



# LEGISLATIVE SUMMARY



## **Bill S-16: An Act to amend the Criminal Code (trafficking in contraband tobacco)**

**Publication No. 41-1-S16-E  
15 April 2013**

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill S-16*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL S-16: AN ACT TO AMEND THE CRIMINAL CODE (TRAFFICKING IN CONTRABAND TOBACCO)

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## 1 BACKGROUND

Bill S-16, An Act to amend the Criminal Code (trafficking in contraband tobacco) (short title: Tackling Contraband Tobacco Act), was introduced in the Senate on 5 March 2013 by the Honourable Marjory LeBreton, Leader of the Government in the Senate. The bill passed second reading and was referred to the Standing Senate Committee on Legal and Constitutional Affairs on 16 April 2013. The committee report was presented to the Senate with observations on 9 May 2013. According to its summary, the bill amends the *Criminal Code*<sup>1</sup> to create a new offence of trafficking in contraband tobacco and to provide for minimum penalties of imprisonment for repeat offenders.

### 1.1 DEFINITION OF CONTRABAND TOBACCO

Contraband tobacco is defined as any tobacco product that does not comply with the relevant federal and provincial statutes. Importing, stamping, marking, manufacturing, distributing and paying duties and taxes on such products are all regulated by statute.<sup>2</sup>

According to the Royal Canadian Mounted Police (RCMP), contraband tobacco products in Canada are generally one of five types of product:

- American product smuggled into Canada;
- product that is illegally manufactured within Canada;
- counterfeit product that enters by sea container;
- product to be sold on First Nations' reserves that has been diverted to the wider market;
- product sold on the Internet, including illegally manufactured and counterfeit products, as well as products for which duties and taxes have not been paid.<sup>3</sup>

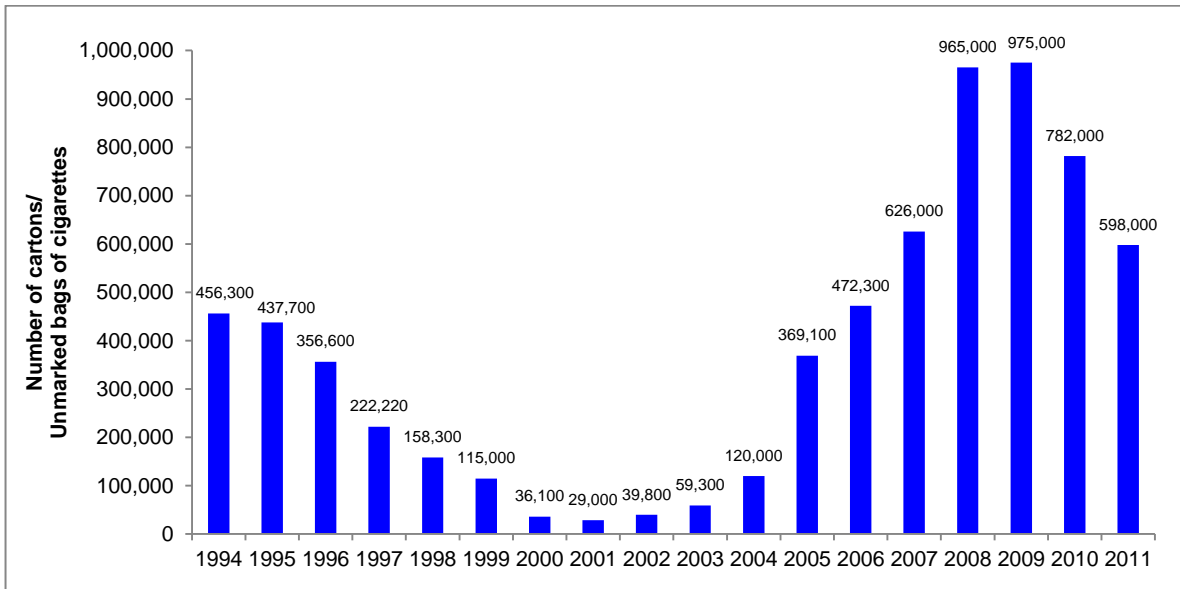
### 1.2 STATISTICS

Estimates of the illegal trade in tobacco products vary significantly. One recent study found that national estimates range from 15% to 33% of the tobacco market being contraband, with greater percentages in Quebec and Ontario.<sup>4</sup>

Although seizures of contraband tobacco vary from year to year, the early 2000s were characterized by a big drop in seizures. Midway through the decade, significant increases began to occur, though it cannot be assumed that this was solely the result of increases in sale of tobacco contraband, as it is possible that law enforcement priorities played a role as well. In 2011, the RCMP seized approximately

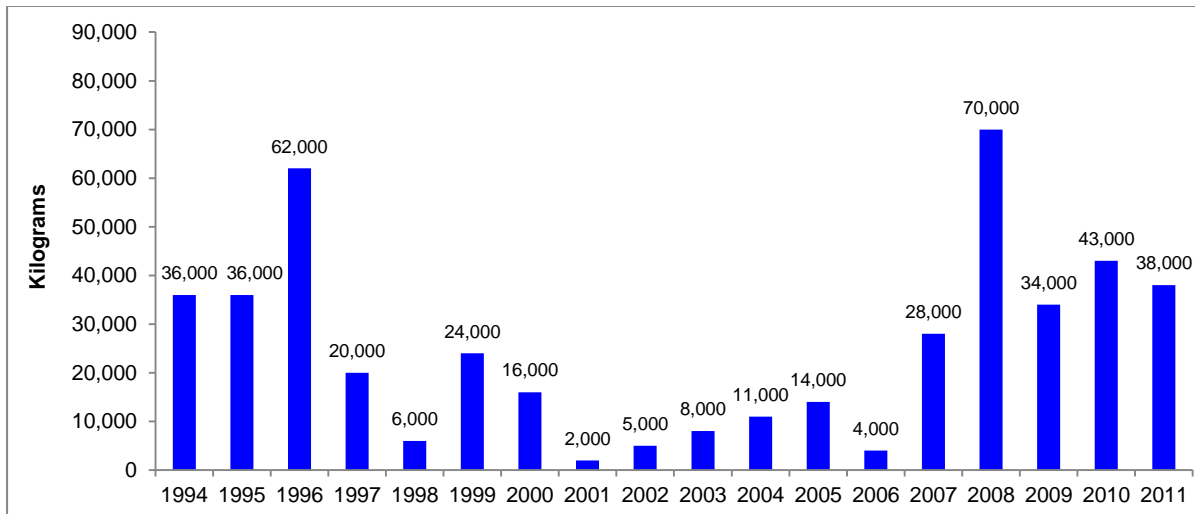
598,000 cartons and unmarked bags of cigarettes, 38,000 kilograms (kg) of fine-cut tobacco and 43,000 kg of raw leaf tobacco, all of which were lower amounts than in 2010. By contrast, there was a 720% increase in cigar seizures in 2011, to 1,164,000 illegal cigars.<sup>5</sup> Figure 1 illustrates RCMP seizures of cigarette cartons and unmarked bags of cigarettes between 1994 and 2011, while Figure 2 tracks RCMP fine-cut tobacco seizures during the same period.

**Figure 1 – RCMP Cigarette Seizures, 1994 to 2011**



Source: Figure prepared by the authors using data obtained from Royal Canadian Mounted Police, [2011 Contraband Tobacco Statistics](#).

**Figure 2 – RCMP Fine-Cut Tobacco Seizures, 1994 to 2011**



Source: Figure prepared by the authors using data obtained from Royal Canadian Mounted Police, [2011 Contraband Tobacco Statistics](#).

### 1.3 TRENDS IN CONTRABAND TOBACCO

In the 1990s, some major manufacturers of cigarettes legally produced in Canada were involved in smuggling contraband tobacco. They were exporting cigarettes to the U.S., which were then smuggled back into Canada to be sold tax-free. Imperial Tobacco Canada Limited and Rothmans Benson and Hedges signed an agreement in 2008 to pay \$1.15 billion in criminal fines and civil restitution over 15 years, while JTI-Macdonald Corp. and Northern Brands International pleaded guilty and paid \$550 million in criminal fines and civil restitution.<sup>6</sup>

Since then, the type of contraband tobacco has changed, with illegal manufacturing and counterfeiting of cigarettes increasing while smuggling of otherwise legally manufactured cigarettes to avoid taxes is no longer a significant issue.<sup>7</sup>

Ontario and Quebec, and more specifically the Cornwall–Valleyfield corridor, are the primary manufacturing areas and entry points of contraband tobacco. Ontario and Quebec are also the provinces where consumption of contraband tobacco is greatest. Of the 782,000 cartons and bags of cigarettes seized by the RCMP in 2010, 566,000 or 72% were from the Cornwall–Valleyfield area. Of the 43,000 kg of fine-cut tobacco seized in Canada that year, 36,300 kg or 84% were seized in that area.<sup>8</sup>

The importation of counterfeit cigarettes also appears to be increasing, primarily from China. Port Metro Vancouver and other British Columbia ports and cities are the common points of entry.<sup>9</sup>

A significant amount of the trade in contraband tobacco occurs in and around certain First Nations reserves.<sup>10</sup> The reasons for this are complex. First Nations such as the Mohawk of Akwesasne and Saint Regis have territories that straddle the border with the United States, which can facilitate smuggling, for example.<sup>11</sup> Certain First Nations believe that the use and trade in tobacco, including between different First Nations across the country, is an inherent right that should be constitutionally recognized under section 35 of the *Constitution Act, 1982*.<sup>12</sup> As such, some First Nations individuals and communities do not recognize certain federal or provincial laws limiting their rights in relation to tobacco. In addition, prices of tobacco products are usually lower on reserve because provincial taxes and sales taxes (both federal and provincial) are not included in the prices of these products when purchased by customers who are Status Indians.<sup>13</sup> Though anyone other than a Status Indian is supposed to pay all taxes if they purchase tobacco products on reserve, this does not always occur and certain businesses on reserve are major distributors of contraband tobacco.<sup>14</sup>

Various organized crime groups involved in contraband tobacco appear to be using this situation to their advantage. In 2008, the RCMP estimated that 105 such groups were involved in the trade.<sup>15</sup> Many of the same organized crime groups that are involved in contraband tobacco are also involved in other forms of illegal activity, such as the smuggling of drugs, humans and arms.<sup>16</sup>

#### 1.4 CURRENT LAWS

Currently, prosecutions for contraband tobacco-related offences can be conducted either under the *Excise Act, 2001*,<sup>17</sup> or under a number of general provisions in the *Criminal Code*.

Under the *Excise Act, 2001*, certain contraventions are already subject to fines and imprisonment for up to five years. These include disposing of, selling, offering for sale, purchasing or possessing unpackaged or non-stamped raw leaf tobacco (section 30) and the possession, sale or offering for sale of tobacco products that are not stamped (section 32), both of which are “hybrid offences” (read more about hybrid offences in section 2.2.3 of this paper, “Penalties”).<sup>18</sup>

Currently, no specific offence relating to “contraband tobacco” is found in the *Criminal Code*. That being said, because the illicit trade of contraband tobacco is often related to organized crime, prosecutors have an array of offences at their disposal to assist in the prosecution of some tobacco smugglers. Most commonly, charges may include, but are not limited to, the following:

- fraud pursuant to section 380(1) of the *Criminal Code*;
- conspiracy pursuant to section 465(1)(c) of the *Criminal Code*;
- conspiracy to commit offences pursuant to section 465(3) of the *Criminal Code*;
- participation in activities of criminal organization pursuant to section 467.11 of the *Criminal Code*;
- commission of offence for criminal organization pursuant to section 467.12 of the *Criminal Code*;
- laundering proceeds of crime pursuant to section 462.31 of the *Criminal Code*;
- and
- possession of property obtained by crime pursuant to section 354(1) of the *Criminal Code*.

#### 1.5 ENFORCEMENT AND THE IMPACT OF BILL S-16

Criminal enforcement under the *Excise Act, 2001* may be carried out by “any police force in Canada” that is designated according to certain conditions.<sup>19</sup> It appears that the RCMP is the force designated as such.<sup>20</sup> In comparison, all police forces may enforce *Criminal Code* provisions. By creating specific provisions on contraband tobacco in the *Criminal Code*, similar to the ones found in the *Excise Act, 2001*, the amendments proposed in Bill S-16 ensure that all police forces are mandated to pursue these new specific tobacco offences. The Standing Senate Committee on Legal and Constitutional Affairs submitted observations with its report on the bill, suggesting that the government consider providing provincial police with enforcement powers under the *Excise Act, 2001*, as well as under the *Customs Act*.

On 7 May 2008, the Minister of Public Safety and the Assistant Commissioner of the RCMP announced the RCMP Contraband Tobacco Enforcement Strategy. The strategy aims to disrupt organized crime and reduce the availability of and demand

for contraband tobacco. To ensure that the strategy is effective, the RCMP emphasized that it planned to conduct regular reviews and provide updates as the illicit market evolved. To date, three Contraband Tobacco Enforcement Strategy progress reports have been released. They cover the periods of May 2008 to May 2009, May 2009 to April 2010 and May 2010 to April 2011.<sup>21</sup>

One of the challenges for enforcement has been the differing interpretations of First Nations and the Canadian government about the content of Aboriginal rights and who has jurisdiction on reserves. These issues have clearly affected how governments and law enforcement agencies address contraband tobacco on and around reserves. Nonetheless, relationships have developed between law enforcement agencies on and off reserve. For example, in the Cornwall area, there are various efforts such as joint investigative units and a task force to encourage collaboration between various enforcement organizations such as the RCMP, the Canada Border Services Agency, the Ontario Provincial Police, the Cornwall Community Police Service and the Akwesasne Mohawk Police Service.

According to the news release that accompanied the introduction of Bill S-16, a new 50-officer RCMP Anti-Contraband Tobacco Force will be created to “target organized crime groups engaged in the production and distribution of contraband tobacco, to reduce the contraband tobacco market, and combat organized crime networks.”<sup>22</sup> At this point, it is not yet known where the new force will focus its attention.

## 2 DESCRIPTION AND ANALYSIS

Bill S-16 consists of four clauses. Clause 1 gives the short title of the bill, the Tackling Contraband Tobacco Act, while clause 4 stipulates that the Act will come into force on a day to be set by an order of the Governor in Council. Clauses 2 and 3 outline details of the Act itself. The following description highlights selected aspects of these last two clauses.

### 2.1 DEFINITION OF “ATTORNEY GENERAL” (CLAUSE 2)

Clause 2 amends paragraph (g) of the definition of “Attorney General” in section 2 of the *Criminal Code* to add the new offence of trafficking in contraband tobacco as one of the offences in relation to which proceedings may be undertaken by either the federal Attorney General or the provincial Attorney General or Solicitor General. Currently, the other offences listed under paragraph (g) of the definition of Attorney General also involve crimes that have a fiscal or monetary component. These offences are those found under sections 380 (fraud), 382 (fraudulent manipulation of stock exchange transactions), 382.1 (prohibited insider trading) and 400 (false prospectus) of the *Criminal Code*. Of these crimes, only fraud carries a mandatory minimum sentence, of two years, although this applies only in cases where the total value of the fraud exceeds \$1 million.



## 2.2 NEW OFFENCE RELATED TO THE SELLING OF NON-STAMPED TOBACCO PRODUCTS AND RAW LEAF TOBACCO (CLAUSE 3)

Clause 3 of the bill adds a new section 121.1 to the *Criminal Code* in Part IV, which addresses offences against the administration of law and justice. It creates an offence that prohibits certain activities related to the sale of non-stamped tobacco products or the sale of raw leaf tobacco that is not packaged, unless it is stamped. The section also specifies the possible applicable punishments when there is a contravention.

### 2.2.1 PROHIBITED PRACTICES

The new section 121.1 prohibits different steps involved in the selling of tobacco products that have not received an excise stamp or of raw leaf tobacco that is not packaged, unless it is stamped. These steps include the selling, offering for sale, transportation, delivery, distribution or possession for the purposes of sale of the tobacco product or raw leaf tobacco. Notably, the prohibition does not extend to possession without the intention to sell these controlled goods.<sup>23</sup> It also does not explicitly mention manufacturing or purchasing, acts that are addressed in the *Excise Act, 2001*.

The prohibitions in section 121.1(1) incorporate by reference the definition of certain tobacco-related terms as they are found under the *Excise Act, 2001*. That Act, which deals with the production and possession of tobacco products, including those for which the proper duties have not been paid or those that have been manufactured illegally, gives specific meaning to the following terms.<sup>24</sup>

- “Tobacco product” – This means manufactured tobacco, packaged raw leaf tobacco or cigars. “Manufactured tobacco,” for its part, means every article, other than a cigar or packaged raw leaf tobacco, that is manufactured in whole or in part from raw leaf tobacco by any process, while “cigar” includes a cigarillo or cheroot and any roll or tubular construction intended for smoking that consists of a filler, binder and wrapper composed of pieces of natural or reconstituted leaf tobacco.
- “Raw leaf tobacco” – This means unmanufactured tobacco or the leaves and stems of the tobacco plant.
- “Packaged” – This means, in respect of raw leaf tobacco or a tobacco product, packaged in a manner prescribed by regulation or determined in accordance with rules prescribed by regulation.
- “Stamped” – In respect of a tobacco product, this means that an excise stamp, and all prescribed information in a prescribed format, are stamped, impressed, printed or marked on, indented into or affixed to the product or its container in the prescribed manner to indicate that duty, other than special duty, has been paid on the product.

Having the same meaning as that found in the *Excise Act, 2001* ensures continuity in the practical application of tobacco control by the different administrative and enforcement agencies involved (the Canada Revenue Agency, the RCMP, the Canada Border Services Agency, the Attorney General, etc.).

## 2.2.2 EXCEPTIONS

Under sections 121.1(2) and (3), the practices prohibited by the *Criminal Code* are subject to the same exceptions granted under sections 30(2), 31(a), (b) and (c) and 32(2) and (3) of the *Excise Act, 2001*. This means, in the case of raw leaf tobacco that is not packaged or stamped, that the prohibition does not apply to persons with the appropriate licences and permissions to possess, store, market or transport it.<sup>25</sup> In the case of tobacco products that are not stamped, the exceptions are based on the tobacco product in question (such as manufactured tobacco and cigars that are manufactured in Canada or imported) and/or on the specified licensees (such as tobacco licensees, excise warehouse licensees or duty-free shop licensees).<sup>26</sup>

## 2.2.3 PENALTIES

The new offence is a hybrid offence; that is, the Crown has the discretion to choose to proceed by either indictment or summary conviction. The decision to proceed by way of indictment or summary conviction is determined by a number of factors, including the seriousness of the allegations and the complexity of the case.

For the new offence, the penalty is imprisonment for up to five years for an indictable offence and up to six months on summary conviction (section 121.1 (4)). These sentencing maximums are similar to those for other hybrid offences under the *Criminal Code*, including, for example, certain weapons-related offences (sections 87, 90, 91, 93, 101 and 104 to 108), public mischief (section 140), assault (sections 265 and 266), insider trading (section 382.1) and identity theft (section 402.2).

Under the enforcement provisions of the *Excise Act, 2001*, the maximum term of imprisonment for contravening that Act's provisions against the possession or sale of raw leaf tobacco that is not packaged or stamped (section 30) or against the unlawful possession or sale of non-stamped tobacco products (section 32) is five years on conviction on indictment and 18 months on summary conviction, as well as payment of fines.<sup>27</sup>

## 2.2.4 MANDATORY MINIMUM SENTENCES FOR SUBSEQUENT OFFENCES

The bill provides for mandatory minimum imprisonment terms in cases where the person has previously been convicted for the offence outlined in the proposed section 121.1 of the bill, where the subsequent offence is prosecuted as an indictable offence, and where certain threshold amounts of contraband tobacco product or raw leaf tobacco are exceeded.

The conditions governing mandatory minimum imprisonment terms for subsequent offences are incorporated into section 121.1(4) and its paragraphs, while section 121.1(5) clarifies that, for the purposes of a subsequent offence, earlier convictions are considered offences whether they were prosecuted by indictment or by summary conviction. It also makes clear that tobacco-related convictions under other provisions and laws will not be considered since a prior conviction must be "an offence under this section."

Section 121.1(4) provides that, where prosecution is by way of indictment, there are certain threshold amounts that must be met for the application of mandatory minimums: 10,000 cigarettes or more, 10 kg or more of any other tobacco product, or 10 kg or more of raw leaf tobacco.

In cases where the three conditions of prior offence(s), prosecution by indictable offence and quantity are met, the mandatory minimum punishment is imprisonment of 90 days for a second offence, 180 days for a third offence and two years less a day for a fourth or subsequent offence.

Currently, there are a limited number of offences in the *Criminal Code* that attract mandatory minimum imprisonment sentences as of the second offence. Some examples are certain weapons-related offences (one year, section 92), betting and bookmaking-related offences (14 days, sections 202 and 203) and impaired operation of vehicles offences (30 days, sections 253 to 255).

Certain mandatory minimum sentences have been struck down by the courts as unconstitutional, while others have been upheld.<sup>28</sup> However, since around 2000, the Supreme Court of Canada has tended to be more deferential towards mandatory minimum sentences introduced by Parliament and the choice to “stress denunciation, retribution, and deterrence over specific deterrence, rehabilitation, and the restorative principles of sentencing.”<sup>29</sup> The Court of Appeal for Ontario recently heard appeals for a series of cases involving mandatory minimum sentences.<sup>30</sup> No decision had come down as of the time of writing this legislative summary.

Section 718.2(e) of the *Criminal Code* requires the sentencing judge to pay “particular attention to the circumstances of aboriginal offenders.” The meaning of that phrase has been elaborated upon in case law, particularly in *R. v. Gladue* and *R. v. Ipeelee*.<sup>31</sup> There does not appear to be any Supreme Court of Canada decision resolving the tension between mandatory minimums and section 718.2(e), including the requirement to consider the Aboriginal background of an offender. Nonetheless, courts of appeal and lower courts have pronounced on the matter, including the Ontario Court of Appeal, which has said:

[T]he existence of a minimum ... must, of necessity, limit the practical impact of s. 718.2(e) just as it limits the impact of other potentially mitigating factors particular to the individual offender.<sup>32</sup>

Currently, the provisions relating to tobacco in the *Excise Act, 2001* allow judicial discretion in sentencing with respect to imprisonment, though there are mandatory minimum fines. The amendments to the *Criminal Code* proposed in Bill S-16 would reduce the judicial discretion for second and further offences, where the most recent offence is pursued as an indictable offence, by introducing mandatory minimum sentences of imprisonment. It is arguable that the prosecutor could, nonetheless, avoid a mandatory minimum by proceeding by summary conviction, which has no minimum sentence. Where the prosecutor seeks to have the mandatory minimum sentence for a second or further offence applied, they will also have to provide notice to the accused according to section 727 of the *Criminal Code*. If no notice is given, the mandatory minimums will not apply (though the judge could still impose an

equivalent penalty).<sup>33</sup> Alternatively, a charge could also be laid under the *Excise Act, 2001*, which has no mandatory minimum sentence for similar offences.

As such, there is the potential for offenders to be treated differently, depending on which police force is involved in the case. As noted earlier in section 1.5 of this paper, “Enforcement and the Impact of Bill S-16,” only the RCMP has enforcement powers under the *Excise Act, 2001*. If the RCMP proceeds with the charge, then the *Excise Act, 2001* provisions would be available in addition to the *Criminal Code* provisions. In contrast, other police forces would only be able to charge based on the new *Criminal Code* provisions. It is arguable that some people may be subject to a mandatory minimum sentence of imprisonment while others would not, even though they may have essentially committed the same offence. It remains to be seen how this potential inconsistency would be treated by the courts.

### 3 COMMENTARY

Chiefs from Akwesasne have been quoted in the media voicing concerns about the impact that mandatory minimum sentences may have on their communities, particularly their youth. In particular, Mohawk Council of Akwesasne District Chief Brian David is concerned that large fines and incarceration will turn some youth, who are only involved in contraband tobacco due to lack of legal employment opportunities, into “hardened criminals” and force them further into illegal activity.<sup>34</sup> The Mohawk Council of Akwesasne also recently issued a press release announcing the receipt of a grant from the Government of Ontario to assist in developing an Akwesasne Tobacco Law and Regulatory Framework, and calling on the federal government to work with them to address tobacco concerns rather than increasing sentences and the enforcement presence around their community.<sup>35</sup>

According to media reports, Keith Gordon of the Akwesasne Department of Justice has also voiced concern that offenders might have contested their first offence more vigorously if they had known any conviction could be used to increase jail time for further offences.<sup>36</sup> He appears to believe that tobacco-related convictions from before Bill S-16 was law will be considered earlier offences for the purposes of section 121.1(5).

As an alternative to Bill S-16, Serge Simon, Grand Chief of the Mohawk Council of Kanesatake, would like to see the tobacco business regulated by band councils. Lloyd Phillips, one of the chiefs of the Mohawk Council of Kahnawake, agrees, saying that regulation would eliminate the organized crime element from the industry and ensure that profits are reinvested in the community.<sup>37</sup> Like Akwesasne, the Kanesatake and Kahnawake First Nations reserves are part of the Cornwall–Valleyfield corridor.

The Canadian Convenience Stores Association, whose members sell legal tobacco products, has said it is happy to see an increase in the number of police officers whose work will be focused on contraband tobacco.<sup>38</sup>

NOTES

1. [Criminal Code](#), R.S.C. 1985, c. C-46.
2. Royal Canadian Mounted Police [RCMP], Customs and Excise Branch, [2008 Contraband Tobacco Enforcement Strategy](#), Ottawa, 2008, p. 4.
3. RCMP, [2011 Contraband Tobacco Statistics](#).
4. Jean Daudelin, Stephanie Soiffer and Jeff Willows, [Border Integrity, Illicit Tobacco, and Canada's Security](#), Macdonald-Laurier Institute, Ottawa, March 2013, p. 7.
5. RCMP, *2011 Contraband Tobacco Statistics*.
6. RCMP, [Contraband Tobacco Enforcement Strategy: Third Progress Report \(2010-2011\)](#), February 2013, pp. 5–6.
7. *Ibid.*, p. 6.
8. *Ibid.*
9. RCMP (2008), p. 15; and RCMP (2013), p. 10.
10. RCMP (2008), p. 13. The strategy clarifies that “[n]ot all manufacturing operations in these communities are illegal, and not all community members support the illegal operations which may be occurring within their communities.”
11. *Ibid.*, p. 14.
12. See, for example, Assembly of First Nations, “[Resolution] 22: Inherent Right of Nation to Nation Trade,” [Resolutions Update Report for 2011 Resolutions](#), July 2012.
13. Unlike various other taxes, the federal excise tax is imposed even for Status Indians on reserve. The same is true for excise duties. Both the tax and duty are paid by the manufacturer. See Canada Revenue Agency, [“Excise duties and taxes,” Information for Indians](#); and *Grand River Enterprises Six Nations v. Canada*, 2012 FCA 239 (leave to appeal to the Supreme Court of Canada denied). Please note that there is some controversy concerning the term “Indian.” However, as this is a legally recognized term in the *Indian Act*, it is used here for that reason.
14. RCMP (2008), p. 13.
15. *Ibid.*, p. 5.
16. RCMP (2013), p. 9.
17. [Excise Act, 2001](#), S.C. 2002, c. 22.
18. *Excise Act, 2001*, ss. 215–216. These sections specify the penalties for contraventions under ss. 30 and 32, respectively. Under s. 222 of the *Excise Act, 2001*, any contravention of that Act for which no other offence is specified carries a maximum penalty of \$100,000 or imprisonment for up to 12 months, or both.
19. *Excise Act, 2001*, s. 10.
20. RCMP (2008), p. 46.
21. RCMP, [Contraband Tobacco Enforcement Strategy: Progress Report For the Period May 2008 – May 2009](#), 2009; RCMP, [Contraband Tobacco Enforcement Strategy: Progress Report For the Period May 2009 – April 2010](#), August 2011; and RCMP (2013).
22. Public Safety Canada, [“Harper Government takes action to keep contraband tobacco off Canadian streets and out of Canadian communities,”](#) News release, 5 March 2013.
23. Unlawful possession of raw leaf tobacco that is not packaged or stamped, or of a tobacco product that is not stamped, are respectively regulated under ss. 30 and 32 of the *Excise Act, 2001*. The contravention of these provisions may result, on conviction on indictment, in a fine, imprisonment for up to five years or both, or, on summary conviction, in a fine, imprisonment for up to 18 months or both (*Excise Act, 2001*, ss. 215–216).

24. Ibid., s. 2.
25. Ibid., s. 30(2).
26. Ibid., ss. 32(2)–32(3).
27. Ibid., ss. 215(1) and 216(1).
28. See, for example, [R. v. Smith](#), [1987] 1 S.C.R. 1045; [R. v. Bill](#), 1998 CanLII 1446 (BC SC); [R. v. Morrissey](#), 2000 SCC 39; [R. v. Latimer](#), 2001 SCC 1; [R. v. Ferguson](#), 2008 SCC 6; and [R. v. Nasogaluak](#), 2010 SCC 6.
29. Kent Roach, “Searching for Smith: The Constitutionality of Mandatory Sentences,” *Osgoode Hall Law Journal*, Vol. 39, Nos. 2 and 3, Summer/Fall 2001, p. 372.
30. Betsy Powell, “[Mandatory minimum sentence for gun possession challenged in court](#),” *The Star.com* [Toronto], 18 February 2013.
31. [R. v. Gladue](#), [1999] 1 S.C.R. 688; and [R. v. Ipeelee](#), 2012 SCC 13.
32. [R. v. Brooks](#), 2012 ONCA 703, para. 11. Also on this topic, see [R. v. Johnson](#), 2013 ONCA 177; [R. v. Anderson](#), 2013 NLCA 2 (leave to appeal denied); and [R. v. Bressette](#), 2010 ONSC 449 (leave to appeal denied). None of these cases found the mandatory minimum sentence in question to be unconstitutional.
33. In *R. v. Anderson*, 2013 NLCA 2, para. 14, the Supreme Court of Newfoundland and Labrador (Court of Appeal) interpreted s. 727 as follows: “It is clear from the language of section 727 that the Crown has a discretion in deciding whether to serve the notice and whether, ultimately, to request the mandatory minimum sentence.” That case has been appealed to the Supreme Court of Canada but no decision granting leave had been made at the time of writing.
34. CBC News, “Akwesasne leaders worry about contraband tobacco bill,” 11 March 2013; and Jesse M. Kelly, “Aboriginal leaders fret over implications of contraband tobacco bill,” *Postmedia News*, 12 March 2013.
35. Mohawk Council of Akwesasne, Office of the Grand Chief, [Government of Ontario Funds Akwesasne Tobacco Pilot Project: \\$476,115 Two-Year Project will regulate tobacco at Akwesasne](#),” News release, 2 May 2013.
36. CBC News (2013).
37. Christopher Curtis, “Tobacco trade lights fire in Mohawk economy,” *The Gazette* [Montréal], 13 April 2013.
38. “Plus de policiers : les propriétaires de dépanneurs applaudissent,” *Le Journal de Québec*, 25 March 2013.