



AFN National Cannabis Summit

Licensing and Regulation

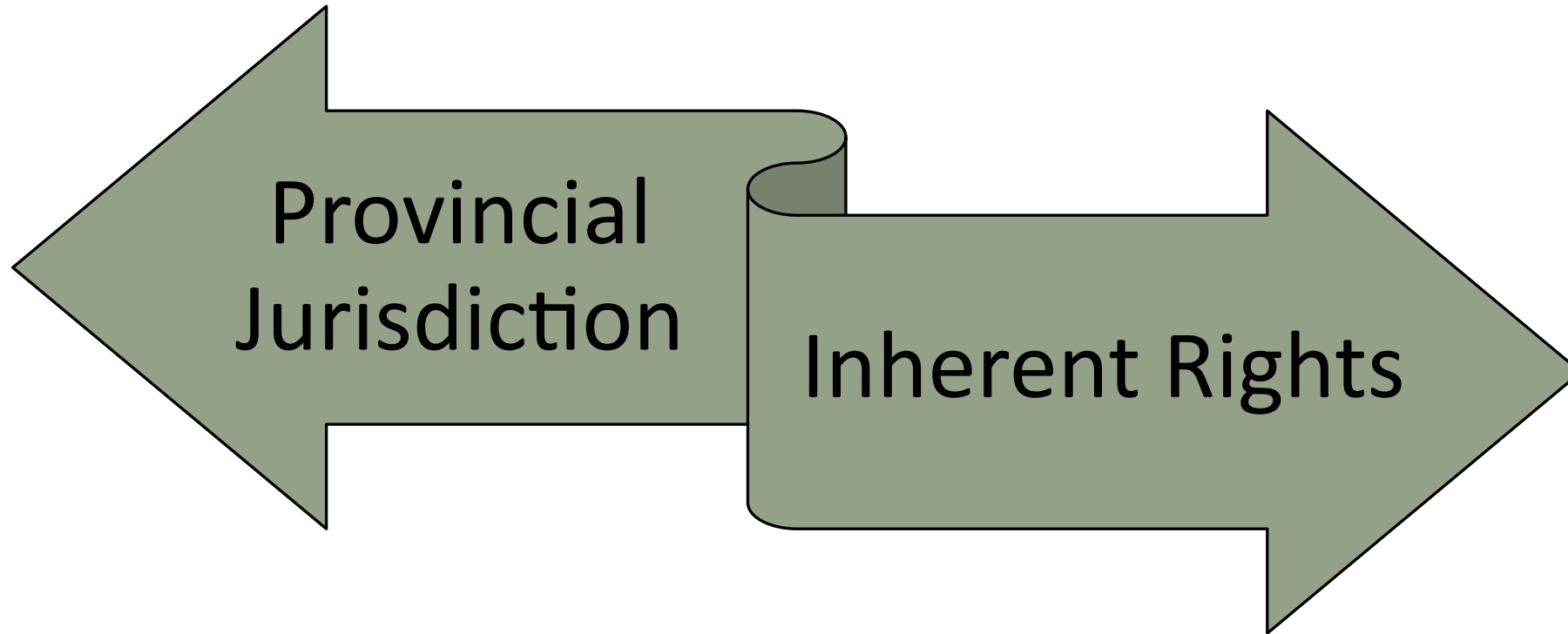
VANCOUVER BC, SEPTEMBER 4 -5, 2019

SCOTT ROBERTSON, NAHWEGAHBOW CORBIERE



Jurisdiction = Licensing and Regulation

Licensing and Regulation of Cannabis





“As with the provincial Liquor Control and Licensing Act, B.C.’s cannabis laws are laws of general application that apply across the province, including on reserve and treaty settlement lands,”

- *Solicitor General Mike Farnworth*



“Indigenous peoples have the inherent right of self-determination, including the appropriate law-making authority to make meaningful decisions that affect the lives of their people and communities, including regulating cannabis,”

- *Senate Standing Committee on Aboriginal Peoples*



“By not including (First Nations) in Bill C-45, Ottawa has created grey markets on Indian reserves, and that’s no one’s fault but their own”

- *Manny Jules, First Nations Tax Commission*

Collateral Damage to Communities



Jurisdictional uncertainty has led to:

- Arrests and Fines;
- Escalating Violence within Communities;
- Associated Health Risks/Death;
- Consumer Uncertainty;
- Loss of Market Share and Reputation.



Which Jurisdiction to Adhere To?

Responding to Legalization of Cannabis



Status Quo

(do nothing)

Adopt
Provincial
Jurisdiction

Assert
Inherent
Rights

(Law Making
Authority)





- “Wait and See” approach;
- Moratoriums on the use, sale and production of cannabis in order to seek further consultation from community members;
- Prohibitions on the use, sale and production of cannabis.



Cannabis Licence Act, 2018, S.O. 2018, c. 12, Sched. 2

Prohibition on stores

43 (1) If the Registrar receives a copy of a resolution of the council of the band in respect of a reserve requesting that the Registrar not issue retail store authorizations for cannabis retail stores to be located on the reserve, the Registrar shall not issue the authorizations.



Provincial Jurisdiction – Ontario's Experience

Adopt Provincial Jurisdiction – Ontario Experience



The controlling statute governing the retail sale of cannabis in Ontario is the *Cannabis Licence Act* of 2018, and its attendant regulation, Ontario Regulation 468/18 (the "General Regulation").

In addition to the CLA and the General Regulation, retailers must also abide by the Alcohol and Gaming Commission of Ontario's Registrar Standards for Cannabis Retail Stores (the "*Standards*").

Obtaining License to Become Authorized Retailer



To open a retail store and sell recreational cannabis, there are two licences and an authorization that are required from the AGCO. These are:

- Retail Operator Licence (allows you to operate one retail store);
- Retail Store Authorization (requirements such as layout/location); and
- Cannabis Retail Manager Licence (each store requires one licensed manager.)

Obtaining License to Become Authorized Retailer



You are not eligible for a Retail Operator Licence if:

- you are under 19 years of age.
- you have been convicted or charged with certain offences;
- you have, or previously had, certain roles or connections with a criminal organization as defined in subsection 467.1(1) of the Criminal Code (Canada);
- you have made a false statement or provided false information in your application.

Obtaining Licenses to Become Authorized Retailer



Con't,

- you have a business number with the Canada Revenue Agency and have not filed a tax return under certain Federal or provincial legislation;
 - you are in default of filing a tax return under a tax statute administered and enforced by the government of Ontario, or have any outstanding amounts owing and past due of tax, penalty or interest under those laws and have not made payment arrangements.
-and a host of other qualifications.

Regulations for Operating Retail Location



Regulations Include:

- operating hours (9am to 11pm).
- location of retail outlet (not near a school),
- no self-service or vending machines,
- no sales to anyone under 19 years of age,
- no sales of more than 30grams of dried cannabis per purchase,
- record keeping, license renewal, only sales of authorized products.

Adopt Provincial Jurisdiction – Ontario Experience



Cannabis Licence Act, 2018, S.O. 2018, c. 12, Sched. 2

Agreement with council of the band

44 (1) Subject to subsection (2) and to the approval of the Lieutenant Governor in Council, the Minister may, on behalf of the Crown, enter into arrangements and agreements with a council of the band with respect to the regulation of cannabis retail stores on a reserve, the licensing or authorization of persons to operate cannabis retail stores on a reserve or the enforcement of this Act and the regulations on a reserve.



Asserting Inherent Rights -Kahnawá:ke Experience

Assert Inherent Rights– Kahnawá:ke Experience



After extensive community consultation Kahnawá:ke passed the *Kahnawá:ke Cannabis Control Law*, which is a law respecting the cultivation, processing, distribution, sale, possession and use of cannabis within and from the Kahnawá:ke territory.

Assert Inherent Rights– Kahnawá:ke Experience



Jurisdiction – The people of Kahnawá:ke have existing, inherent, and inalienable rights which include the right of self-determination; the right to promote and control economic development; and the right to preserve peace, power and righteousness within the Territory.

Assert Inherent Rights– Kahnawá:ke Experience



Application – 3.3 Laws of general application will continue to apply to the extent they are not inconsistent with this Law or regulations.

Prohibition – 4.1For greater certainty, a license issued by a regulatory authority outside of the Territory has no validity within the Territory unless the license holder has also been authorized under this Law or the regulations.

Assert Inherent Rights– Kahnawá:ke Experience



Harmonization – 6.1 This law may serve as the basis for the harmonization of laws and regulations concerning cannabis in other jurisdictions and for cooperation and mutual assistance between the Kahnawá:ke Cannabis Control Board and other First Nations and other regulatory and law enforcement agencies. However, this Law and the regulations are not dependent on the approval of, or cooperation from, any other governmental body or agency.

Assert Inherent Rights– Kahnawá:ke Experience



Licenses – 16.1 No person may conduct any commercial cannabis activity within or from the Territory without holding both an appropriate license issued under this Law and the regulations, and an equivalent license issued by Health Canada, where applicable.

Harmonization – 6.3 The requirement in 16.1...will remain in force until such time as Kahnawá:ke establishes a public health agency that has a capacity and standards comparable to Health Canada regarding the issuance of cannabis-related licences....

Assert Inherent Rights– Kahnawá:ke Experience



Kahnawá:ke Cannabis Control Board – 10.1 There is established a regulatory body to be known as the Kahnawá:ke Cannabis Control Board for the purpose of regulating, enforcing and administering this Law. For greater certainty, the Board will not be a public policy-making body.

Structure of the Board – 13.1 The Board will be accountable to but will function at arm's length from the Council.

Assert Inherent Rights– Kahnawá:ke Experience



Purpose

7.(f) Balance interests of Kahnawá:ke community members who, on the one hand, are opposed to legal cannabis in the Territory with the interests of community members who support the regulated cultivation, processing, distribution, sale, and use of cannabis in the Territory.

Issues to Consider



Canada and provinces failed to adequately consult and accommodate First Nations prior to enacting current laws and regulations. As a result many issues remain unresolved:

- + Taxation and sharing of tax revenues;
- + Operating risks for “unlicensed” production and/or sales on reserve;
- + Proper structuring for liability protection;
- + Insurance risks/ Banking risks;
- + Balancing opportunities and assertion of rights against potential criminal risks;
- + Community engagement and consultation (“social license”);
- + Partner risks (who are you doing business with?)

Asserting Inherent Jurisdiction



Requires carefully well drafted Laws regulations and enforcement measures;

- + Review and consider provincial and/or federal laws;
- + Build in processes and institutions for implementation (boards/oversite);
- + Communication with the province and feds (or not);
- + Communication with suppliers and producers;
- + Communication with local municipalities and law enforcement.

Thank You for Your Time

AFN National Cannabis Summit Licensing and Regulation

SCOTT ROBERTSON, LL.B., CERTIFIED SPECIALIST INDIGENOUS LEGAL ISSUES

SROBERTSON@NNCFIRM.CA

705-325-0520

