

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 to the Standing Committee on Finance and Economic Affairs Pre-Budget Consultations

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Introduction

The COVID-19 pandemic has had an impact one way or another on every organization, business and individual in Ontario, including organized crime groups involved in the sale and distribution of contraband tobacco. While the illicit trade has continued to grow over the past decade, and illegal cigarettes sourced from the province have been seized from Alberta to Newfoundland and Labrador, the pandemic added extraordinary elements for organized criminals and law enforcement.

The pandemic has created a rough case study for the Government of Ontario on the potential increase in tobacco tax revenue if the government takes action. At the height of the pandemic, the sale of legal tobacco increased as law enforcement became more effective and communities selling illegal tobacco went on lockdown. Traffic on highways across the province was significantly reduced, and as a result, law enforcement located along the Trans-Canada Highway in Northern Ontario were better able to identify suspicious vehicles. Furthermore, the availability of illegal product was reduced by lockdowns, forcing individuals to turn to the legal market. A study by Ernst & Young, commissioned by the Convenience Industry Council of Canada found that Ontario had an increase of over \$6 million in tobacco tax revenue, equalling an increase of over \$72 million annually.¹

However, as the impact of the pandemic subsides, there are signs that the contraband tobacco market is already growing when compared to pre-pandemic levels. Prior to the pandemic, one in three cigarettes sold in Ontario were illegal. With record rates of unemployment and millions more of Ontarians having had their buying power affected, smokers will return to the illegal tobacco market. The Government of Ontario must take action now in their upcoming budget to support law enforcement combatting organized crime and prevent a boom in contraband tobacco in the province.

Recommendations

1. 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.
2. In order to have as many police officers combatting contraband tobacco in Ontario as possible, the NCACT recommends the Government of Ontario allow all police officers to conduct full contraband tobacco investigations.
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.
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.

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 held this designation for over a decade. Multiple studies in Ontario have shown that about one in three cigarettes sold are illegal. These rates

¹ https://convenienceindustry.ca/wp-content/uploads/2020/12/Impact-of-COVID-19-on-Contraband-Tobacco-and-Provincial-Tax-revenues-in-Canada_EN-Final.pdf

skyrocket in northern communities, where the illegal tobacco market makes up 60% to 70% of sales. According to the Ernst & 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 Royal Canadian Mounted Police (RCMP) and other research, the manufacturing of illegal cigarettes in Canada is done solely in Ontario and Quebec. However, Ontario is the primary source of contraband tobacco in other provinces due to its larger manufacturing capacity. Every year, contraband tobacco sourced directly from southwest Ontario is seized in Alberta, 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 a direct result of the low level of enforcement in Ontario, as well as the higher profits that can be acquired in other provinces. Evidence from law enforcement in other provinces show 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.

Furthermore, contraband tobacco ignores all tobacco control measures currently in place. This includes the health warnings on cigarette packaging, keeping tobacco covered in retail outlets and needing to ID underage consumers. The latest tobacco control measure introduced by the federal government was plain packaging on all cigarette and tobacco packaging. Recent seizures of illegal cigarettes have shown that these new regulations are already being ignored. Therefore, if evidence that demonstrates that

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

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>

colours and logos have an impact on attracting smokers, then the colours and logos that continue to exist on contraband tobacco will attract more smokers to the illicit market.

The second point is also confirmed by different organizations. For example, the RCMP have found that 175 organized crime groups are involved in contraband tobacco, and some of these 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 often seized alongside other illicit products. This includes cocaine, illegal cannabis, fentanyl, opioids, heroine and guns. This was clearly highlighted by Project Cairnes led by the Ontario Provincial Police (OPP) which seized 11.5 million cigarettes, 1,714 pounds of cannabis, three hand guns, 1.14 kilograms of cocaine, 1.3 kilograms of fentanyl and \$236,750 in cash.⁵ Unfortunately, one of the individuals charged through these seizures was recently gunned down in Toronto by organized crime.⁶

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 towards Ontario's economic recovery and 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. Simply put, criminal gangs in Ontario are profiting over a million dollars a day through contraband tobacco.

The Quebec Gold Standard

Prior to 2009, Quebec had a very similar contraband tobacco issue as Ontario, where one in three cigarettes sold were illegal. Illegal tobacco revenue funded organized crime activity across the province and took millions of dollars away from the province's tobacco tax revenue. 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 smuggling⁷. 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 12%.⁸ 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 lay charges under their taxation laws. This left little to no incentive for any police officers to conduct any contraband tobacco investigations. Furthermore, like in

⁵ <https://www.cbc.ca/news/canada/hamilton/contraband-cigarettes-organized-crime-1.5612187>

⁶ <https://www.thestar.com/news/gta/2022/01/04/toronto-shooting-victim-was-charged-in-organized-crime-linked-contraband-cigarette-bust.html>

⁷ <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-59-39-1.html>

⁸ http://www.budget.finances.gouv.qc.ca/budget/2019-2020/en/documents/AdditionalInfo_1920.pdf

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 resulted in the majority of police services focusing on only a few top priorities, which usually includes homicides, drugs and other more public crimes. Contraband tobacco is sometimes included on this list, but is not usually a priority, despite evidence showing that contraband tobacco is directly tied to some of the more immediate priorities for law enforcement. In response to 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, the government spent \$14.4 million on the program, which yielded a return of \$206 million.⁹ 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."¹⁰ 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.

⁹ http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf

¹⁰ <https://occ.ca/wp-content/uploads/Guiding-Policy-Principles-for-Tobacco-and-Vaping-Products.pdf>

Unfortunately for Ontario, the federal government recently implemented a surprise tax increase on cartons of cigarettes without consultation and without taking any action against contraband tobacco. The Parliamentary Budget Officer's (PBO) Legislative Costing Note¹¹ found that past federal excise tax increases on tobacco have contributed to the contraband tobacco market. This has helped to fuel the already growing illegal cigarettes market in Ontario, and without immediate action, it is likely the illicit trade will continue to grow and add additional profits to criminal gangs.

Recommendations

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 and guns. 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. Furthermore, funding contraband tobacco investigations is proven to create a return on investment. As stated above, for every dollar spent in Quebec, they see a return of over \$14 in increased tobacco tax revenues.

- 1. 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.**

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. 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.

- 2. 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.**

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. Simply put, while officers focus on other

¹¹ <https://distribution-a617274656661637473.pbo-dpb.ca/5119810a22be97d43fd86994f5149dca5bde78b972673f9b7d20154cdb037da>

matters, criminal gangs continue to sell and distribute illegal cigarettes. 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, as well as introduced surprise increases as seen in 2021. This, mixed with 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. With the contraband tobacco market already growing following the end of lockdown measures, tax increases without action will only further fuel the illicit market.

- 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.**

About the National Coalition Against Contraband Tobacco

The National Coalition Against Contraband Tobacco 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.

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