

# OLTHUIS, KLEER, TOWNSHEND LLP

## MEMORANDUM

**DATE:** May 26, 2021  
**TO:** Garden River First Nation Members  
**FROM:** Sara Mainville and Tomas Jirousek (law student)  
**RE:** FAQ - Frequently Asked Questions about the Draft Cannabis Control Law  
**FILE NO:** 74829

---

The following are some available answers from OKT LLP (the lawyers who had revised the current draft in November 2020) to some of the community member's questions.

### **1. Why is this called a Cannabis Control Law?**

- Legalization of a controlled substance requires continuing control to ensure at least two objectives (1) that the cannabis is carefully controlled so that it does not intermingle with illicit cannabis (black market) or fuel (through cash mismanagement) organized crime and (2) that the cannabis is entirely restricted from the view, vision, or possession by children or youth (under the age of 19 years old). Cannabis advertising is restricted in many of the same ways that tobacco advertising is restricted because of the health risks especially to young, developing brains.
- Like many legalization regimes, a window remains open for "red market" or unlicensed cannabis to enter the regulatory regime for a time-limited period in order to ensure that there is enough supply within the regulated regime, as well as that the regulated supply may compete with illicit or black markets. This is done in a controlled procedure which creates legitimacy for this regulated regime to be "entirely licensed" at some future date.

### **2. What are the enforcement mechanisms for this law? (What are the 'teeth' behind the law?)**

- The permit itself is the 'teeth' or enforcement mechanism. Permit holders will want to keep their permits and will comply with Law/regulations and the terms and conditions of the permit in order to keep their permit.
- The Law allows for the terms and conditions on permit holders to operate in the way community needs to, and a permit will be suspended any time commercial activity steps outside of that box (breaking of a rule, condition, or term of keeping the permit in good standing).
- A person or business operating without a permit risks enforcement under this Law and the federal Cannabis Act.
- Recent First Nation cannabis charges related to "illicit cannabis" and the lack of a licence or permit in the provincial or federal laws. GRFN permit holders will not be in possession of illicit cannabis as it will be authorized by the GRFN Commission (legal authority).
- A person or business operating with a GRFN permit, may be able to have business services (like banking, insurance, employee benefits) once the law is recognized as both legal and legitimate.

**3. Is there a difference between cannabis, marijuana, or weed? What is cannabis?**

- No, there is no difference. The terms marijuana and weed are just different terms used for cannabis. Regardless of the term, the cannabis is sourced from flowers, buds, or leaves from a cannabis plant. The cannabis is then used for either recreational or medical purposes.

**4. What about medical cannabis? Is that covered by this law?**

- No. This Law does not regulate medicinal cannabis cultivation, distribution or medical cannabis sales. Medical cannabis is a very different jurisdictional issue. Recreational cannabis is easier to displace because it is governed by the province, but medical cannabis is federal, just like the Criminal Code, which is impossible to displace on federal land like an Indian reserve.

**5. What about ceremonial usage?**

- This Law does not specifically regulate ceremonial usage. However, GRFN can explicitly say that ceremonial use of plants is exempted from this law. We have heard this and will provide language for Gimaa and Council's consideration.

**6. What if the cannabis business that has a permit does not want to continue operating? What happens to the permit?**

- The permits are non-transferable and put in place for five year terms. If the business does not want to renew, the operation stops when the permit expires or the permit may be surrendered to the Commission.

**7. What happens to the existing cannabis retailers?**

- Unless authorized by this law, the distribution and sale of cannabis within the GRFN is prohibited, per s.9 of this Law.
- The individual operating without a permit will face the consequences within the Law and within the Cannabis Act for operating without a permit or federal/provincial licence.

**8. Why is there a community benefit fee for cannabis and not for anything else?**

- Gimaa and Council and the Commission have the responsibility to ensure that this new regulatory regime is both legal and legitimate, it is an opportunity cost for the community in not being able to do something else.
- The GRFN collective/community is undertaking the cost of creating this controlled cannabis permit system and should benefit if the permits create the socio-economic success that other communities have experienced.
- A policy for the Community Benefit Fees will be established after a conversation about community benefit fees is undertaken with the community members. The policy can restrict and/or permit uses of the fund for specific or general purposes.

## **9. What is the difference between the provincial system and the Garden River system?**

- AGCO licences retail stores and the province owns the only licenced distributor (wholesaler) in Ontario called the Ontario Cannabis Store.
- Each store must meet fairly stringent regulatory requirements for security and standard operating procedures and the GRFN process will have a lot of this as well.
- AGCO has a \$4,000 operator application fee and a \$6,000 store authorization application fee as well as a manager's licence fee – this is all only for recreational cannabis, none of the stores' employees can speak to the medical benefits of any of the products they sell.
- These fees have not been set in a GRFN regulation but may also be in the above range.
- All AGCO licenced stores must buy all their products and inventory from the Ontario Cannabis Store.
- The Ontario Cannabis Store does RFPs, requests for proposals, to source out cannabis and cannabis products from Health Canada licenced producers (LPs) only. They cannot purchase First Nation licenced products under the federal Cannabis Act.

## **10. What is the difference between the federal Cannabis Act and the GRFN law?**

The GRFN law does recognize the “criminal” powers within the federal Cannabis Act co-exist on-reserve (as federal lands) much like the federal Criminal Code also does.

The federal Cannabis Act also fully regulated the medical cannabis system from “seed to sale” through licenced producers (LPs) who can only sell medical cannabis to patients with a prescription through their online websites.

There is no such thing as a licenced/legal medical cannabis dispensary, these storefronts were largely closed down after October 2018 as being unlicenced and stores that sold “illicit” cannabis.

Each licence producer must pay a regulatory fee, smaller producers (under \$1 million in revenue) pay 1% regulatory fee, while larger producers all pay 2.3% of their net revenue to Canada as a regulatory fee. This is a big benefit for the federal government. In addition, the tax revenue for licenced producers (excise taxes) are shared 80/20 with provincial/federal governments.

Canada's agency, Health Canada is the regulatory body who gives licences through the medical cannabis regime including so-called “personal growers” for larger quantities of cultivation to service multiple individuals. Personal growers should not be selling to First Nation retail stores.

In addition, Canada also regulates the licenced production of cannabis for recreational purposes across the country. This includes micro and standard cultivation, micro and standard processing, and nurseries, and LPs can only sell to licenced distributors within provincial and territorial licenced regimes, as mentioned, the Ontario licenced distributor is called the Ontario Cannabis Store. The OCS is the only online regional distributor of legal adult-use (recreational) cannabis allowed in Ontario.

## **11. When will the law be enforced and made operational?**

This is a draft law that will be revised and approved by GRFN Council.

- Once there is a final draft law and an accompanying regulation (that sets out the rules for the Commission to function including some details re permit and application costs, etc.) – then the Commission will be appointed and trained prior to being open for business.
- GRFN may give notice to Canada and Ontario about the GRFN law and may have government to government meetings with them in order for these governments to understand the work and purpose of the law to create a viable, legitimate, and controlled cannabis permit regime in GRFN Territory.

**12. How does this law protect children and youth?**

- The Law takes steps to limit the visibility of cannabis in the community, including limiting the use of cannabis in public settings and limiting the advertisement of cannabis.
- The Law also ensures cannabis is kept away from spaces where children and youth can access it. Even more, this law takes steps to ensure that the retail stores and production facilities are physically secure (and separate) so children cannot access them.

**13. What about people who already buy cannabis from grey and black market sources? How will they be incentivized to purchase cannabis from a licenced retail store?**

- The cannabis sold in licenced retail stores will be quality controlled. This ensures safe cannabis is available for consumption, and will encourage people to purchase from retail stores rather than unregulated grey market activity.
- There is a market advantage to so-called “red market” products as the Health Canada production measures actually creates a pharmaceutical product that is not likely to interest or meet the standards of former black market cannabis users. Cannabis is a plant, it can be used as a medicine, but traditionally many Elders are aware of better practices that foster those elements of the plant that cannabis users in various segments want from the cannabis use.

**14. Can I grow my own cannabis?**

- Individuals can apply for a Small Cultivation Permit. However, this permit only allows cultivation of cannabis plants “for the purposes of sale to the holder of processing permit or a distribution permit.” Further, Small Cultivation Permit holders are still bound by other standards imposed by the licence, including the inspection and certification of a valid cultivation facility.
- However, depending on community preferences, you may choose to amend the law to explicitly indicate whether an individual can grow cannabis for personal use only.
- The Ontario Cannabis Control Act allows the growing of four plants per household for (personal) recreational cannabis use purposes. Other First Nations have explicitly made rules to allow for four plants per adult in each household.

**15. Is there a maximum amount of cannabis I can purchase on any individual day?**

- Yes. A retail store must not sell an amount of cannabis that exceeds the amount prescribed by law; identified as a maximum of 30 grams.
- This is a control mechanism put in place to ensure that the retail stores do not fuel other illicit markets (such as individuals reselling after purchasing large quantities at a First Nation store).

**16. Can I drive after using cannabis?**

- No. Per s.12.5 of the Law, no person is permitted to operate a motor vehicle, heavy equipment, or firearms while under the influence of cannabis.
- There are also strict rules against driving while intoxicated in Canadian and provincial law.

**17. What type of restrictions are there on individuals who sit on the Cannabis Control Commission?**

Individuals will be ineligible to be appointed to the Commission if:

- They have an interest in a private entity that has applied for a permit
- They have a family member that has an interest in a private entity which has applied for a permit
- They have a criminal conviction for an indictable offence or have received a full pardon for any such conviction.

The individual must also be over the age of 21.

**18. What type of products can be sold at a retail store?**

- Retail stores may sell for the sale of cannabis, cannabis oil, edibles, paraphernalia, and other products specifically listed on their permit.
- The Commission will have an ongoing oversight function to authorize any new products and/or suppliers for the retail stores. Authorized product types will be listed on permits.

**19. What type of security precautions will be taken by permit holders?**

- Cultivation Permit holders must prevent unauthorized access to the grow site using walls or fences along the perimeter of the site and must have secured entry points. Visual monitoring and an alarm system will also be required by all Cultivation Permit holders.
- The Commission will not issue a Retail Store Permit to a person who intends sell cannabis in a location that is easily accessible to persons under the age of 19.

**20. Is there a maximum number of permits which can be issued in the community?**

- The GRFN Council may at any time and in its sole discretion limit the number of permits that are issued to ensure the appropriate level of regulatory oversight.
- The problem of “cannibalization” within cannabis markets is seen in some First Nations that have too many temporary, fly-by-night, and disreputable store owners, who begin competing by nefarious means (selling other more serious drugs in their storefronts, selling alcohol, staying open 24 hours/7 days a week, etc.).
- The Commission is entrusted by the community to learn from other First Nation communities’ experiences, better practices, as well as to grow the market potential for the betterment of the community.

**[smainville@oktlaw.com](mailto:smainville@oktlaw.com)**