

An initial response to the Draft Millbrook First Nation Cannabis Control Law by the Micmac Rights Association - May 10, 2023

On June 27th, 2022, the Mi'kmaq Cannabis Association (now the [Micmac Rights Association](#)) released a [position paper](#) analysing the Millbrook Band Council's 32 page [Community Consultation on Cannabis](#) report. In it we wrote:

"In studying the report, it is clear that there are some major takeaways 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, 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."

[June 27, 2022 Position Paper from the Mi'kmaq Cannabis Association](#)

Unfortunately, our worst fears have been confirmed by the [final draft of the Millbrook Cannabis Control Law](#) that is being brought to the Band Council for discussion on May 9th, 2023. This draft law does not take into account the opinions of either the band members or the cannabis dispensary owners who were supposedly consulted in the report. It replicates all the failed policies of the [Kahnawake cannabis law](#), which has been a disastrous failure not only in Kahnawake, but in Six Nations, Tyendinaga, and everywhere else it has been tried.

Most importantly, the proposed cannabis law violates our constitutionally protected inherent Aboriginal and treaty rights as Micmac people, and because of this, it should be immediately withdrawn. Those responsible for drafting this proposed violation of our rights should be ashamed of what they have done, and be immediately removed from any further work on the cannabis file, or for that matter, any issue affecting our inherent Aboriginal and treaty rights.

What's wrong with the proposed Millbrook Cannabis Control Law

1. At the most fundamental level, this law is simply importing Canadian cannabis regulations and taxation into our community in a manner consistent with the Liberal Government's plan for [municipal self-government and termination](#). Because *Indian Act* Band Councils have no authority to change Federal or Provincial laws on cannabis, all they can do is to "harmonise" their laws with those of the province and the federal government. This is a point that has been repeatedly made by [Chief Del Riley](#), and it is precisely what the lawyers have done with their proposed *Millbrook Cannabis Control Law*. It would be far better for the Band Council to simply stay in its lane and keep out of the cannabis industry altogether, as we argued in our February 24th, 2023 position paper entitled "[Developing a Section 35 Aboriginal and Treaty Right to Cannabis Framework for Millbrook First Nation](#)."
2. The *Millbrook Cannabis Control Law* is copied from a framework [initially devised in Kahnawake](#) which was imposed against the wishes of the people. To date, this law does not actually regulate any cannabis dispensaries in Kahnawake, but through consistent police raids on entrepreneurs, the Kahnawake Band Council has managed to stop any sovereign cannabis shops from opening. That has meant that [while nearly 500 sovereign Indigenous dispensaries](#) have opened up across Turtle Island, the people in Kahnawake have missed out on the opportunity to have a legal cannabis industry could have brought hundreds of millions of dollars in revenue into their community over the last five years.
3. In examining the *Millbrook Cannabis Control Law*, we are struck by the fact that it would have been difficult to devise a cannabis law to violate our rights in a more comprehensive manner. This raises the question of who exactly came up with this law and what connections, if any, they might have to the Canadian government and its policing and security agencies. The followings are some of the more obvious ways in which the proposed *Millbrook Cannabis Control Law* violates our constitutionally protected Section 25 and 35 inherent Aboriginal and Treaty Rights:
 - a. By requiring a Canadian licence for a Mi'kmaq person to exercise their Aboriginal and treaty rights on our unceded lands, the law violates those very rights (21.2). The entity "Millbrook First Nation" is a municipal corporation created by and accountable to the Canadian Parliament's racist *Indian Act* and is not a legitimate governing body of the Mi'kmaq nation. Indeed, in the *Millbrook Cannabis Control Law*, "Millbrook First Nation" is defined as "being a "band" within the meaning of the *Indian Act*." As such, it has no right to licence, tax or regulate Mi'kmaq Aboriginal and Treaty Rights.
 - b. By imposing a "Mandatory Community Contribution" (ie. a tax) on all "License Holders" ranging from 0.5% of gross revenue in year 1, to 2.5% of gross revenue in year 5, which may be "amended by the Board as necessary" the law is

violating our tax free status as allies, not subjects of the Crown. This means that a five person Board (requiring just a three person majority) can raise taxes to whatever amount they want for cannabis entrepreneurs whenever they want. The Board can 'revoke, amend, suspend, or extend licenses' at its "sole discretion" and can set the total number of licenses allowed and thereby exclude band members from participating in the cannabis industry (see "Regulation Concerning Mandatory Community Contributions pages 3-4 and 21.5 and 27.1 j).

- c. By excluding Millbrook Band Members who have a "criminal conviction for an indictable offence" which has not been pardoned by the Crown (21.18) this law discriminates against those people unfairly targeted by a criminal justice system which is racist towards Indigenous people. The law also gives the Board – which is selected in part by the Millbrook RCMP detachment (20.2. e) – the ability to decide which license holder might have "direct, indirect, past or present affiliation or association with any criminal organization" with a "sufficiency of evidence of such affiliation or association to be determined by the Board in its sole discretion" (21.19). Even more broadly, the Board may refuse to issue a license if it has "evidence that it considers credible and reliable that the applicant is not of good character" (23.4). This really gives the Board full and arbitrary control over who is allowed into the Millbrook cannabis economy and who will be excluded.
- d. By having the "Cannabis Control Board" set "price controls" at "the Board's sole discretion" for the wholesale price for cannabis for cultivation, wholesale and retail, it thereby controls profit margins and Mi'kmaq peoples' entire businesses (13.1) as if it were operating a state-capitalist command economy. Whatever happened to free enterprise, and the rights of the Mi'kmaq people to, as the [1752 Peace and Friendship Treaty](#) describes, "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 Cannabis Control Board setting prices at their sole discretion is the exact opposite of a Mi'kmaq disposing a product "to the best Advantage."
- e. By criminalising cannabis, this law invites police repression and violence on our territory for the consumption of a safe and legal plant-based medicine. The *Millbrook Cannabis Control Law* considers all cannabis grown or traded by Indigenous people outside of Canadian control to be "illicit" and thereby subject to Canada's criminalization of the plant. "Unless authorized by this Law or the Regulations, the Cultivation, Processing, Distribution, Sale, Possession and use of Cannabis within and from Millbrook Lands is prohibited" (10.1 and 10.4) The only cannabis that is not considered "illicit" is that "licensed" by the Band Council or by Health Canada – ie. that is irradiated and subject to the use of pesticides and herbicides (9.1). The law also limits the possession of cannabis to the amount in Canada's regulations, and states that it is illegal to "sell, barter, give or

exchange... cannabis that is not obtained from the holder of a Distribution License or that is not licensed by Health Canada” (22.2).

- f. By giving the Cannabis Control Board the power to require “any financial, background or contextual information that the Board in its sole discretion, deems necessary to review and evaluate the application” before granting, amending or renewing a license, the law gives the Board Orwellian intelligence gathering capacities that run completely counter to Mi’kmaq notions of freedom and dignity (23.1).
- g. By making it illegal for an individual to consume “Cannabis in any Public Place” the law tramples on our inherent rights to medicine (10.5). As a medicine, we all have a right to consume cannabis in accordance with our peoples customs and conventions – ie. as we see fit, as long as we are not harming anyone else with our actions.
- h. By having the Cannabis Control Board “liaise regularly and cooperate with... any other appropriate body or agency” and seek “co-operation and mutual assistance” with “other regulatory and law enforcement agencies” the proposed law invites colonial and racist policing entities like the RCMP into our community to violate our rights and criminalize our people (5.1 and 7.1).
- i. By requiring individuals and businesses “to hold an equivalent licence issued by Health Canada... until such time as Millbrook First Nation establishes a public health agency that has a capacity and standards sufficiently comparable to Health Canada regarding the issuance of Cannabis-related licences in compliance with the criminal laws of general application,” the Band Council is in effect enforcing Canadian cannabis laws and regulation on our people in violation of our Aboriginal and treaty rights. (7.3) It does this again requiring as a condition of holding any such license, that any facility from which cannabis is cultivated or processed be “inspected, certified and licensed by the health and safety authorities designated by the Board, which may include Health Canada officials” (21.22).
- j. By refusing to issue a dispensary license where, “in the sole discretion of the Board, the proposed location of the Dispensary is likely to disturb or endanger members of Millbrook First Nation” the law violates our rights to use our own lands as we see fit (22.1).
- k. By requiring Health Canada standards upon Micmac people on our unceded lands, the law imposes unrealistic colonial controls on one of the safest plant medicines in existence (11.1). “It is prohibited for a License Holder to Sell Cannabis in a package or with a label that does not conform to the requirements established by Health Canada, as the same may be amended from time to time”

(12.1). By “engag[ing] Approved Agents, which may include representatives of Health Canada, to assist and advise the Board.”

- i. By establishing a “Cannabis Control Board” with quorum of three people (19.1) to “regulate, monitor and inspect all the premises and activities of Licence Holders” the law creates a complete dictatorship (17.1 b). The Board is given sweeping and overreaching authority to “enact such Regulations it considers necessary, make any decision and take any action as is necessary to fulfill the purposes of this Law.” (17.1 c). The board will use “Licensing fees and other amounts collected by the Board” to pay for its costs of operation (18.14) but this does not include the “mandatory community contributions” (18.15). The board meetings “may, at the sole discretion of the Chairperson... be conducted *in camera*,” ie. in secret and without any accountability to the people (19.6).
- m. By making the Millbrook First Nation RCMP detachment one of the representative organizations on the Board Selection Committee that picks the members of the “Cannabis Control Board” the law furthers the colonial occupation of our lands, economy, and polity (20.2 e).
- n. By acting as judge, jury and executioner, the Board may issue “fines or the suspension, amendment or revocation of a Licence” in any laws or regulations it views as broken. But because it doesn’t have any real powers, any breaches which are “criminal in nature” [ie. which violate Canada’s Criminal Code] “shall be initiated and adjudicated in a court of competent jurisdiction” (26.2). This just goes to show that the entire law is simply the imposition of Canadian laws and regulations on Micmac peoples and lands.
- o. By giving the board the power to “enact such Regulations it considers necessary to implement the provisions of the law,” the board is given sweeping powers including: “creating new categories of Licences;” doing “background and security investigations” of “owners, directors and key Persons associated with applicants” as well as “personnel, staff and companies contracted to conduct business with or on behalf of a License holder,” “the amount of application fees, annual licensing fees, and other fees,” in consultation with council, the amount and frequency of Mandatory Community Contributions payments”; the days and hours during which a dispensary may operate; “the type of Cannabis products that a Dispensary may Sell;” the “total number of licenses that shall be issued in any or all categories”; the imposition of fines of up to One Hundred Thousand (\$100,000) Dollars per breach;” the imposition of “processes and systems” on Cultivators, Processors, Distributors, and Dispensaries so that “the Board can accurately track all Cannabis sold by a Cultivator, Processor, Distributor and Dispensary and the price at which the Cannabis is sold” and “accurately verify that all mandatory community contributions and all point-of-sales fees have been

charged, collected and remitted as required by the Law;” and the rules for advertising, marketing, packaging and labeling requirements (27.1) the law creates an unwanted cannabis dictatorship on our lands.

- p. By passing this law through a simple BCR resolution without the consent or knowledge of the people, this law has no real power or authority in law. The real danger is that it could provide a pretext for police forces to carry out raids on our people and that lead to violence and conflict within our community as it did when a similar such law was implemented in Six Nations (28.7).
4. As a result of our analysis, we hold that there is no fixing the draft *Millbrook Cannabis Control Law*. It needs to be scrapped in its entirety. It is not good for our people, our entrepreneurs, our economy or our future. It elevates a small clique on a Cannabis Control Board to have vast and overreaching powers that completely violate everyone’s rights. Should this law be implemented, it will set a dangerous precedent affecting all other aspects of our economic and political lives for many years to come. Anyone thinking of supporting this law should consider the consequences of the same system being applied to them. If it’s fair to tax and control cannabis entrepreneurs in this manner, who will be next?
5. The creation of a Band Council Cannabis Law with a Cannabis Control Board operating on exactly these same lines has been tried in multiple Indigenous communities, and has consistently been a failure. The original Kahnawake Cannabis Law has resulted in the complete stifling of the [Kahnawake cannabis industry](#) which still has zero regulated dispensaries providing Indigenous products after five years of cannabis “legalization.” In Tyendinaga Mohawk Territory, a version of this law [was technically passed](#) but has never been implemented. At Six Nations, the development of the same law cost the community over [\\$3 million dollars](#) that went mostly to consultants, lawyers and cannabis board members. The law turned out to be not only [completely illegal](#) in Canada’s eyes, but it proved a complete failure as the people organized their own [people’s cannabis coalition](#) and regulated cannabis themselves. Continued enforcement attempts by Six Nations police seriously injured community members and led [to a riot at the police station](#) that nearly escalated into a gun battle. After all the violence and millions of dollars spent, the Six Nations cannabis law now regulates nothing.

Conclusion

We wish that the committee working on this draft cannabis law had consulted seriously with us and the cannabis dispensary owners in our community. That did not happen. None of our concerns have been addressed. This law is copy-pasted from Kahnawake’s and Six Nation’s version of the same law. It doesn’t serve our people and it doesn’t respect our rights. It needs to go.

We again draw the attention of Millbrook's *Indian Act* Chief and Council to our two position papers on these matters. Our [position paper of June 27, 2022](#) engaged with the community consultation process begun by the Millbrook Band Council and concluded by inviting Chief and Council and staff members to attend our founding meeting to discuss these issues. We received no feedback or response to it.

Our [second position paper of February 24, 2023](#), continued to engage the issue of cannabis regulation and proposed an alternative "Section 35 Compatible Millbrook Cannabis Framework" with a dozen key elements described therein. Again, we were met with silence. We are aware of no written response to either of our two documents, and no attempt to engage with any of the perspectives or arguments developed within them.

We also made treaty expert and former National Chief Del Riley available to Chief and Council, as we thought his expertise in adding four sections to the *Canadian Constitution Act* as President of the National Indian Brotherhood, might be useful in helping to draft whatever cannabis law might be necessary. Again, we received no interest in the offer, despite Chief Riley personally visiting Chief and Council to introduce himself.

We will conclude this document by quoting a key passage in our second position paper which we feel is worthy of being repeated:

"Keep in mind that even Band Council Resolutions and bylaws are not enforceable by Canadian police authorities. The BCR has the legal power of a wish, nothing more. The powers that John A. MacDonald gave to Chief and Councils are extremely limited by the *Indian Act*, and they do not extend to making laws about cannabis.

Band Council regulations concerning cannabis must "harmonize" any cannabis regulation they make with Federal and Provincial cannabis laws, or risk incurring severe legal liabilities. When it comes to cannabis, the key issue is where the cannabis is sourced from. Does it come from Health Canada's Licensed Producers – the only legal option under Canada's laws? Or does it come from independent Indigenous sources, sourced through a "red," "grey," or "black" market of growers and manufacturers?

This is the dilemma for any Band Council cannabis regime. If laws are passed saying that all cannabis on the reserve must come through Health Canada, then the Band Council is violating the Section 35 rights of the Indians on reserve. If on the other hand, the cannabis product does not come through Health Canada, then the Band Council and its employees are liable for breaking the Federal and Provincial Cannabis Acts and may face severe financial penalties as well as a maximum sentence of up to 14 years in jail."

[*Developing a Section 35 Aboriginal and Treaty Right to Cannabis Framework for Millbrook First Nation*](#)