

NATIONAL
COALITION
AGAINST
CONTRABAND
TOBACCO

Stopping the sale of illegal cigarettes in Canada



LA COALITION
NATIONALE
CONTRE
LE TABAC DE
CONTREBANDE

Enrayer la vente de cigarettes illégales au Canada

Submission for the Government of Ontario Consultation on Unregulated Tobacco

June 2020

Definitions

In Ontario's 2019 Fall Economic Outlook and Fiscal Review: A Plan to Build Ontario Together, the government used the term "unregulated tobacco" without defining this new term. Throughout the past several decades, law enforcement on the frontlines have used the following terms to describe the issue that Ontario currently faces: contraband tobacco, illegal cigarettes, illegal tobacco and contraband cigarettes. These terms have been used by the Ontario Provincial Police (OPP), the Royal Canadian Mounted Police (RCMP) and other law enforcement and government agencies.

This submission will use the above-mentioned terms with the following definition:

Under the Tobacco Tax Act, unless otherwise authorized, it is illegal to buy, possess or distribute any quantity of untaxed cigarettes or any other untaxed tobacco products.¹

¹ <https://www.fin.gov.on.ca/en/tax/tt/illegal.html>

Introduction

Contraband tobacco has been a public safety, public health and economic issue for decades in Canada due to its prevalence in multiple provinces caused by low penalties and the low amount of enforcement against the illicit trade. Nationally, it is estimated that the combined annual federal and provincial excise tax loss to contraband tobacco is over \$2 billion. The RCMP estimate there are around 175 organized crime groups involved in the illicit trade, from distributors to sellers. Some of these groups operate across provincial boundaries and others operate solely in one province. However, they are all highly connected through the contraband tobacco trade.

Evidence shows that contraband tobacco is sold and distributed in every Canadian province. Due to the growing prevalence of contraband tobacco, individual provinces such as Manitoba, Quebec and New Brunswick have taken specific actions to combat the illicit trade. This is due to the realization that the organized crime groups involved in contraband tobacco are also involved in the sale and distribution of drugs, guns and human trafficking. It is also due to the realization that the billions of dollars lost annually to the illicit trade could be used for other provincial expenditures.

Contraband tobacco is one of the most lucrative illicit trades. For example, a 400% profit can be made off of illegal cigarettes, compared to a 50% profit for cannabis and 100% profit for cocaine at the street level. It has been proven that these large sums of profit for organized crime groups also fuels money laundering schemes in Ontario and beyond. Due to this, provinces have found that enforcing contraband tobacco is one of the few public safety investments that will increase overall government revenues.

While other provinces have made the investments in combatting contraband tobacco, Ontario continues to lag behind. This has caused a vacuum in law enforcement in the province, allowing for more organized crime groups to operate and make millions of dollars off the illicit trade. The following submission explores the issue in Ontario, actions that other provinces have taken, and recommendations outlining how Ontario can stop the growth of contraband tobacco and organized crime in the province.

Contraband Tobacco in Ontario

It is a well-known fact within the contraband tobacco law enforcement community that Ontario has the largest contraband tobacco problem in the country, and has had that designation for over a decade. Multiple studies in Ontario have shown that about one in three cigarettes sold are illegal. These rates skyrocket in northern communities, where the illegal tobacco market makes up 60% to 70% of sales. According to the Ernst and Young Line-by-Line Review of Ontario Government Expenditures 2002/03 – 2017/18², commissioned by the current Government of Ontario, the provincial government alone saw “\$750m in lost provincial revenue annually.” The same report also found that one in three cigarettes sold in Ontario are contraband, and that Ontario represents 80% of “all contraband tobacco in Canada.”

According to the RCMP and other research, the manufacturing of illegal cigarettes in Canada is done solely in Ontario and Quebec. However, Ontario is to blame for the prevalence of contraband tobacco in other provinces due to its larger manufacturing capacity. Some of Ontario’s largest illegal manufacturers products can even be found beyond Canada’s borders, in the United States, Mexico and South America. In 2019 alone, contraband tobacco sourced directly from southwest Ontario was seized in Alberta,

² https://files.ontario.ca/ey_report_2018_en.pdf

Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland. Not only is Ontario allowing the illicit trade to operate within its own borders, but the lack of action is also harming at least seven out of nine other provinces. This is due to the low level of enforcement in Ontario, as well as the higher purchase rates that can be acquired in other provinces. Anecdotal evidence from law enforcement in other provinces shows that a carton of illegal cigarettes sells for higher a rate the further it is from its point of origin. Furthermore, the lack of resources for law enforcement in Ontario tracking illegal tobacco allows for most product to cross provincial boundaries without issue or monitoring.

According to Ontario's Ministry of Finance, the presence of contraband tobacco in Ontario³:

- Undermines the government's efforts to reduce smoking rates and protect children and youth from the dangers of smoking, as contraband cigarettes can be purchased for as little as a few dollars
- May generate profits that fuel other criminal activity, including trafficking of drugs or purchasing illegal weapons
- Results in a loss of government tax revenue.

The first point has been corroborated by The Centre for Addiction and Mental Health (CAMH), Canada's largest mental health teaching hospital and one of the world's leading research centres. According to a study⁴ done by CAMH in 2010: "contraband tobacco accounts for 43% of all cigarettes consumed by Ontario high school daily smokers in grades 9 to 12." The lead investigator on the study found that because of "lower prices and lack of restrictions on purchase, youth are able to afford and access them more readily than regulated tobacco products." This has also been confirmed by different studies and anecdotal evidence that has shown that a pack of illegal cigarettes is less expensive than a movie ticket.

The second point is also confirmed by different organizations. For example, while the RCMP have found that 175 organized crime groups are involved in contraband tobacco, they have also found that some of those criminal organizations are also involved in other illicit trades. Furthermore, whenever contraband tobacco is seized in Ontario or the other seven provinces impacted by the province's production, it is normally seized alongside other illicit products. This includes cocaine, illegal cannabis, fentanyl, opioids, heroine and guns. Examples include:

- March 12th, 2020, Nova Scotia: 152 cartons of illegal tobacco seized with illegal cannabis and cannabis edibles⁵
- February 6th, 2020, Alberta: 304 cartons of illegal tobacco seized with fentanyl, cocaine, illegal cannabis and four firearms⁶
- December 23rd, 2019, Manitoba/Ontario: 246 cases of illegal tobacco seized with cocaine, illegal cannabis and cannabis edibles and ecstasy, alongside many other illegal products⁷

³ <https://www.fin.gov.on.ca/en/tax/tt/illegal.html>

⁴ <https://www.newswire.ca/news-releases/contraband-cigarettes-main-source-of-supply-for-ontario-youth-545961142.html>

⁵ <https://atlantic.ctvnews.ca/n-s-rcmp-seize-significant-quantity-of-cannabis-edibles-illegal-tobacco-during-traffic-stop-1.4850207>

⁶ <https://calgary.ctvnews.ca/calgary-police-seize-500k-in-drugs-and-cash-along-with-firearms-1.4800446>

⁷ <https://winnipeg.ctvnews.ca/winnipeg-police-opp-raids-on-interprovincial-organized-crime-network-lead-to-major-drug-bust-1.4741594>

The Government of Ontario's EY Report from the Fall of 2018, as well as several other reports, confirms the third point. While Ontario loses \$750 million in provincial tax revenue to contraband tobacco, that combined with the federal loss, totals \$1.1 billion in lost tax revenue. While these millions of dollars could go to essential services that Ontarians rely on, such as public transit, healthcare and education, they instead contribute to other issues that the province is currently facing, including human trafficking, gang violence and the opioid crisis. Therefore, not only does the government lose millions of dollars every year to contraband tobacco, but the lost revenue also contributes to other issues which must be financially addressed.

As shown above, contraband tobacco is not a simple issue. It has direct impacts on youth smoking rates, the prevalence of criminal enterprises, and the loss of government revenue. These impacts, along others, were realized by governments across the country over a decade ago who have decided to take decisive actions to stem the flow of illegal tobacco. While Quebec continues to be the gold standard on contraband tobacco enforcement, other provinces like Manitoba are doing their part as well.

The Quebec Gold Standard

Prior to 2009, Quebec had the same contraband tobacco issue as Ontario, where one in three cigarettes sold were illegal. This was funding organized crime activity across the province and taking millions away from Quebec's taxation system. In 2009, the Government of Quebec passed *Bill 59: An Act to amend the Tobacco Tax Act* and other legislative provisions primarily to counter tobacco smuggling⁸. Due to the actions created through Bill 59, within two years Quebec was able to reduce their rate of contraband tobacco from approximately 33% to roughly 12%.⁹ This also allowed the government to put millions of dollars back into their public treasury within a two-year timespan.

Bill 59 took three specific actions which continue to be in place today:

1. It allowed all police officers in Quebec to conduct full contraband tobacco investigations.
2. It created Accès Tabac, a program to fund ongoing contraband tobacco investigations.
3. It created a Contraband Tobacco Enforcement Team of Sûreté du Québec of 54 members.

Prior to Bill 59, only RCMP officers and Ministry of Finance officials were able to conduct full contraband tobacco investigations. For example, if a police officer with the SPVM, Montreal's police service, stopped a truck with one hundred cases of illegal cigarettes, they would need to wait for either an RCMP officer or Ministry of Finance official to come and take over the investigation. This left little to no incentive for any police officers to conduct any contraband tobacco investigations. Furthermore, like in Ontario, the RCMP have little to no presence in Quebec as the province has its own provincial police force. Having the majority of police officers in Quebec not participating in contraband tobacco investigations left a gap which Bill 59 rectified.

One of the other major issues that police services across Canada face is a shortage of financial resources and budget cutbacks. This has caused the majority of police services to focus on only a few of their top priorities, which usually includes homicides, drugs and other more public crimes. Contraband tobacco is sometimes on the list, but usually at the bottom. This is despite evidence showing that contraband tobacco is directly tied to some of the more immediate priorities for law enforcement. In response to

⁸ <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-59-39-1.html>

⁹ http://www.budget.finances.gouv.qc.ca/budget/2019-2020/en/documents/AdditionalInfo_1920.pdf

this, Bill 59 created Accès Tabac, a program which continues to fund ongoing contraband tobacco investigations performed by police services. Similar to funding that is available for drinking and driving roadside stops, police services are able to apply to this program to fund their own contraband tobacco investigations. The program also fosters collaboration between provincial, regional and municipal police services. This allows all police within the province to share information on contraband tobacco investigations and take effective steps in combating the illicit trade.

In Quebec's 2020 budget, they listed that the government spent \$14.4 million on the program, which yielded a return of \$206 million.¹⁰ This equals a return of over \$14 for every one dollar invested by the Government of Quebec.

Finally, the creation of the Contraband Tobacco Enforcement Team allowed for the provincial-wide coordination of contraband tobacco enforcement measures. The team works with local and regional police services and other law enforcement groups to coordinate investigations and interdictions. The team is now made up of 60-members of the Sûreté du Québec who are solely dedicated to contraband tobacco. When cannabis was legalized in the Fall of 2018, Quebec created a similar 60-member team for illegal cannabis enforcement in order to continue the momentum they had gained on contraband tobacco. The team also coordinates with other provinces, including Ontario and the OPP, on monitoring contraband tobacco activity that crosses provincial boundaries. The team has also done training exercises alongside other provincial teams, specifically from New Brunswick and Manitoba.

Besides Bill 59 and law enforcement measures that have proven to be successful in Quebec, the province has also taken a prudent approach with their tobacco tax rates. One of the primary drivers for the large contraband tobacco market in Ontario is the availability of the product and its low price. For example, a pack of 25 cigarettes can be legally purchased for around \$14 to \$17, while a pack of 25 illegal cigarettes can be purchased for as low as \$4.

In light of this, the Ontario Chamber of Commerce recommends that the province "should take further action on combatting contraband tobacco by maintaining the freeze on provincial tobacco taxes until further efforts to address the illicit market are implemented."¹¹ Evidence shows that increases in tobacco taxes does not yield the expected return in taxation and that it forces many smokers to begin purchasing from the illicit market. While we commend any tobacco control measures to lower smoking rates, these must be implemented at the same time as contraband tobacco enforcement measures to be effective.

Manitoba

Manitoba has a fraction of the population when compared to Ontario or Quebec, yet is far more active in contraband tobacco enforcement. In Manitoba, they have a 9-member Contraband Tobacco Enforcement Team that is made up of Ministry of Finance officials, some of whom have prior law enforcement backgrounds. Manitoba has done well in both contraband tobacco investigations at a provincial level, and in retail compliance. Their investigations over recent years have seized millions of illegal cigarettes, mostly sourced from southwestern Ontario. In 2019 for example, they seized over 4.5

¹⁰ http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf

¹¹ <https://occ.ca/wp-content/uploads/Guiding-Policy-Principles-for-Tobacco-and-Vaping-Products.pdf>

million illegal cigarettes and over \$100,000 in cash. The potential tax loss that was everted through the seizures amounts to nearly \$1.4 million.

Their retail compliance includes investigating retailers who may be selling contraband tobacco and issuing fines for those that break the law. The Manitoba Contraband Tobacco Enforcement Team is also at the frontlines of preventing the flow of contraband tobacco from Ontario into other western provinces.

New Brunswick

Similar to Manitoba, New Brunswick also has a fraction of the population compared to Ontario or Quebec. Due to its geographical location, New Brunswick is also the gateway to Atlantic Canada for organized crime groups involved in contraband tobacco. According to Government of New Brunswick resources, the contraband tobacco market in New Brunswick is responsible for a minimum annual revenue loss of \$13 million. In response to this growing issue, in 2016, the government created the Contraband Enforcement Unit based out of New Brunswick Public Safety, which was a 9-member team, some with previous law enforcement experience. In their first year, the unit was able to seize nearly 2 million cigarettes which would account for an almost \$500,000 tax loss. In 2018, the unit seized over 4.5 million cigarettes, accounting for a potential tax loss of nearly \$1.2 million.

Due to a change in government priorities following the last New Brunswick election, the Contraband Enforcement Unit was disbanded. However, the success the unit was able to have within a three-year timespan speaks for itself. The unit was able to increase their illegal cigarette seizures by 142%, disrupted more than \$2.31 million in provincial tax losses and issued fines of over \$3.17 million. This was mainly through the creation and effectiveness of New Brunswick's Contraband Enforcement Team, who were solely dedicated to combatting illegal tobacco. The team also coordinated with local police services and their provincial police in investigations and arrests. The team also served to educate police officers about contraband tobacco and how it was contributing to other issues they were having within their jurisdictions. To this day, the New Brunswick Contraband Enforcement Unit is still regarded highly by the Canadian law enforcement community for its effectiveness and success.

Ontario Recommendations

With Ontario and Quebec having similar sized populations, and having had similar sized contraband tobacco problems, the province should look to emulate all or some of the success seen in Quebec. Currently in Ontario, only RCMP officers and Ministry of Finance officials are able to conduct full contraband tobacco investigations. For example, if an officer of the Toronto Police Service were to stop a truck with a hundred cases of contraband tobacco, they would need to wait for an RCMP officer or Ministry of Finance official to take over the investigation. While this policy may work for provinces that use the RCMP as their provincial police force, it does not work where the OPP are the dominant police service. Furthermore, it discourages local, regional and provincial police officers from conducting any contraband tobacco investigations. With other priorities, it is nearly unheard-of for local or regional police services to be conducting these investigations.

- 1. In order to have as many police officers combatting contraband tobacco in Ontario as possible, we recommend the Government of Ontario allow all police officers to conduct full contraband tobacco investigations.**

Every police service across the province is facing the same issue: the lack of financial resources and staff to fulfill their duties. While this issue has persisted for decades, it has only allowed police services to combat their top priorities within their jurisdictions. This usually includes homicides, gang violence and drugs. While these are important priorities, they are also all contributed to by contraband tobacco which financially fuels other illicit activities. Evidence shows that the organized crime groups involved in contraband tobacco are also involved in the sale and distribution of drugs. By directly funding local and regional police services to conduct contraband tobacco investigations, they can become part of the solution to lowering its prevalence in Ontario.

- 2. To support local and regional police services in Ontario, we recommend the Government of Ontario create a funding program, similar to Quebec's Accès Tabac, to support ongoing contraband tobacco investigations.**

Ontario is home to a Contraband Tobacco Enforcement Team which falls under the OPP. This team coordinates anti-contraband tobacco efforts across the province to the best of their ability. However, the team is only made up of 9-members who are not solely dedicated to investigating contraband tobacco. Through regular communication with the team, we have knowledge that over half of the team has been pulled into contraband cannabis investigations for periods of up to 6 months. While the enforcement of both illicit trades is important, by pulling resources from one team to another, it leaves a gap in provincial coordination and enforcement efforts. The 9-member team also pales compared to the 60-members dedicated to contraband tobacco enforcement in Quebec, and equals the team that exists in Manitoba for a province a fraction of the size. In order to effectively combat contraband tobacco, a dedicated team of an appropriate number is necessary.

- 3. To effectively coordinate provincial contraband tobacco enforcement efforts, we recommend the Government of Ontario increase the size of the Contraband Tobacco Enforcement Unit and make them solely dedicated to contraband tobacco investigations.**

Since 2017, the federal government has annually increased the excise duty rates on tobacco products. This, mixed Ontario's tobacco tax rates, have encouraged smokers in the province to purchase tobacco from the available and less expensive illegal market. Evidence shows that increase price differentials between legal and illegal tobacco helps the contraband market to grow.¹² While taxation continues to be an effective tobacco control measure, it is also ineffective without actions taken against contraband tobacco.

- 4. To help lower the rate of contraband tobacco in Ontario, we recommend that the Government of Ontario maintain a prudent fiscal approach regarding tobacco products until actions against illegal tobacco are implemented.**

Conclusion

It is clear that Ontario continues to be the epicentre of the contraband tobacco issue in Canada. The province alone loses \$750 million to the illicit trade and inaction has allowed organized crime groups to act with near impunity. Inaction has allowed the illicit trade to spread throughout the country, with illegal cigarettes manufactured in southwestern Ontario seized from Alberta to Newfoundland.

¹² <https://occ.ca/wp-content/uploads/Guiding-Policy-Principles-for-Tobacco-and-Vaping-Products.pdf>

Fortunately, there is an opportunity for the government to show leadership on this issue and look to the many examples of successful contraband tobacco enforcement measures in Canada. As mentioned, Quebec continues to lead the way in enforcing contraband tobacco with no issues with the public or any specific community. Following the passing of Bill 59 in 2009, Quebec was able to reduce their rate of contraband tobacco by over 50% within two years. In their 2020 budget, the government reported a return of over \$14 for every one dollar spent on supporting contraband tobacco investigations. This was done by allowing all police officers within the province to conduct full contraband tobacco investigations, creating a funding program for ongoing investigations and creating a Contraband Tobacco Enforcement Team solely dedicated to contraband tobacco.

Should the Government of Ontario enact similar legislation and take similar actions as Quebec, we expect the province would be able to have similar success in combatting this illicit trade. The tax revenue saved through enforcement would be able to fund essential services for Ontarians, including public transit, healthcare and education. Furthermore, it would take away an important funding source for organized crime groups who are also involved in other illegal activities. The province would be able to recoup lost revenue and increase the public safety of communities. Ontario is nationally lagging behind in contraband tobacco enforcement measures, but the time is now for the province to begin taking this issue seriously.

COVID-19 Pandemic Considerations

The economic downturn caused by the COVID-19 pandemic has been unprecedented and has impacted nearly every industry in Canada. The latest Statistics Canada report found that Canada lost over 3 million jobs due to the economic downturn, and that the unemployment rate has risen to over 13%.¹³ This has had a large-scale impact on Ontarians across the province who have either lost their job, or have seen a decrease in their personal revenue. The majority of reserves in Ontario have closed to non-residents due to the virus, and sources have shown that the rate of contraband tobacco in the province has dropped. For example, Six Nations of the Grand River, one of the largest sources of illegal cigarettes in Ontario, restricted access to the community in late March.¹⁴ This has prevented regular buyers of contraband tobacco to be able to access the cheaper product, and they have, therefore, had to turn to the regulated legal market.

However, due to the widescale job losses across the province negatively affecting the buying power of consumers, it is likely that contraband tobacco will see a large rebound once the economy and reserves begin to reopen. Previous purchasers of illegal cigarettes will return to the cheaper product, and Ontarians who have been financially impacted will either cease to smoke or will turn to the illicit market. This is especially alarming as the government explores ways to economically recover after the pandemic.

While small-scale purchasers have been barred from accessing the reserves, sources and news articles have shown that organized and large-scale purchasers have not ceased their activities. Several seizures of contraband tobacco in Ontario and other provinces in April 2020 have shown that the distribution and sale of illegal tobacco by organized crime groups continues uninterrupted.

¹³ <https://www150.statcan.gc.ca/n1/daily-quotidien/200508/dq200508a-eng.htm>

¹⁴ <https://www.brantfordexpositor.ca/news/local-news/six-nations-plans-to-shut-down-community-during-pandemic>

The Government of Ontario currently loses \$750 million in provincial excise tax to contraband tobacco every year, and these losses could grow without particular attention paid to the illicit market now, more than ever, as Ontario looks to recover from this pandemic.

About

The National Coalition Against Contraband Tobacco (NCACT) is a Canadian advocacy group formed with the participation of businesses, law and order organizations and individuals concerned about the growing danger of contraband cigarettes. Our members share the goals of working together to educate people and urge government to take quick action to stop this growing threat. Members include the Ontario Chamber of Commerce, Toronto Crime Stoppers, Frontier Duty Free Association and Ottawa Crime Stoppers. The NCACT receives funding from membership fees and from direct contributions from its members. A significant portion of that funding comes from the Canadian Tobacco Manufacturers Council (CTMC) whose members are Rothmans, Benson & Hedges Inc.; Imperial Tobacco Canada; and JTI-Macdonald Corp.

Spokespeople for the NCACT include Ron Bell, a 30-year veteran of the Winnipeg Police Service who now leads contraband tobacco enforcement measures in Manitoba, Gary Grant, a 39-year veteran of the Toronto Police Service and founder of Toronto Crime Stoppers, and, Pierre Primeau, a 27-year veteran of the Royal Canadian Mounted Police who partook in national and international investigations.