



## **A Response to Millbrook First Nation's Community Consultation on Cannabis**

# A position paper from the Mi'kmaq Cannabis Association

June 27, 2022

In January of 2022 the Millbrook First Nation Band Council organized a community consultation directed by Claire Marshall. The purpose was to develop a “community perspective on cannabis governance” at Millbrook First Nation. The process was co-ordinated by Claire Marshall and Gerald D. Gloade with the services of Kahnawake-based lawyer Scott Robertson. One of the results of the consultation process was the release of a 32 page [Community Consultation on Cannabis](#) report by the Band Council.

In early 2022 the [Mi'kmaq Cannabis Association](#) (MCA) was created as a body of Mi'kmaq people with the mission of advocating for and promoting the rights of all Mi'kmaq people to access cannabis and to build an “above ground” self-regulated industry to grow, process, transport, retail, and trade cannabis on a nation-to-nation basis. You can learn more about our mission statement and organizational structure [here](#).

We believe that the issues discussed in the Millbrook First Nation report are important ones, and that we need to add our voice to the conversation. Consequently, we have developed the following position paper as a written response to the Millbrook First Nation *Community Consultation on Cannabis* to spur further discussion and dialogue.

## Points of agreement with the report

We would like to begin by thanking the members and staff of Millbrook First Nation who worked with the consultants to create this report. It is clear that a significant amount of work was put into this effort. We also want to thank the 6 elders, 11 youth, 15 admin staff, 14 health centre staff, 8 business owners, 11 dispensary owners, and 40 online community members who participated in the consultation process and shared their opinions.

In studying the report, it is clear that there are some major take aways from the consultation process which the Mi'kmaq Cannabis Association is in full agreement with. For starters, we agree and share in the widespread distrust of Band Council involvement in the cannabis industry. There was a clear community consensus reflected in the report that the Band Council has not handled the cannabis file well so far, and an aversion to the Band Council advancing further with this issue. The report notes that, “A common theme amongst most, if not all,



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participants was a general malaise or mistrust of Chief and Council's ability to regulate cannabis in the community. For example, many participants indicated they had previously attempted to address cannabis at Council meetings and engage in dialogue but were either ignored or stifled in their submission. In addition, participants expressed concern that Council members may be in a conflict of interest because some Council members were actively engaged in the cannabis economy and were therefore making decisions for their own personal benefit."

Furthermore, "Concern was expressed by some participants that Council would develop regulations for their own personal benefit, thereby shutting out community members from benefitting from a cannabis economy." We agree that any attempt by Band Council to regulate the cannabis industry is inherently flawed and that any attempt to do so will impinge upon the constitutionally protected Section 25 and 35 rights of the Mi'kmaq people. We shall return to this point later in our document.

We also concur with the report's conclusion that there is a clear lack of knowledge about cannabis in some sectors of our community that needs to be remedied. In discussing the session held with elders, the report noted that "several of the attendees said that they did not know what cannabis was and asked to have it defined." It is not surprising, that with this lack of knowledge, common stereotypes about cannabis abound, such as the claim that "cannabis is a gateway drug that can lead to harder, more illicit substances." We agree that there is a strong need for cannabis education in Millbrook First Nation, and this is a cause which we are devoted to doing something about.

We want to stress that cannabis is an incredibly safe product for human consumption. Human beings cannot overdose from the consumption of cannabis. Due to the many beneficial aspects of the plant, the argument can be made that [all forms of cannabis use are in fact medicinal](#), even if the user thinks they are partaking "recreationally." Across Turtle Island, Indigenous people have used a wide variety of plant medicines to heal themselves and to improve their lives since time immemorial.

As providers of cannabis we are well aware of the fact that the plant is widely used in our community. We share the view of the community consultation report that "among participants, cannabis for medical purposes was viewed as a natural substance for pain reduction, effective for palliative care, anxiety, and muscle and bone aches."

The report also references the fact that the people of Millbrook First Nation view the sale and use of cannabis to be a constitutionally protected Aboriginal and Treaty right. As the report notes, "many of the participants indicated that the regulation of cannabis was an Aboriginal right protected under s.35 of the Constitution and therefore the community should be responsible for creating its own laws and guidelines for using, selling and producing cannabis." The document also "acknowledges the unceded, occupied territory of the Mi'kmaq peoples on which we are all



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gathered, and which continues to sustain us and provide for us. It is our responsibility to as Mi'kmaq people to protect these lands and ensure we pass them onto our children.”

However – and this is where most of our problems with the document come from – the report fails to build on these key insights. There is no discussion of the limits of the *Indian Act* and the need to go beyond it. There is no discussion about the ongoing racism that Mi'kmaq people face in exercising our economic right to a moderate livelihood, whether it be in fishing, cannabis, tobacco, or any other aspect of the use of our sovereign lands. Mi'kmaq people have only ever signed peace and friendship treaties with the British Crown. We never gave up our lands or our rights. This understanding needs to be the foundation of our way forward. As former National Chief Del Riley said [in a recent presentation](#) in Millbrook First Nation:

“You're actually in a hell of a good position here. The Royal Proclamation [of 1763] said the government had to buy the land from you. How much did they buy from you? Where is that receipt for what they bought from you? Bet you can't find it.”

We need to be bold and politically aggressive about the fact that we are sovereign people living on sovereign land. Canada claims to be coming to terms with its mistreatment of our people, and has put a lot of effort into a supposed “Truth and Reconciliation” process. However, the racist *Indian Act* remains, and our rights are not still not being respected – despite our clear legal victories in the courts.

We need to assert our rights and build and grow our own sovereign economy. This is the only way that we can gain the political and social power to have our rights respected. The *Indian Act* system is a dead end, and will only result in the municipalization of our nation under one of Canada's “self-government” agreements. To get a better handle on the Indian Act and Canada's termination policy, we recommend reading the following document produced by Chief Del Riley and his assistant Tom Keefer, [A Sovereign Path Forward: Band Councils, Lands Reserved for Indians, and the need to end the Indian Act](#).

### **Problems with the Community Consultation document**

Instead of building an analysis based upon the constitutionally protected rights of the people of the Mi'kmaq nation, the *Community Consultation on Cannabis* unconsciously adopts a perspective firmly based in the colonial and racist *Indian Act* system. The fundamental problem with this approach is that it misunderstands the nature and the jurisdiction of the Millbrook First Nation as it is constituted by the *Indian Act*.

At issue is the fundamental question of what is “Millbrook First Nation”? At first glance this might seem obvious – it's the section of the Mi'kmaq Nation residing in the territory recognized as Millbrook First Nation Indian Reserve by Canada. But that's not actually the case. Canada has never legally defined the term “First Nation” in its laws or policies. As a result, the term can and



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often is used to refer to the Indian Act Band Council system that is operating according to Canadian laws and rules – as well as the broader concept of a Nation involving all the people.

However, because the term “First Nation” is not legally defined, Canada is able to talk about First Nation rights and self-governance, when what it really means is the rights and governance for its own *Indian Act* system. The distinction is crucial. The *Indian Act* is a racist colonial law that was expressly created for the purposes of assimilation of Indigenous people and the termination of their national rights. While confining Indigenous people on reserve, it conferred “certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers.” In other words, if all worked as planned, all Indians would one day be “enfranchised” and leave their Indian status behind to enjoy the legal status of a “person” and the rights and privileges of being a Canadian – rather than being a ward of the state.

It is important to stress that it is the Band Council constituted under Indian Act laws in Millbrook First Nation that produced the *Community Consultation on Cannabis* – not the nation or people as a whole. The Band Council is a body of the Canadian government. Its members are being paid and financially supported by Canada. The Band Council is responsible to the Minister(s) of Indian Affairs of Canada, not to the people who elected it. It can make no major decision without having it approved by the Minister. Any Band Council Resolutions it passes are wishes – statements of opinion by the council – not enforceable laws. These are facts, no matter how much anyone wants to pretend otherwise.

The Millbrook First Nation Band Council is a corporation which can sue and be sued. It has no treaties with anyone, and no land base. The Band Council is not an “Indian” and does not have rights of one. It is a creation of the Federal Government for the purpose of administering its fiduciary responsibility to “Indians” under the *Indian Act* – and not a structure of the Mi'kmaq Nation.

Baked into the very fabric of its being is the reality that the Band Council of Millbrook First Nation can only operate according to the *Indian Act* and Canadian laws. If it does not do so, it will be breaking laws and those responsible for breaking the law could be punished by it and could also lose funding and program money from the Government. The Band Council is advised by lawyers who themselves swear an oath to the Crown and who must act in accordance with Canadian laws. There is not and can be no room for Mi'kmaq sovereignty under the *Indian Act* system.

When we understand this basic fact, the question of “Millbrook First Nation’s” jurisdiction over cannabis is moot. Nothing in the *Indian Act* gives the Band Council any power of the regulation of cannabis, people’s medicines, or their economy. This is because Canada has never been willing to allow Indigenous people to take real control of their affairs through the *Indian Act*. According to Canada, cannabis is not legally considered an “intoxicant” under the meaning of



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the *Indian Act*, and it is the position of the Federal Government, in the words of spokesperson William Olscamp that “there are no specific authorities or definitions in *The Indian Act* for the regulation of cannabis.”

We want to be clear that this is not to say that the Indian Act Band Council cannot take steps to protect the Indigenous cannabis industry in Millbrook First Nation. If the Band Council correctly reflects the customs and conventions of the people on a particular matter, it can express that consensus as the view of the community as a whole, and demand that this position be upheld.

Indeed as Chief Gloade did in a [January 18, 2022 letter](#), a Band Council can request that the RCMP consult with the First Nation before attempting to enforce any Canadian cannabis laws, and it can announce its opinion that cannabis is an internal matter for the nation as a whole to handle. Federal and Provincial police forces are aware of the constitutionally protected rights of Indigenous people, and have indicated that if “First Nations” tell them not to enforce Canadian cannabis laws on their territory, they will back off.

One Band Council in Ontario handled the issue by passing a one sentence Band Council Resolution that stated that Cannabis was legal in the community and that cannabis businesses need to follow the same rules as any other business in the community. After the motion was passed, local police forces were communicated the decision and agreed not to attempt any cannabis enforcement. With that, practically the entire elected council then quit their positions and opened cannabis dispensaries along with many other community members.

However, it is important to note that letters asking the RCMP to back off or BCR’s legalizing cannabis don’t actually have any formal legal weight in the Canadian system. However, if BCR’s are reflective of the will of the people, outside policing authorities are often reluctant to interfere because of concerns about escalating matters and intensifying a political or legal struggle they could lose.

It is the case that various *Indian Act* Band Councils have created so called “cannabis laws” that claim to create a legal framework for the cannabis industry on reserve. But in reality, these laws are no more than local “harmonizations” with Federal and Provincial cannabis laws. The cannabis that is bought and sold must come from the government’s LP system, and it is controlled and monitored by Health Canada. In these systems the Band Councils get to act like municipalities, and set zoning regulations and their “own source revenue” or taxation on the cannabis industry.

Such laws do not reflect Indigenous sovereignty or economic emancipation, because the Band Councils are not empowered to act in such a manner. Instead, they represent a further Federal and Provincial encroachment on the rights of Indigenous people and a new terrain for legal and political conflict between traditionalists and assimilationists.



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Some times these laws are created with an “arms length” body, a “Cannabis Commission” which is appointed by Band Council to administer the cannabis industry. This was the framework used in Kahnawake’s cannabis law, which was then used as a template for many communities in Ontario. It would appear from the number of times that such a body is referenced in the *Community Consultation on Cannabis* that it is being proposed as some kind of solution to the mistrust the people have of the elected Band Council. Unfortunately, the creation of such a committee as a regulatory body operating under the *Indian Act* is no more legitimate than the Band Council having direct control. In the cases where such an approach has been implemented, such [as at the Six Nations of the Grand River](#), there have been high levels of [community conflict](#) that only subsided after a riot took place at the police station. And nor does Kahnawake stand as a good example for the Indigenous cannabis industry. There the cannabis law was pushed forward [despite bitter community opposition](#), and the Band Council is [still engaged in negotiations](#) with Health Canada for the okaying of their cannabis supply.

The key point we wish to stress is that there is no place for an *Indian Act* Band Council that is the construct of Canadian colonial law to determine the laws and economic functioning of sovereign Indigenous people on unceded lands. The Mi'kmaq were never conquered. We signed peace and friendship treaties with the British. These treaties were *introductions* between our peoples and contained no surrender of lands or rights. Indeed, our ability and right to trade are explicitly discussed in the [1752 Peace and Friendship Treaty](#) which states that any Mi'kmaq people are entitled to “bring for Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.”

### **A failure to understand the larger context**

Another issue with the document is that it fails to understand the broader context which has led to the development of the more than [265 sovereign Indigenous cannabis shops](#) operating across Turtle Island without any external regulation. There was also no mention or awareness of the ways in which cannabis associations have been created in many communities – including Tyendinaga, Alderville, Six Nations, the North Shore, Kanehsatake, and Pikwakanagan – to self-regulate the industry without Band Council or government control. Also of note is how the [Red Feather Certification](#) process in Alderville First Nation provides full lab testing and certification of cannabis products at a level exceeding Health Canada requirements. Similarly, the [Red Road Trading Catalogue](#) offers over a dozen different lab-tested Indigenous cannabis brands at wholesale prices for nation-to-nation trading. These are all alternatives to the Indian Act system proposed by the Consultation report.

It is a serious weakness of the report to not consider the significance of the widespread growth of cannabis dispensaries across Turtle Island, or to examine the various efforts and strategies communities with more established cannabis industries have adopted. For the most part, those





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communities with a successful and booming cannabis industry are the ones where Band Council did not interfere or get involved with cannabis issues.

When it comes to the context on the Canadian side of things, the report is also lacking some basic insights. Canada's legalization of cannabis in 2018 was done with no more consultation with Indigenous people than its criminalization of cannabis in 1923. That is to say, there was no consultation with Indigenous people or their *Indian Act* representatives or traditional governance structures. This is true Federally as well as Provincially, as the Mi'kmaq were never consulted over the Provinces plans for selling recreational cannabis on our traditional territory. This lack of consultation was [condemned by the Canadian Senate's Aboriginal People's Committee](#), which called for a one year delay in legalization so that the government could consult with Indigenous people.

The *Community Consultation on Cannabis* notes that Canada has created a "legal framework controlling the production distribution, sale and possession of cannabis across Canada." But the document does not realize that this regulatory regime does not include the unceded "lands reserved for Indians" or take into consideration that there has long been a thriving indigenous production and sale of cannabis from unmarked residences on reserve.

The claims in the document that the purpose of Canada's *Cannabis Act* is to protect public health and safety, keep young people safe, prevent illicit activities relating to cannabis, ensure the quality of cannabis being supplied to the public, and enhance public awareness of the health risks associated with cannabis use are all Canadian PR spin, not the truth about why the industry was legalized. In fact, legalization happened because Canada had been unable to stamp out the black market in cannabis, and kept losing constitutional challenges from medicinal cannabis users.

Legalization was a means for corporations and the state to capture immense value and market share from the black market. One of the ways that this happened was through the inflation of share price of legal cannabis companies, and the raising of billions of dollars of investment in this new green gold rush. Former politicians, government bureaucrats, and law-enforcement officers got rich from jumping into this arena, and they profited handsomely from the overvaluation of cannabis companies before cashing out.

Since valuation was tied to productive capacity, investments flooded in and were used to massively overproduce productive capacity. In From 2018 to 2020, Canadian cannabis producers [destroyed over 500 tons of cannabis](#) (some 20% of total production) as recorded by Health Canada. In addition over 3.7 million packages of dried cannabis, 1.5 million packages of extracts and 714,491 packages of edibles were also destroyed.

Canada's mismanagement of cannabis legalization has led to the swamping of the industry with low-quality unsaleable products. There was massive inflation in the value of cannabis stocks



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upon legalization, and then a quick crash of the market value of cannabis companies. Those with an inside track profited immensely, and the average investors got soaked and are now holding nearly worthless stock. Canadian cannabis policies are nothing that should be emulated. Government bureaucracies, ex-politicians turned consultants and lobbyists, lawyers, and the elite benefited from legalization, but it was never about fairness or freedom for the “little guy.” The industry remains massively over-regulated, and the black market continues to thrive.

The report also devotes some space to raising some serious concerns about the alleged negative side of the growth of the cannabis industry in Millbrook First Nation. It is difficult to respond to these concerns as they lack any specifics, and are largely speculative. In other cases, such as with worries about “strangers” shopping at cannabis dispensaries, fear of “loiterers” and concerns that generous dispensary owners are sharing their wealth too freely with other community members and unduly influencing them, say more about the paranoia and suspicions of those holding them than the actual reality.

In Millbrook First Nation, the owners of the shops live in the community and people know who they are. If store owners were to cause harm to people – by selling products that sicken people, selling to children, mixing hard drugs with cannabis, etc. the people will know, and there will be consequences – legal or otherwise – for those actions. It is our hope that the creation of the Mi'kmaq Cannabis Association will provide a further means to minimize these problems through self-regulation.

### **A way to move forwards**

So if the Band Council has no authority or jurisdiction over cannabis, what should be done about the regulation of cannabis in Millbrook First Nation? We believe there are a couple of different options.

One is to simply let the industry be. Cannabis has been around in Millbrook for a long time. Although open identified cannabis dispensaries are new, there have long been unmarked locations where community members could purchase cannabis. It is widely used in the community, and it is a safe medicine which is often used in a harm-reduction capacity by people looking to quit drinking or opiates. It is impossible to overdose on cannabis, and there is widespread community acceptance of it. As a trade good, cannabis is not fundamentally different from tobacco, or from convenience store goods bought and resold on reserve shops. Arguably, cannabis is safer than tobacco or sugary drinks – both of which are also “mind-changers” and are not regulated by the Band Council.

Cannabis can be “regulated” informally by the customs and conventions of the Mi'kmaq people. Like many other Indigenous peoples, Mi'kmaq people are a free people, and our relationship with Creation enables us to do what we like as long as we are not harming others. When it comes to the efforts of Indigenous cannabis entrepreneurs, who are they harming? If the answer





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is nobody, then there is no need for regulation. "If there is no harm, then there is no foul" as the saying goes.

Our own business people have a common interest and standard in how the businesses should be run. In the constitution of the Mi'kmaq Cannabis Association, the member shops agree to follow a set of standards that are the norm in other Indigenous communities. These rules include dispensaries not selling cannabis to those under 19 years of age, the IDing of people looking like they are under 25, the testing cannabis products for their potency, visually inspecting product to ensure that it is not mouldy, and wearing gloves and take steps not to mix different types of cannabis products together.

Of interest is the way that traditional Mohawks have addressed this issue in Tyendinaga Mohawk Territory – the first Indigenous community to open cannabis dispensaries (starting in 2015 with the opening of Legacy 420). In a document called [\*Cannabis and Clan Governance\*](#), Kanenhariyo writes:

Cannabis rules and laws should follow the same format as our customs and usages in other parts of our economy. We shouldn't start creating new rules and new ways of making rules and systems that will make our way of life confusing. We have to maintain our continuity. Especially since we're saying we're a sovereign people. We have a right to be independent and to be our own unique people, and we have to stay true to who we are. We can't be making whole new systems that don't fit our culture.

The document is worth reading in full, as it offers a framework for self-regulation that doesn't require taxation or government oversight and helps to bridge the gaps in our traditional systems that were caused by Canadian colonialism. Key to this approach is understanding the medicinal qualities of cannabis, and the fact that Indigenous societies have their own rules and frameworks for determining our relationships with mother nature and other people.

Another strategy that can be used to address community concerns with the cannabis industry is the development of cannabis associations. Although the Mi'kmaq Cannabis Association is a new organization and in its development stages, it builds from previous such efforts to create associations in Tyendinaga Mohawk Territory, Alderville, and among Anishinaabe on the North Shore of Lake Huron.

The draft bylaws of the Association offer a framework to deal with complaints, accessible traditional gatherings where the people can offer their input and suggestions, and a means to ensure the availability of safe and tested cannabis products. The model is one which can meet the report's claim that "An overwhelming majority of participants expressed positive opinions and agreed that cannabis should be regulated."

The structures of the Mi'kmaq Cannabis Association allow for all of our people to be involved within the organization. As the bylaws state, "Members of the MCA join one of five bodies based



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upon their involvement in the cannabis industry and personal knowledge base. These five groups are: *growers* (anyone involved in any stage of the growing or manufacturing of cannabis); *retailers* (anyone involved in selling cannabis directly to consumers); *consumers* (members of the Mi'kmaq Nation who consume cannabis products); *elders* (grandparents who provide advice and direction concerning the customs and conventions of the Mi'kmaq); *medicine people* (Mi'kmaq people trained in traditional medicinal practice who provide advice and direction concerning the customs and conventions of the Mi'kmaq medicines).

The decisions of the association are made by consensus at Biannual gatherings (held twice a year) which are open to all members, and are a place where we can work to rebuild traditional forms of governance outside of the Indian Act system.

The first such Biannual gathering will be held on Saturday, August 27th in Millbrook First Nation. We invite Millbrook First Nation's Chief and Council, staff, and members to attend.