

POSITION PAPER ON THE “SHAWANAGA CANNABIS LAW NO. 1”



The following is a written response to Shawanaga First Nation’s “Cannabis Law No. 1” that has been prepared by the High-Way 69 Medicinal Shop, a medicinal cannabis dispensary that has been operating in Shawanaga First Nation since March of 2020.

May 3, 2021

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Note: Text that is [underlined](#) is hyperlinked to a web resource in the PDF version of this document. To view the PDF version with clickable links, visit www.hwy69medicinal.com. Send corrections, suggestions, or comments to info@hwy69medicinal.com.

We also encourage all Shawanaga First Nation members to send their comments and concerns to Band Manager Adam Good at bandmanager@shawanagafirstnation.ca and to Administration Assistant Bella Pamajewon at administrationassistant@shawanagafirstnation.ca.

BACKGROUND TO THE LAW

1. The "[Shawanaga First Nation Cannabis Law No. 1](#)" was released to the public on March 29, 2021, shortly after the High-Way 69 Medicinal Cannabis Shop was [raided by the APS on March 11th](#), and a [community protest was held at the band office](#) on March 22nd, 2021.
2. The cannabis law is written as a "land law" in accordance with the [Shawanaga First Nation Land Code of 2017](#). The Cannabis law seeks to regulate the "use, possession and management of Shawanaga lands" upon which the "possession, cultivation, processing and retail sale of cannabis" occur.
3. The law was enacted using Section 8.5 of the Land Code, which specifies that it is to be used "on an urgent basis for public health and safety purposes."
4. Shawanaga First Nation received the go ahead for a [cannabis license from the Province in July of 2019](#), so it is unclear why they would rush to implement the law on an "urgent basis" more than a year and a half later.
5. The proposed law was released as an [unsigned letter on Band Council letterhead](#) posted to the [Shawanaga First Nation Administration Facebook Page](#).

COMMUNITY APPROVAL OF THE LAW IS REQUIRED

6. The letter announced that a cannabis law had been created and was now ready for a 42-day review. Members were asked to review the document and share their thoughts or comments with Band Manager [Adam Good](#), or Administration Assistant [Bella Pamajewon](#).
7. The letter concludes by saying that the 42 day review will finish on May 10th, and that "shortly after the community review there will be a member vote of the drafted law."
8. According to section 8.7 of the Land Code, a Land Law can be approved by *either* a quorum of Council at a duly convened meeting, or by a community approval process involving a Members Meeting or ratification vote.

9. In a March 22nd, [interview with Dispensing Freedom](#), Chief Wayne Pamajewon stated in reference to the proposed law that "... the Council has the authority to put that law together and put it on the table and then bring it to the membership to allow the membership to vote on it. That will happen. I said that in the meeting. That is the way we do things because the Council doesn't have the authority to arbitrarily go ahead and make laws and that's it. The people themselves are the ones that pass those laws. I don't do that, my Council doesn't have the power to do that, but they do have the power once the people sanctioned by way of vote yay or nay, we count those ballots and we see how that is and if it says yes then it's law. Very simple."
10. Section 13.1 of the Land Code states that "Council shall consult with Members at a Meeting of Members prior to the enactment of a Land Law: (i) respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this section." The community input for consultation purposes "does not require a quorum," but written notice for a Meeting of Members must be given.
11. Section 15.1 of the Land Code states that "Community approval must be obtained for the following: (a) any master Land use plan; (h) any Land Law or class of law that Council, by Resolution, declares to be subject to this section."
12. Council may decide in what way community approval may be achieved. It can take place "by calling for a Meeting of Members, by calling for a vote and establishing voting days and polling locations, by calling for a mail-in ballot community vote, or any other method outlined in subsection 15.2." 10% of eligible voters must participate in the vote in order to obtain quorum for community approval.
13. It is unclear if this means that the matter will be put to a vote in the May 15th Band Council election, or if the vote will occur at a "meeting of members" as per Section 13.1 of the Land Code, or through the "community approval" procedures of Section 15.
14. Notice for a "Meeting of Members" under Section 14.2 of the Land Code must be posted to the SFN website 42 days in advance of the meeting, and be published "in the community newsletter or local newspaper at least 35 days before the meeting."
15. Neither the Chief nor Council have issued any public explanation to the members of Shawanaga First Nation as to why this law is necessary and why it was created without consultation or involvement from Band Members – including the owners and operators of the [High-Way 69 Medicinal Shop](#) which has provided medicinal cannabis services in Shawanaga with the open support and patronage of Shawanaga members for over a year.
16. The [1993 Custom Election Code of Shawanaga First Nation](#) does not outline any specific procedures or processes by which a community vote or referendum on a law should be held.
17. No notice of a "Meeting of Members" to discuss the Cannabis Law has been provided to members by Chief and Council as of May 3rd, 2021.

18. No announcement of a vote or voting days and polling locations for a vote on the Cannabis Law has been provided to members by Chief and Council as of May 3rd, 2021.
19. Chief and Council have not answered inquiries as to the timeline or process by which the Cannabis Law will be discussed or voted on.

CONVOLUTED STRUCTURES OF THE BAND'S SYSTEM

20. The proposed cannabis law would result in the Band Council implementing Provincial and Federal cannabis law on Shawanaga territory. It would also give the Band Council monopoly powers over the cannabis industry in Shawanaga as the sole supply source, and would make the current operations of the High-Way 69 Medicinal Dispensary, and any other currently operating cannabis activity in the community illegal. These actions run contrary to the constitutionally protected Aboriginal and Treaty Rights that the Anishinaabe of Shawanaga have to use cannabis as a medicine and a trade good.
21. Under the law, an “entity controlled by Shawanaga First Nation” shall be the sole wholesaler for all people or business entities seeking to retail cannabis on reserve – effectively giving Band Council monopoly control of the cannabis industry on the territory.
22. Until the Band Council figures out how to “put in place a wholesale supply chain,” the only entity that “shall be permitted to operate on Shawanaga Lands” in the cannabis sector is a business called **SFN Cann Retail LP**, an entity that the Alcohol and Gaming Commission of Ontario (AGCO) [authorized to apply](#) for a cannabis licence on reserve. The Cannabis Law thus has the effect of rendering the operations of the High-Way 69 Medicinal Shop “illegal” and enforces a Band Council monopoly – regulated and controlled by Provincial and Federal law – over the cannabis industry in Shawanaga.
23. Interestingly, **SFN Cann Retail LP** is not named in the [2020 Consolidated Financial Statements](#) of Shawanaga First Nation.
24. However, a [job posting](#) for running the Shawanaga First Nation Retail Cannabis Store was put out by “**SFN Cann Retail GP Inc.** on behalf of **SFN Cann Retail LP.**” That shows that these two businesses are connected. LP stands for limited partnership, which can be a useful way to shield partners from liability, taxation, and transparency.
25. As the law firm [Blaney McMurtry explains](#), limited partnerships are “composed of a general partner (or partners) and one or more limited partners. The limited partners benefit from limited liability. In an LP, management is conducted by the general partner(s), who is/are fully liable for all debts, liabilities, and obligations of the LP. The liability of the limited partners is restricted to the amount of money or interest they have invested in the LP. Limited Partnerships are not separate legal entities and, as such, they present potential tax advantages compared to those offered by structures involving corporations. Limited Partnerships have no audit requirements. LPs have no restrictions on the residency of partners, thus allowing non-residents to contribute to the

partnership; ...An LP can be composed of a single person who is the sole general and limited partner, or can be expanded to include the contributions of multiple partners; ... LPs can “flow through” profits and losses to their partners; and in terms of taxation, there is no corporate income tax, no requirement to file corporate tax returns, and no withholding tax on profits received by partners situated outside of Canada.”

26. Lawyer Cherie Brant, a member of the Mohawks of the Bay of Quinte, is [listed as the sole signatory](#) and the holder of power of attorney (the legal right of one person to make decisions for another) for **SFN Cann Retail LP**.
27. According to [Provincial partnership registration forms](#), the partners of **SFN Cann Retail LP** are listed as **Mashkiki Cannabis** and **Shawanaga Cannabis**. Neither business is incorporated, and may be a sole proprietorship, general partnership, or a limited partnership. It is unclear who the owners are of **Mashkiki Cannabis** and **Shawanaga Cannabis** since they are not incorporated.
28. According to its [Business Name Report](#), **Mashkiki Cannabis** is a partnership involved in “cannabis retail.” The person [authorizing its registration](#) was Daniel Pawis, of **SFN Cann Retail GP Inc**. Its mailing address is that of the Band Council office.
29. According to its [Business Name Report](#), **Shawanaga Cannabis** is a partnership involved in “cannabis retail.” The person [authorizing its registration](#) was Daniel Pawis, of **SFN Cann Retail GP Inc**.
30. Government documents show that **SFN Cann Retail LP** registered the business **Mashkiki Cannabis** on January 27th, 2021 as well as the company **Shawanaga Cannabis** on February 26, 2021.
31. In 2016 Cherie Brant was a lawyer with the firm [Dickson Wright](#), and was hired by Band manager Adam Good to [build a partnership](#) with Strathcona Energy Group and [Blackstone Energy Solutions](#). Brant is [quoted in a news release](#) from Dickson Wright as stating: “The partnership between Shawanaga First Nation and Strathcona Energy Group is a perfect example of how the Feed-in-Tariff project can work to create economic prosperity and sustainability for First Nations while helping Ontario reach its renewable energy goals.”
32. In 2018 the president of Strathcona Energy Group, CEO Karl Hollett, was [investigated](#) by the OPP Anti-Rackets Branch, the OPP Aviation Services and James Bay OPP, and [charged for defrauding the town of Kapuskasing out of \\$800,000](#). The Strathcona Energy Group now appears to be defunct [after entering receivership](#), despite having [received a \\$1.9 million subsidy](#) from the Federal Economic Development Agency. Brant is currently a [partner with the law firm BLG](#) specializing in Indigenous law and commercial practice... land development and financing on First Nations lands, franchising, cannabis, and economic development.”
33. Hollett has recently re-emerged as the general manager and chief operating officer for Nova Scotia based [Licensed Cannabis producer ZURI INC](#).

34. The company **SFN CANN RETAIL GP INC.** is listed in the 2020 Consolidated Financial Statements as one of the "organizations controlled by the First Nation." However, this corporation is listed as "Inactive" in the Band's [Financial Statements](#), which is odd because searches with the Province showed that it was listed as an "active" corporation.
35. The consolidated Financial Statements list a number of other corporations that may be involved in the Band Council's cannabis business, including **Shawanaga Retail GP Inc.** [incorporated 2012], **Shawanaga Retail LP** [limited partnership not a corporation], **SFN Cann Retail GP Inc.** (listed as inactive) [incorporated 2019], **SFN Ec Dev Corporation** (listed as inactive) [incorporated 2015], **1582787 Ontario Ltd.** (listed as inactive) [incorporated 2004].
36. Chief and Council have not responded to requests for information to clarify the relationships between these various corporations or to explain why **SFN Cann Retail LP** is not listed in the Consolidated Financial Statements and why there exists so many varied interests and corporate structures.
37. The Band Council makes reference to a new law, the "SFN Business License Law, 2021" which does not appear on the website of the Band. The cannabis law states that "All Persons and Business Entities operating a business" in Shawanaga must obtain a Business License in accordance with the Business License Law in order to operate.
38. Not only is there no published information about the "SFN Business License Law, 2021" anywhere on the SFN website or newsletters, but the people of Shawanaga First Nation were not consulted about the creation of this law.

ANALYSIS OF THE SFN CANNABIS LAW

39. The cannabis law does not set out a system for cannabis cultivation and processing, as this will be left to an undefined later date. In the interim, "all business activities relating to Cultivation and Processing of cannabis" shall require not only the support of Chief and Council, but also a "valid Health Canada licence." This provision has the effect of bringing in the Canadian Federal cannabis regulations into Shawanaga, and makes the Shawanaga Cannabis law little more than an extension of Provincial and Canadian cannabis law into unceded Anishinaabe territory.
40. Conditions for getting a cannabis licenses may include, but are not limited to:
 - a. An exemption from Health Canada to permit sales of its product by wholesale to Shawanaga First Nation
 - b. "Specific insurance be obtained relevant to the Cannabis Business;"
 - c. An agreement to indemnify Shawanaga First Nation for any losses incurred by Shawanaga First Nation as a result of the Cannabis Business;

41. As in other jurisdictions which have attempted to create cannabis laws (Kahnawake, Six Nations, and Garden River) a “Shawanaga Cannabis Board” will be created as a regulatory body to assist the council. But unlike the model proposed in other jurisdictions, this body will not operate at “arms length” from council but will simply assist Council in the process of issuing Cannabis Licences.
42. For the time being the proposed Cannabis Board shall be composed of “the same members selected and appointed by Council for the Shawanaga Economic Development Corp.” and be subject to the same procedures and protocols.” Cannabis Board recommendations may be appealed to Council, the decision on an appeal to Council will be final.
43. A fine system is put in place so that “Any Person, Business Entity or Cannabis Business who contravenes any provision of this Law or who takes part in the contravened activity upon conviction is liable to a fine of \$10,000.00 for a first conviction, \$25,000.00 for a second conviction, and \$50,000.00 for a subsequent conviction for Cannabis Businesses wholly owned and operated by Members, and a fine of \$50,000.00 for a first conviction, \$150,000.00 for a second conviction, and \$250,000.00 for a subsequent conviction for all other Cannabis Businesses.”
44. Criminal sanctions are also added to the enforcement mechanism for the law as “Any Person, Business Entity or Cannabis Business who contravenes any provision of this Law or who takes part in the contravened activity upon conviction is also liable to a term of imprisonment not to exceed six months or to both fine and imprisonment.”

OBJECTIONS TO THE PROPOSED LAW

45. The High-Way 69 Medicinal Shop opposes the proposed cannabis law for multiple reasons, including but not limited to: A) its unconstitutional violation of our Aboriginal and Treaty rights on our unceded Indigenous lands, B.) the failure of Chief and Council to involve or consult with the people, C) the lack of transparency or accountability over the convoluted corporate structure created to monopolize the cannabis industry, and D) the way in which the law criminalizes Shawanaga members involved in the cannabis industry.
46. The law is unconstitutional as it violates the constitutionally protected Aboriginal and Treaty rights of the Anishinaabe people of Shawanaga. Hereditary Crane Clan Chief Del Riley, the former head of the National Indian Brotherhood and co-author of Sections 35 and 25 of the Canadian Constitution, [addressed these matters in a speech](#) he gave at the Shawanaga Band Council on March 22nd, 2021, and in a meeting with Elected Chief Wayne Pamajewon on the same day.
47. Chief Del Riley further explained these issues in depth in a two part video interview he did with Rob Stevenson, the owner of Medicine Wheel Natural Healing in Alderville First Nation. (See [Part 1](#) and [Part 2](#).) When asked if he viewed cannabis as a constitutionally

protected “Aboriginal Right” Chief Riley replied, “It sure is. And even if it wasn’t, the authority to regulate cannabis lies with your traditional people.”

48. Chief Riley explained that when the Anishinaabe people began making treaties with the British Crown, they did so as independent nations with full and inherent rights. Indigenous military support for the Crown during the American Revolution and the War of 1812 was the decisive factor in the Crown remaining in what is today Canada, and in order to gain this military support, the Crown made peace and friendship treaties with Indigenous nations that remain in effect today.
49. Indigenous people never gave up their inherent rights to make medicine from or otherwise benefit from the cannabis plant on their own lands, and the nation-to-nation treaties made with the Crown – long before the existence of Canada – reflect this. As Chief Riley explains, “our position on our rights is that they were totally intact as of 1814.” In Chief Riley’s view, Canadian Confederation and laws and policies such as the *Indian Act* remain racist and colonial attempts to control and oppress Indigenous people, but they haven’t taken away Indigenous rights.
50. According to Chief Riley, cannabis regulation, “raises another big issue, and that’s who really has the authority on the reserve. From my research and opinion now, it’s your traditional people, the ones that originally made the agreements. The problem with “Chief and Council” is that they were conjured up by John A. MacDonald at Confederation and [created by] the racist *Indian Act*. It was an attempt to take total control of all Chiefs and Councils – which it did – it made them totally responsible to the Minister [for Indian Affairs], not to the people. That’s why you end up with a lot of corruption across the country. They had to report to their boss, the Minister.”
51. Even though these band councils were given very little authority by their colonial bosses, “A lot of band councils believe they have all sorts of authority because they’re Chief and Council. Most of them haven’t looked at the reality of the legal situation they’re in, which is totally controlled by the *Indian Act*.”
52. This lack of authority is articulated clearly by the Federal government. As Government of Canada spokesperson William Olscamp, (Media Relations for Indigenous Services Canada) stated in an email with [Dispensing Freedom](#), it is the position of the Government of Canada that “there are no specific authorities or definitions in the *Indian Act* for the regulation of cannabis.” In other words, a Band Council entity created by Parliament through the *Indian Act*, can’t re-write or overrule other Parliamentary legislation such as the *Criminal Code* or the *Cannabis Act*. That is why the Federal and Provincial governments will only support “harmonized” cannabis regulations on reserve – which means doing it their way. As a result, to be legal in Canada’s eyes, Band Council cannabis rules have to follow all Provincial and Federal rules regarding cannabis licensing. In passing their “Cannabis Laws” Band Councils are in effect introducing and enforcing Provincial and Federal law on sovereign Indigenous people living on unceded lands.

53. The creation of “Land Code Laws” does not escape the grip of the colonial system or operate outside of the racist and colonial *Indian Act* system. As evidenced by this proposed Cannabis Law, the Land Code is used as a means to extend Provincial and Federal control over unceded Indigenous lands and the businesses created by Indigenous people on them.
54. [According to Tim Ladouceur](#), a candidate for council and a past member of the Land Code committee, the proposed Cannabis law should not be framed as a “Land Law.” “The cannabis law that they’ve got is not a land law. Possession and use of cannabis are not land laws. You don’t see an alcohol law related to the land law, if you have alcohol or if you drink alcohol. Those are not land law issues. Chief and Council are trying to create controls over the people, anyway they think they can. But that’s not the way to do it. There’s been no consultation with the people.” Ladouceur added, “Chief and Council want to decide who has a business and who doesn’t. Who is on welfare and who has a job. That’s not their decision. Yes we want to live our ways, but we don’t want to be on welfare, we want to have a job of our own, have a business of our own, generate our own income.”

CONCLUSION

55. One of the crucial issues underlying the attempt by Shawanaga’s Chief and Council to push their cannabis law is the problem with the definition of what a “First Nation” is. In many communities – not just Shawanaga – there has long been a clear contradiction between the people occupying Band Office positions and running programs paid for by the Federal Government, and the overall collective of Anishinaabe who make up the “nation” more generally. The term “First Nation” is used interchangeably, [and without a legal definition](#), to reference both *Indian Act* office holders accountable to Marc Miller, the Minister of Indigenous Services, and the *people of the nation as a whole*, who hold sovereignty on their unceded lands through their constitutionally protected Aboriginal and Treaty Rights.
56. As the [1884 version of the Indian Act](#) made clear, the *Indian Act* was intended for the purposes of “conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal authority” ie. for turning “Indians” into assimilated “Canadians” running a third level of government, below the Provinces and the Federal Government. Band Councils and Land Code instruments do not have the authority or jurisdiction to self-regulate the cannabis industry, or Indigenous medicines more generally, they can only exist within and rubber stamp existing Canadian laws and regulations.
57. However, Indigenous nations, and Indigenous peoples as individuals, have sovereign rights on their unceded lands that exist outside of the colonial Indian Act system. These rights are inherent to us as Anishinaabe through our creation stories, our relationships to the lands, waters and animals, and are articulated and protected by traditional

governance systems. The protection of these rights, recognized internationally by the [United Nations Declaration on the Rights of Indigenous People](#), was to be guaranteed through the inclusion of Sections 25 and 35 of the Canadian Constitution, as Chief Del Riley reminds us. It is on this foundation of Indigenous sovereignty that more than 180 sovereign Indigenous cannabis stores across “Canada” currently operate free from Band Council regulations or Canadian law.

58. An examination of the actually existing Indigenous cannabis industry shows that it is able to thrive just fine without government involvement. The Highway 69 Medicinal Shop has operated without issue for over a year, has the open support of over 136 community members and patrons that signed a [petition of support](#) after the March 11, 2021 raid, employs band members, and gives back to the people of Shawanaga in numerous ways.
59. The fundamental problem with “laws” such as the “Cannabis Law No. 1” is that the Band Council, an arm of the Canadian government, is masquerading as a “Nation” and imposing Canadian laws and systems on Anishinaabe people in a way that goes against their Treaty and Aboriginal rights. The confusion comes from the way that the legally undefined term “First Nation” is used to manufacture consent, and fool people into thinking that colonial Band Council systems can achieve freedom and independence from Canada, or have a right to rule over the people and monopolize and control their economy.
60. Consequently, we hold that Shawanaga’s “Cannabis Law No. 1” should be withdrawn. Should the people of Shawanaga wish to create regulatory structures for the cannabis industry – or any other economic activity on their territory – such systems should be developed with the informed consent and participation of the people and done in a manner that does not violate our Aboriginal and Treaty Rights.