agencies from government.

First Nations questioned the involvement of police in what they view as a matter that requires a political solution. They emphasized the need for improved government to government relationships.

Economic Opportunities/Benefits to First Nations

First Nations describe the economic opportunities and benefits that their members have profited from through a new on reserve tobacco industry. According to First Nations, the manufacture, distribution and sale of tobacco products on reserve are not treated by Ontario as legitimate business opportunities and benefits but rather, as criminal activity. First Nations also state that the customers of on reserve retailers are also penalized which has a negative consequence on what they consider to be legitimate businesses.

While some First Nations are taking steps to create tobacco controls that reflect community driven solutions and respect their governance structures, comparable tobacco controls have not been completely developed by all First Nations. In their view, the tobacco products produced on reserve as a result are considered to be contraband by Ontario. First Nations view the enforcement actions of Ontario as singling-out the manufacture, distribution and sale of tobacco on reserve and in a punitive way.

First Nations view tobacco as a new economy on reserve. First Nations describe a new economic reality as a result of the manufacture of tobacco products. Simply put, manufacturing on reserve creates jobs. Similarly, the distribution and sale of tobacco products by retailers recognized as legitimate businesses on reserve by the First Nation governing bodies, also creates jobs. These are new employment opportunities that have emerged on reserve for members who may not otherwise have jobs. This on reserve employment in turn creates other spin-off benefits to other businesses, both on and off reserve.

This new economic reality also extends to the transportation and trade of tobacco products between First Nations. First Nations believe that Ontario is deliberately interfering with these economic opportunities and benefits.

First Nations view the actions of the provincial government as marginalizing their full participation in Canada's economy and rather than seeking solutions where First Nations are able to move out from under what they view as oppression, First Nations view the government of Ontario as wanting to eliminate the economic gains that they have made.

First Nations view Ontario as reinforcing this reality through its administration of the allocation system. Provincial controls on the growth, manufacture, distribution and sale of tobacco produced off reserve result in *Tobacco Tax Act* approved products available for sale to consumers. These products are made available to First Nations through a system of allocation administered by the Ministry. First

Nations resent not only the introduction of this system but the maintenance of it as well. First Nations characterize Ontario's allocation as akin to "rations" founded on what they view as Ontario's desire to stop gap the loss of tax revenue.

First Nations in Ontario unanimously question whether Ontario is intent on eliminating this economy within First Nation communities. This question arises because they view Ontario as choosing to address the issue by unilaterally defining "illegal tobacco". The police then have the job of enforcing Ontario's laws. Ontario's emphasis on law-making and enforcement is perceived as working against the exploration of First Nations tobacco controls on reserve, which could be established on a government to government basis.

Control of Business and Land Use

First Nations view their reserve boundaries as exclusively within their jurisdiction. While they recognize the role of the Government of Canada through s. 91(24) of the *Indian Act*, as being constitutionally responsible for "Indians and lands reserved for Indians", First Nations do not view the government of Ontario as having the same jurisdiction.

First Nations indicated they are only beginning to understand that the amendments Ontario introduced to the *Tobacco Tax Act* through Bill 186 involve raw leaf tobacco. They felt the brief five weeks that the Bill proceeded from introduction to the Legislative Assembly through to Royal Assent all but precluded a thorough examination of the potential impacts by First Nations.

First Nations view the regulation of their land use and any business enterprise, including all trade and commerce coming in to and out of their communities and any regulation of the tobacco industry on reserve as the responsibility of the First Nation and its governing authority. First Nations leaders asserted that they must be supported in determining what tobacco controls need to be created and effectively implemented within their respective communities.

Further, leaders stated that the objectives to be served by First Nations regulating trade and commerce within their borders must be theirs to define. Related to the creation of any regulatory regime is the ability to enforce it. To be effective, enforcement mechanisms and capacity must be developed and supported. While economies of scale may mean not every community has the capacity to make to this happen or happen quickly, First Nations pointed out that such circumstances should not displace their jurisdictional authority or prevent all sides from finding ways to support this work.

Prior to the Ministry retaining a Facilitator for this initiative, the Ministry had been meeting with some First Nations to discuss tobacco issues on reserve. One of

these communities is exercising its jurisdictional authority and has developed a number of community laws to self-regulate the manufacture, distribution and sale of tobacco on reserve. This community is committed to developing solutions that work for it and desire the government of Ontario to recognize this rather than seek to impose its own solutions.

Revenue and Taxation

First Nations conclude that Ontario's primary interest in on reserve tobacco is economic, based on the fact that the Ministry has been charged with the lead responsibility for hearing their views on the issue. They view the Ministry's current approach as being punitive toward First Nations for a single reason: low cost, untaxed on-reserve tobacco products result in lost tax revenue for Ontario.

First Nations believe Ontario is taking a heavy-handed approach toward the manufacture, distribution and sale of on reserve tobacco products in response to the amount of lost revenue that could potentially be generated if these products were taxed. Further, First Nations view Ontario as likely to gain financially through the collection of penalties for those caught violating its laws.

First Nations state unanimously that they are averse to collecting and remitting tobacco taxes to the government of Ontario. For First Nations, if they were, at some future point in time, to introduce surcharges or levies on tobacco products imported to or exported from their communities, then the revenue generated by these surcharges and/or levies would remain within their respective communities. Seen in this light, First Nations view their approach as akin to Ontario taxing tobacco products off reserve at point of sale and generating revenue from it. First Nations want to be on equal footing in generating their own source of revenue.

At present, First Nations governments state they share little in the economic benefit created by the on reserve tobacco industry. To what extent First Nations governments want to approach on reserve tobacco as own source revenue, similar to gaming, will be a matter for further discussion.

Investments in Communities to Encourage other Employment

Some First Nation communities' state that specific strategies may need to be developed to encourage their youth population to seek employment opportunities away from the on reserve tobacco industry but most reserves currently lack these opportunities.

First Nations are interested in entering into more concrete discussions with Ontario regarding what capital investment, programs and partnerships could be developed to support the objective of creating other, sustainable employment on reserve.

Some First Nations have shared their future planning with both the Ministry of Revenue and the Ministry of Aboriginal Affairs. First Nations expect these ministries to coordinate and combine their efforts to explore in greater detail how the longer term objectives of these communities might be supported.

3. Potential Approaches to What was Heard

Based upon all of the issues identified by First Nations leaders during the process of listening, First Nations see the need for Ontario to bring clarity to what it wants to achieve regarding on reserve tobacco. Ontario appears to share the need for clarity of how First Nations view the issues as Ontario's need gave rise to the listening process.

It is the view of the Facilitator that the need for better understanding between parties is both a shared goal and a place to start. It is trite to say but only by understanding the goals and objectives of the other, can the search for joint solutions begin.

As stated in the introduction, the Ministry retained the Facilitator to meet with First Nations to hear their views and perspectives on tobacco issues and based upon this listening, provide possible approaches to address these. This section of the report is offered by the Facilitator in answer to the possible approaches to the issues and perspectives shared by the participating First Nations. The approaches outlined as well as concrete recommendations are provided for careful consideration as a potential way forward.

Relationships and communication

Ontario must create the conditions in which meaningful dialogue can take place. Reconciliation of government to government relationships must be a key priority and on-going dialogue is beneficial to this reconciliation. The opportunity to meet, government to government, must be created and sustained wherever possible.

Ontario will need to consider how it creates and sustains this opportunity within the context of current enforcement. Ontario's primary commitment must be to resolving on reserve tobacco issues through dialogue and negotiation rather than enforcement. It will be necessary to consider ways in which this opportunity for dialogue, once created, can be sustained and in a neutral environment as the joint search for solutions proceeds. Where mandates need to be sought or clarified, all sides must be given the time and opportunity to do so.

Through on-going dialogue, all sides must be given the opportunity to determine if their definition of "contraband tobacco" is reconcilable. Where "contraband tobacco" can be reconciled between the parties, even incrementally, all sides must work together to support this understanding.

Resolution must be given priority by all sides and all sides must commit to show progress. First Nations will continue to expect an integration of advice across the relevant ministries regarding appropriate consultation. In going forward, Ontario should demonstrate a higher commitment to its duty to consult on any further tobacco control initiatives that have the potential to impact First Nations, while First Nation driven solutions are sought. Should future legislation ever be introduced, the integration of advice across relevant ministries regarding consultation will be paramount.

Conflicting messages from Ontario have resulted in First Nations not having a clear view of Ontario's goal. Transparency of Ontario's objectives must be restored as a priority. First Nations must also be given further opportunity to express their goals and objectives. Ontario could demonstrate good will in the short term by supporting the two current proposals submitted by First Nations to the Ministry. This commitment could be expressed in the recommended Memorandum of Understanding.

Multiple ministries are involved in Ontario's tobacco control regime. Multiple ministries should be involved in finding solutions and creating sustainable Communities. Ontario must develop an internal strategy to link these multiple lines of authority to the goal of helping to create sustainable, First Nation communities.

Once developed and when the timing is appropriate, Ontario should consider appointing an independent, high profile individual to lead this strategy for Ontario and the recommended on-going dialogue that leads to effective change.

As all sides work toward creating an improved and strengthened relationship, one potential aspiration that should be jointly considered is creating a Secretariat, independent of the parties, to support their dialogue by keeping the record, documenting agreement on issues and tracking progress. While this will require an injection of resources, it will also be a powerful statement of independence and may inspire confidence on the other side to continue.

Creating Sustainable Communities:

All sides must commit to seek and support solutions that remove barriers to full participation in Ontario's economy. First Nations view tobacco as a new economy on reserve. To support sustainable economic opportunities that lead away from unregulated tobacco, First Nations see the need to arrive at some kind of accommodation of economic interests but these solutions must support mutual gain. The creation of own source revenue opportunities on reserve has the potential to reduce First Nations economic dependency on other levels of government.

One possible vehicle to explore economic solutions that all sides might consider in the longer term is the Minister of Finance and the Ontario Regional Chief striking a new Economic Renewal Initiative to explore partnerships, investments and programs between Ontario and First Nations to encourage a range of economic opportunities not limited to tobacco. This initiative should be time limited, be supported by lead representatives from all necessary ministries and First Nations. This initiative must be obliged to produce measurable outcomes and publicly report its progress.

Proposals for community driven solutions:

Ontario must determine if it supports community driven tobacco control solutions. If it does, good will opportunities exist in the form of supporting current proposals as pilots going forward. If it does not, Ontario must be prepared to explain why. Ontario has received proposals from at least two First Nations that have advanced approaches that may guide a new course.

Ontario could immediately show good will by supporting the First Nation proposal that begins with research and analysis and that has the potential to inform other First Nations communities. This approach would eliminate any duplication of research and encourage information sharing on all sides.

The development of tobacco controls on reserve has the potential to negatively impact current and future economic activities on reserve. First Nations must be given an opportunity to examine these impacts and potentially prepare for them. This examination should form part of the research and analysis to be undertaken.

Concurrent and continued good will could also be shown by Ontario through support of the First Nation economic recovery proposal that has the potential to shape sustainable economic opportunities that lead away from unregulated tobacco.

Tobacco control requires more than a punitive approach. It must encourage the development of a range of appropriate self-regulating alternatives that will take time to develop.

Role of the Government of Canada:

Ontario's broad definition of "contraband" fails to recognize the manufacture and sale of tobacco products produced under federal license on reserve. To determine if the definition of "contraband" is reconcilable, First Nations and Ontario must consider involving Canada and invite Canada's participation where necessary.

Memorandum of Understanding:

A Memorandum of Understanding could be developed to guide the way forward, affirm the will of all sides to continue together and to acknowledge that immediate steps are being taken by Ontario like the timely appointment of an independent, high profile individual - to find solutions on a government to government basis.

If Ontario supports community driven tobacco control solutions, then this could be expressed within the Memorandum of Understanding. All sides could work to define the principles that will guide the search for community driven solutions within a Memorandum of Understanding without prescribing the outcome for any one community.

All sides might explore how current proposals could be supported as pilot approaches to longer term solutions. The appointment for Ontario could lead the interaction for Ontario on these pilots. Support for a pilot approach and for exploring revenue sharing opportunities could also be expressed in the Memorandum of Understanding.

Finally, the potential role for the Government of Canada could be expressed in the Memorandum of Understanding.

Recommendations

1. Reconcile government to government relationships as a key priority;
2. Develop a shared understanding of contraband tobacco;
3. Build common understanding of objectives and mutual gain, beyond enforcement, to include economic renewal, social and health issues through dialogue and negotiation;
4. Ontario must act on its duty to consult on all tobacco related initiatives that impact First Nations;
5. Build common understanding of both issues and opportunities and build public and community understanding together;
6. Bring whole of government approaches, align internal resources and an internal strategy across ministries;
7. Act on opportunities to explore community based solutions. Support two live proposals as pilot projects and explore community driven solutions without prescribing the outcome for any one community;
8. Work with First Nations to design processes and structures that advance the development of mandates and strategies. Consider the use of a

Memorandum of Understanding as described in this report, to guide the way forward; and

9. Commit to explore solutions that encourage partnerships, investments and a range of economic opportunities not limited to tobacco. First Nations must be given an opportunity to examine these impacts and potentially prepare for them. This examination should form part of the research and analysis to be undertaken.

4. Conclusion and Suggested Next Steps

The relationship building and work initiated by the Ministry to date has been an important first step and it must continue for progress to be made. The success on this issue may set the stage for longer term improvements in the growth and health of First Nation communities.

An essential characteristic of the search for mutually acceptable solutions to the complex issue of on reserve tobacco will be the confirmation of the commitment to participate – on all sides. This commitment will require a sustained dedication of human and financial resources directed toward measurable results.

The immediate challenge ahead, for all sides, is to chart a path forward that will enable each to better understand where mandates for engagement currently align and where stronger alliances may be developed. This will require concerted effort from all and a commitment to get there.

The proposals submitted to date have the potential to guide a new course. First Nations are much more deeply invested in where they are right now than in where they might be able to go for economic reasons. The new tobacco industry on reserve has provided employment for their members; jobs they do not otherwise have.

Through the recommendations offered herein, all sides have the potential to explore alternatives along concurrent and inter-related tracks. First, explore more fully the mandates that currently align. Consider supporting the First Nation's research and analysis proposal as a starting place for First Nations to undertake the necessary due diligence to community driven solutions. At the same time, consider supporting the economic recovery proposal as a starting place to support sustainable economic opportunities that lead away from unregulated tobacco. Be prepared to work incrementally and along multiple lines of authority wherever necessary to pilot a concrete way forward that allows for transition to take root. Develop an internal strategy that coordinates these multiple lines of authority and consider a timely appointment of an independent, high profile individual to lead this pilot approach for Ontario.

Parallel with these efforts, consider developing an Economic Recovery Initiative for a time limited period to explore economic partnerships and opportunities away from tobacco and that support First Nations' goal of creating healthy, sustainable Communities. Equip this initiative with the necessary mandates to deliver tangible results and be prepared to report publicly on its successes.

Finally, consider developing a Memorandum of Understanding as the instrument to affirm the will of all sides, chart the path forward and acknowledge the immediate steps being taken by Ontario to find concrete solutions on a government to government basis.

All sides have a place to start.