**BC FNLC Cannabis Pre-Engagement Session**

**Context Setting and Early Recommendations for Federal Legislative Change**

*Draft Subject to Review*

**(August 10, 2021)**

On August 10, 2021 the FNLC Cannabis Joint Working Group held its first Engagement Session (or, Pre-Engagement Session) towards the development of a BC First Nations Cannabis Strategy. The details of the Pre-Engagement Session are below:

***Update on the FNLC’s Mandate***

At the start of the meeting, First Nations Summit executive Lydia Hwitsum provided an update on some of the work the BC-FNLC working group has done to date on cannabis. This work was mandated through resolutions passed by the Union of BC Indian Chiefs, the First Nations Summit, and the BC Assembly of First Nations in February and March, 2021. Part of this mandated work involves facilitating Engagement Sessions, which were/are planned for August 10, October 20 & 21st, and November 27th, 2021. These sessions are also meant for us to receive feedback on proposed upcoming legislative changes to the federal *Cannabis Act* as well as to seek input on potential changes to the draft DRIPA action plan.

The FNLC WG has been developing several other economic development initiatives: the Strategic Partnership Initiative, the Cannabis Market Access project, the BC Indigenous Shelf Space program, and the Farm to Gate program.

*Strategic Partnership Initiative*

* This is a joint initiative between the FNLC, Health Canada, Indigenous Services Canada, and the Province of BC.
* The intention is to create a BC Indigenous Cannabis Initiative that will provide financial and regulatory supports for Indigenous communities and individuals seeking to develop cannabis-related businesses. It will be designed to be flexible, in order to support a diverse range of projects in the cannabis sector.
* Funding has been successfully received for the fiscal year 2021/2022, which will allow for us to establish the governance and detailed funding framework for how SPI can roll out.
* A final stage of review will happen in late Fall to secure the multi-year funding that will enable us to flow funds to approximately 20 projects over the next 3 years.
* The hope with SPI is to provide support to Indigenous communities to create new economic opportunities, provide education, and, among other things, economic diversification.

*Cannabis Market Access Project*

* This is a research project that aims to respond to an information gap regarding First Nations participation in the cannabis sector.
* In addition to a jurisdictional analysis, an Indigenous contractor will convene and conduct one on one interviews Indigenous participants in the cannabis retail, processing, cultivation, and ancillary sectors to discuss Indigenous supply chain opportunities and challenges; as well as the potential role for an Indigenous cannabis business association.
* These discussions will contribute toward a final report and feasibility study regarding the institution, which the FNLC will be able to utilize in conjunction with what is heard through the strategy engagement sessions; and can also potentially be used to support First Nations own information needs.

*BC Indigenous Shelf Space Program*

* Set to be launched sometime in 2021
* This program will highlight cannabis products produced by B.C. Indigenous producers in BC Cannabis Stores, helping consumers easily identify those products and make purchasing decisions.

*Farm to Gate*

* Set to be launched in 2022
* This policy framework is intended to give BC cannabis growers the ability to sell their products directly to consumers from stores located at their production site. This is not currently allowed under BC regulations.

In more detail, the Strategy Development Process for the BC Cannabis Strategy is currently set to occur as follows:

*August 10th, Pre-Session*

* Discuss areas of importance for change in cannabis law, as identified in advocacy work done so far, which are: jurisdiction, law-making and regulation, enforcement, economic development, taxation, revenues, health, safety, education, as well as finding areas of focus within these topics to make room for the ceremonial, spiritual and medicinal potential for cannabis.
* Seek specific feedback on requested changes to the *Cannabis Act*, and the *Declaration on the Rights of Indigenous Peoples Act* Draft Action Plan.

*October 20th, Engagement Session #1*

* Topics of focus on this day include: taxation & revenue sharing and economic development.
* Seek feedback on our work to date on SPI, the Indigenous Shelf Space Program, Direct Delivery, Farm to Gate, as well as our work with the Province on the Cannabis Market Access Project.
* This day will focus on the development of a “red market” for cannabis – hopefully tapping into the input from First Nations with experiences with the actual cannabis market so far and leveraging that to come up with some key areas for us to focus our advocacy work.

*October 21, Engagement Session #2*

* A focus on the topic of Health and Community Safety, as well as Jurisdiction.
* Time will be made during this session to focus on how we can make sure we emphasize and provide support for the value of cannabis in medicinal, spiritual and ceremonial uses in First Nations communities.
* This day will also be used to explore the potential for a BC First Nations Cannabis Institution as this ideas has surfaced in several areas of our cannabis related work. We would like to seek input on the desire for such an institution, and what function First Nations might want to see it play – such as supporting business and economic development; law and regulation making support; and health, safety, and security standards and testing.

*November 17th, Post-Session*

* This session will focus on seeking feedback on a draft of the BC First Nations Cannabis Strategy we will have developed based on the Engagement Sessions held to date.
* This BC First Nations Cannabis Strategy will then be revised based on the feedback received this day and put forward for endorsement by Chiefs via resolutions at the FNS, UBCIC, and the BC AFN.
* If supported, this Strategy will form the basis of the FNLC’s ongoing work and advocacy with respect to cannabis.

***Legal Landscape Presentation***

During the Pre-Session we also had a presentation by Yvan Guy Larocque of Miller Titerle & Co on the Legal Landscape of cannabis currently. The presentation highlighted some mechanisms available right now to First Nations to develop a more tailored approach to cannabis, through s. 119 agreements, though was critical of their limitations. There is also potential use for bylaw making under the *Indian Act* (s. 81 to 83) to provide for some jurisdiction for First Nations over cannabis.

Of the ways that First Nations might go about passing cannabis laws, the best avenue for a defensible cannabis law is to pass it in accordance to First Nations inherent right to self-government with reference to UNDRIP. Many nations have also purported to pass laws pursuant to an economic right to regulate cannabis. First Nations pursuing jurisdiction through the use of an aboriginal right may come into legal conflicts, and so this approach can be problematic.

Regarding licensing, there does not exist any First Nations led licensing regime. Some First Nations are entering into agreements with the provincial/federal governments though and this potentially signals a path forward for First Nations licensing jurisdiction. Taxation is also problematic, as there is no recognition of First Nations taxation powers other than the First Nations Sales Tax. First Nations are also currently not receiving any tax revenues on the sales of cannabis.

With Health and Safety, if you do not have a federal licence you can’t have your products tested. Grey market products have been seized and have been found to have a lot of contaminants. There is criticism that Health Canada should open up its testing processes to not just production facilities, and that they should not use Health and Safety as a means to control the cannabis market. With Enforcement, the enforcement of laws can be difficult for First Nations without resources. If lacking resources, it is hard to enter into agreements with federal and municipal police to have those laws enforced.

***Breakout Sessions***

The main source of discussion focused on the discussion paper contained in the meeting kit. There were breakout-room sessions made up of three questions:

1. What are the priority jurisdictional issues for your community? (possible areas could be law-making and regulations, licensing and standards, compliance & enforcement, revenues, taxation and economic development?
What areas do you want to focus on in the short-term vs. long-term?
How could this be addressed through legislative change?
2. What are the health, safety, and education priorities and impacts in your community?
3. How do you and your community want to be involved in the federal review process, and what is needed to support your participation?

***Feedback***

Below, the feedback and questions we received are compiled and broken up below into different topics, they are: Licensing, Jurisdiction, Education, Health & Safety, Enforcement, Tax & Revenue Sharing, Economic Development, and the Cannabis Institution.

*Licensing*

* First Nations band members are wanting to obtain licenses to grow, produce, or distribute cannabis. They have been asking their leaders if it could be possible for them to obtain a type of license where individual members might be able to tap into for use rather than needing to follow the traditional licensing pathway.
* The application process for licensing is much too costly. Small production licensing requires significant investment and it is cumbersome.
* The MCK and Health Canada MOU development is an encouraging change.

*Jurisdiction*

* Cannabis legislation pertaining to First Nations only applies on reserve land, rather than being understood to apply to a First Nations traditional territory. This absolutely needs to changed and must be made a priority going forward.
* Mention of the province cracking down on stores and seizing products even though First Nations are operating sovereignly within their territory because it is not considered on reserve.
* First Nations who have created their own cannabis laws are tired of waiting to implement them.
* There needs to be more discussion and clarity as to how First Nations can implement their cannabis laws and have them be recognized. There need to be assurances from the federal and provincial governments that First Nations cannabis laws will be respected.
* Advocacy done on cannabis by the FNLC with governments needs to stand up First Nations cannabis laws and support them as the legitimate sources of authority that they are.
* Amendments to the federal *Cannabis Act* need to include a recognition of First Nations cannabis laws.
* A goal in cannabis legislation change needs to recognize First Nations as equal government, and not subordinate government.
* The benefits of s. 119 agreements under the CCLA need to be realized both on and off reserve. This includes the discussion around the inclusion of territory in wording, not just the application of laws to reserve land.
* Some of the requirements of the province in s. 119 CCLA agreements are overly paternalistic. For example, they try to dictate who First Nations in the cannabis industry can and cannot do business with. That is unacceptable and unnecessary. Cowichan is an example of a First Nation who has contested this and have been successful.
* The FNLC Cannabis WG could assist with getting interim agreements in place to help provide benefits to First Nations now rather than waiting for legislative changes to happen.
* There was discussion of the value of promoting cannabis bylaws, as they help members start their own companies on First Nations land.
* There was a question around the applicability of some of the location policies within cannabis laws as they apply to First Nations. Some community members might want to start a business, but for whatever reason, there is no possible way for them to have a business outside of a particular distance, like for example the requirement to be 500m away from a public park. Are members of this community just not allowed to enter the cannabis industry? There should be some room for flexibility here, particularly given the restrictive state of provincial and federal law as it stands now.

*Education*

* There needs to be more education about products contained in stores, so people are knowledgeable about what they are buying (people might not understand their tolerance levels and so might purchase at a strength too high for their needs).
* Education is needed on the difference between THC and CBD.
* There needs to be more education about the safety of marijuana in contrast to other substances – noting that there has been no recorded deaths from marijuana use, compared to a substance like alcohol.
* Pushing for opportunities for individuals to get involved in the cannabis industry.
* There was a mention that some cannabis production facilities aren’t accommodating to workers with disabilities and a wonder if there could be some changes made.
* Educating people on the notion that marijuana is a ‘gateway dug’, conceiving of it instead as a ‘gateway to wellness’ to reduce stigma.
* Using dispensaries as an area to educate. One dispensary owner keeps marijuana on display with other cultural artifacts and traditional medicines, using this as a way to provide education to people.
* Education around cannabis needs to be more culturally informed.
* The need to bring job training closer to home in the province. Some training institutions in the cannabis industry only exist in places like Ontario, we need more options in the province so people can get the training they need.
* One First Nation mentioned creating a cannabis retail course where people would be able to work with the First Nations stores to help train people about health and wellness.
* The stigma that exists in some First Nations communities makes it difficult for some community members to provide education, as they feel they might be criticized for doing so.

*Health & Safety*

* Medicinal marijuana purchases are a huge market, with Elders being frequent buyers. Some of the busiest days in some stores are on pension days.
* Some of the most consistent consumers are over the age of 40, and they use marijuana to treat back pain, anxiety, and other medical challenges.
* How can we ensure lower prices on cannabis products for those who use it as medicine?
* How can we provide compassionate access to marijuana as a medicine for First Nations community members who need it?
* How can the FNHA be involved in facilitating that compassionate access to marijuana for those in need?
* Mentioned that some stores offer discounts for elders and those who need products for medical reasons – they might offer a direct discount.
* There was a mention of medicinal marijuana cards, where holders of it could keep their receipts and use it to get some kind of a reimbursement or discount on their purchases.
* The use of cannabis as a treatment for addiction. People are finding relief in cannabis from addictions to other substances like opioids and alcohol.
* There was also a mention on the need to seek information on certification studies done on rehabilitation or drug and alcohol use in relation to cannabis. This information is important before priorities can be assessed.
* There was mention of a study by Carrier Sekani Family Services regarding the promotion of cannabis for use of healing of opioids and alcohol addictions.
* The Ministry of Indigenous Relations and Reconciliation, the FNHA or other bodies could potentially help with providing for the testing and safety needs of First Nations pursuing a red market avenue.
* Mentioned the need for involvement in this issue by the Ministry of Indigenous Relations and Reconciliation.
* Some First Nations have established relationships with educational institutions like UBC for research projects regarding Health and Safety topics.
* There are private institutions who will currently test cannabis products, but they are not recognized by the government as legitimate.

*Enforcement*

* The Community Safety Unit is now often pursuing the landlords of cannabis businesses with fines and other penalties as a way to avoid negative publicity and, among other things, reputationally harmful legal precedents.
* There are mentions of the CSU threatening First Nations cannabis business owners with $100,000 fines.
* Dealing with the CSU is a frequent topic of conversation, a lot of frustrations have been expressed from First Nations feeling like they are unable to operate their businesses properly.
* There is an argument that the CSU are potentially acting illegally by coming onto First Nations land and stealing medicines by seizing cannabis.
* There needs to be a conversation coordinated between First Nations leaders and the CSU very soon to come to better understandings around cannabis enforcement on First Nations territory.
* Difficulties were expressed with having problematic dispensaries dealt with by administration which were hesitant to deal with them.
* There was a question as to how band governance can protect their community members who are running integral family-owned cannabis businesses when bands are not included in enforcement or jurisdictional discussions. The CSU and RCMP come to communities to disrupt and criminalize families operating dispensaries, this is extremely damaging and more needs to be done.
* There is a question of how we can get the CSU to stay away and protect families who are operating within the red market?
* There was a discussion about the need for First Nations to have and use their own security forces on their territory. There was a mention about how someone would rather receive a visit in the middle of the night from security people who are part of their own territory, rather than the CSU or other Police force showing up with weapons.

*Tax & Revenue Sharing*

* First Nations do need to receive some of the funds from taxation. However, an issue stemming from this will be how it drives up the costs of products as well. Being a part of a licensed regime drives up costs and makes products less accessible. Pushing for a share of tax revenues might increase price making products even more inaccessible. This might push the elderly or those who are unable to afford the products to the black or grey market where they are cheaper.
* Questioning why the province should be able to collect fees for cannabis business done in First Nations communities, when the reverse isn’t available as an option for First Nations.
* There was a mention of looking at the BC Gaming Commission’s advancement for revenue sharing as an example for a quicker win on revenue sharing.

*Economic Development*

* There was expression for the need for First Nations community members to help in the creation of industries within the red market. Hiring First Nations people within all sectors of the market.
* There needs to be a way within the work the FNLC does to amplify the voices of First Nations entrepreneurs without legal backgrounds, so they can provide their valuable expertise to these conversations.

*Cannabis Institution*

* A BC First Nations cannabis institution could be used to set standards, target jurisdictional issues and provide other advocacy work.
* An institution could have a role as a type of central body which could be useful for standards/testing. Standards vary a lot between different dispensaries and facilities, so having some coordinating body that ensures everything is standardized could be helpful.
* Not all First Nations members would want to be involved in joining a cannabis association to coordinate together, but some would like to. There would need to be a way for a First Nation to opt out.
* There is value in offering expertise to First Nations wanting to enter the market who might not have enough resources or expertise in the area to do so. Such an association could fill that gap.
* The potential for a Cannabis Institution to operate as a First Nations cannabis testing facility, with a potential seal of approval on products.

*Other Topics*

* Regarding the federal *Cannabis Act* review, there is a question of how cannabis exporting is currently treated. Individuals wondering if it is still considered a controlled substance or what the review process is on this?
* Some First Nations community members or leadership might not want to engage in the federal review process because it might be used against them politically.

***Conclusion***

The discussions were helpful in identifying some current priority issues for First Nations communities with cannabis. Recognizing First Nations territory in cannabis law and not just reserve land is an important advocacy piece going forward, as well as finding a way to facilitate productive conversations between the CSU and First Nations leaders to push for greater First Nations control over enforcement activities on First Nations territory. The below are some summaries on the content of the discussions had:

*Licensing*

Some First Nations community members are still finding licensing difficult to obtain. There were mentions of the possibility of providing a license or more authority to First Nations leadership within communities which could be used by other members. There was positive sentiment regarding the MCK and Health Canada MOU.

*Jurisdiction*

The first priority issue here for First Nations is the application of cannabis laws extending to traditional territory and not only reserve lands. Frustrations were expressed over the difficulties in implementing First Nations cannabis laws and having them not be respected by the provincial and federal governments. Any amendments to the *Cannabis Act* will need to include greater recognition of First Nations Cannabis laws. Beyond the *Cannabis Act*, more changes need to be made to s. 119 CCLA agreements. As they are now, their requirements are too paternalistic and their benefits should apply to First Nations territory and not only reserve lands.

*Education*

A common sentiment expressed was the existence of the stigma marijuana carries in First Nations communities. Culturally informed education around cannabis is needed to help people understand important aspects of cannabis, like product strengths. One creative way of doing this could be to use dispensaries as an area to educate. One dispensary owner keeps cannabis on display with other cultural artifacts and traditional medicines as a way to provide a more holistic education on cannabis. There was also a desire expressed to work to provide more training for cannabis related industry positions.

*Health and Safety*

Medical marijuana is a huge aspect which is not receiving enough discussion. Some dispensary owners noted that some of their most consistent consumers were those over the age of 40 who used cannabis as a way to treat back pain, anxiety and other medical challenges. There were also concerns expressed over access to cannabis as a medicine, and a desire to provide more subsidies to those who need compassionate access. There was discussion about cannabis as a potential treatment for addictions.

*Enforcement*

Many frustrations were expressed over how the Community Safety Unit has been treating First Nations cannabis businesses. There were mentions of threats of large financial fines, and other tactics like pursuing cannabis business’ landlords. This is a priority area for change, especially in the short term. A discussion needs to be coordinated with the CSU and First Nations leaders to come to better understandings around cannabis enforcement on First Nations territory. It is disrupting businesses and the lives of First Nations community members. Some First Nations leadership expressed feeling like they are unable to help protect their community because they have not been made part of enforcement conversations with the provincial government and the CSU. There was a desire expressed to have First Nations have and use their own security forces on their land.

*Tax & Revenue Sharing*

Participants expressed the need for First Nations to receive funds from revenue sharing and taxation. There was a worry expressed as to how implementing this might impact the prices of cannabis sold within First Nations territory, and whether it would make products inaccessible. There was a mention of looking at gaming revenue sharing as an example of where to start on revenue sharing work.

*Economic Development*

First Nations community members need to be included in the creation of all industries within the red market. There was also discussion about the need to have the FNLC Cannabis WG amplify the voices of First Nations entrepreneurs without legal backgrounds in these conversations.

*Cannabis Institution*

There was support expressed for a BC First Nations Cannabis Institution. There was mention that it could advocate on jurisdictional issues, and be used to set regulatory standards. There was discussion of it being used as a way to provide quality standards and testing services to the First Nations cannabis industry that could place their seal of approval on products.