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MEMORANDUM

TO: SCO CHIEFS
FROM: SAM MURDOCK, CHIEF OF STAFF
DATE: AUGUST 22, 2007 (originally sent July 17, 2007)
SUBJECT: SUBMITTING A SMOKING BY-LAW TO INAC

Attached please find a *Smoking By-Law* which was drafted by a lawyer and reviewed by two other lawyers to develop a template for use by First Nations within SCO membership. The template was drafted to be reflective of a First Nation community and aspirations, and was also compared to past precedents which met the test of approval at INAC. To this end, if you require a *Smoking By-Law*, you can insert the name of your First Nation in the spaces provided, filling out the other appropriate information and **forward the by-law to Minister Chuck Strahl via registered mail**. A sample letter for forwarding the by-law is also attached. **Please be advised, it will take up to 40 days to get your by-law approved by INAC.**

As you know, the Manitoba government introduced the *Non-Smokers' Health Protection Act* in which it exempted the First Nation communities from its application. However, Justice Clearwater of the Court of Queen's Bench heard the Jenkinson case and found the *Non-Smokers' Health Protection Act* unconstitutional and discriminatory in light of section 15 of the Charter of Rights and Freedoms in so far as it provided for an exemption of the law from applying on reserves but not to off-reserve premises such as that operated by non-aboriginal beverage room operator Jenkinson. In his decision, **Justice Clearwater also directed the government to apply the *Non-Smoker's Health Protection Act* on First Nation communities which the government said they will do by September 2007.**

If a First Nation by-law is enacted on your reserve, political arrangements can be achieved to effect Section 88 of the *Indian Act* which basically states that by-laws supersede provincial legislation such as the *Non-Smokers' Health Protection Act*. For this reason, VLT agreements may continue to have designated smoking areas, hence, retain room to make your own laws.

If you require an electronic template of the Smoking By-Law, please contact Doreen Sanderson at 946-1869 or at e-mail address: Doreen.sanderson@scoinc.mb.ca.