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The British Columbia First Nations' Struggle around the Cannabis Act¹

Today, the main goal of first nations living in the territory known as Canada, and specifically British Columbia, is to leave behind the damage caused to their communities by the colonial period and the Indian Act. The loss of most of their ancestral lands, the severe limitations on their access to natural resources, the aggressive segregationist and assimilationist policies, and the violent incursions into the intergenerational transfer of wisdom, weakening their communities' linguistic and cultural wealth, are only some examples of that damage.

This structural form of imposing inferiority that portrayed them as human beings incapable of deciding for themselves what was best for them has led to the fact that even today, they experience the most precarious living conditions among the Canadian population. This means that it is not by chance that they have the lowest levels of

schooling, the worst housing conditions, and the highest unemployment rate.

Despite this painful history, the First Nations have never been passive. On the contrary, they have developed multiple strategies to resist and counter the overwhelming prejudice. Today, because of more than a century of political work, these communities are organized as the Assembly of First Nations (AFN), a body that coordinates the management of matters related to treaties, rights, land claims, and access to resources. The assembly is made up of ten groups, one for each province. Along the west coast of Canada, the 203 First Peoples are represented by the British Columbia Assembly of First Nations (BCAFN). This structure, which links a national strategy with the regional one, defines the lines of action *vis-à-vis* the local and/or federal governments.

The right to self-determination has become this movement's most important banner. And in accordance, they have taken on the task of working to reconstruct their com-

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munities and self-governments. Based on the respect for their respective communities' traditional and cultural concepts, they develop the norms and agreements needed to face a constantly changing world. They actively work to build their future collectively and horizontally, appealing to unity, but respecting diversity.

In addition, the BCAFN has the faculty to define its own precepts and develop strategies and its own relations in order to participate in Canadian political life. Its aims reflect the way they see the different aspects of the world surrounding them, the relationship they have established with the government, governance processes, the construction and reconstruction of self-governments, etc. Some of their aims as an organization include ensuring that their rights, culture, traditions, laws and territories are disseminated, recognized, and respected; solving the problems they face and impacting the creation of public policies; preserving their cultural identity and using it as a guide for their political work; and improving relations among their own communities, with different parts of the government, and with the rest of the Canadian population. At the same time, they identify and work on priority issues such as disasters and emergencies; the Covid-19 pandemic; managing resources such as fishing and casinos; the administration of justice; monitoring the correct implementation of the UN Declaration on the Rights of Indigenous Peoples, gender rights, sexual diversity, children's issues and those of young people; the preservation of linguistic diversity; health and well-being; job creation for members of the First Nations; and fostering economic development.

To promote the communities' economic development, the BCAFN's tasks are to identify business and trade opportunities; make available information, guides, manuals, and different tools that facilitate the creation of firms; develop business plans, budgets, and sales and promotional strategies; create business support networks; and foster private investment in indigenous undertakings, among other activities.

In the framework of all this, when the Cannabis Act came into effect in 2018, it presented a big opportunity for British Columbia's First Nations. They think it has great economic potential for improving the conditions of the indigenous population, whether through the creation of a business or participating in one. Setting up a business in this field will create jobs and generate profits, diversify the economy, develop skills, and offer trading options on dif-

ferent levels for these communities. They see possibilities in the areas of working the land, processing, distribution, sales, consumption, quality control, research, technology, education, etc. They also think that their insertion in this sector would require community planning to create a regulatory system in accordance with their needs, traditions, and ways of understanding the world. This undertaking, which includes internal training and a series of other activities, has already begun.

One fundamental aspect that must be taken into account is that the First Nations have an ancestral relationship to cannabis, including its medicinal, spiritual, and ceremonial uses associated with the balance of life and well-being. The legalization of the plant simply adds another meaning: the possibility of improving their own economic conditions. As a result, they think that, given their longstanding relationship, they have the right to cultivate, process, sell, and consume it on their lands.

One of the main arguments the BCAFN bases itself on to claim this right is the Declaration on the Rights of Indigenous Peoples, passed in 2007 by the UN General Assembly. It should be mentioned that Canada signed this declaration in 2010, after having rejected it when it was first passed. However in 2019, British Columbia was the first province to try to harmonize its local laws with the declaration's content.

Although this document is thought to have multiple safeguards to effectively protect First Peoples' rights, analysts have also mentioned that its importance lies in the advances regarding self-determination. Specifically, the BCAFN bases its claim to jurisdiction on cannabis on the declaration's following points:

- **Article 3** of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides that Indigenous peoples, have the right to self-determination, and the right to freely pursue their economic, social, and cultural development.
- **Article 4** states that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- **Article 5** stipulates that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institu-

tions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

- **Article 21** establishes Indigenous peoples' right, without discrimination, to the improvement of their economic and social conditions.
- **Article 23** provides that Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development and to be actively involved in development and determining economic and social programs through their own institutions.²

Given that the national government has designed a policy for regulating the industrialization of cannabis, a large part of BCAFN's work provides the communities with the information about federal guidelines, sanitary standards, strategies for overcoming the challenges on this level, and, of course, the rights of First Peoples in this matter. However, the task has not been simple; they have encountered many obstacles along the way.

The Cannabis Act operates within a legal framework about possession, production, sale, and distribution of the plant's different varieties and derivatives. It also sets standards and rules for processing it. Enforcing the law is the purview of Health Canada, the federal body in charge of protecting and improving all Canadians' health and providing high quality health services. Overseeing compliance with those regulations is a task shared by the federal, provincial, and, to a lesser degree, the First Nations' governments.

The federal government is responsible for issuing the licenses for cultivation, processing, and accessing medicinal cannabis; establishing producers' obligations; and defining industry guidelines and orientations with regard to labeling and packaging requirements, promotional limitations, types of products authorized, portion sizes, and potency standards, among other things. The provincial governments are in charge of leading the development and implementation of procedures for ensuring that distribution and sales remain within legal limits. They must also create measures that guarantee safe consumption, such as setting minimum consumer age limits, the amounts they may possess, regulating and limiting home production, and defining rules for consumption in public places. Specifically, the British Columbia government issues permits for small producers and acts as the wholesale distributor

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and administrator of the only online store. In addition, it increased the minimum age for cultivating, purchasing, using, and possessing non-medicinal cannabis.

In contrast with all these responsibilities of federal and provincial institutions, the Cannabis Act stipulates that First Nations' self-governments, which it defines as territorial governments, only have the faculty of restricting the public use of the plant even more, as long as they abide by what the public health and property law dictates. In addition, the British Columbia government must ask for the indigenous communities' "support" to issue permits to small producers. It is not clear what kind of "support" this refers to; what is clear is that, in practice, the First Nations' margin for action and decision-making about the possession, production, sale, and distribution of the plant is nil.

A similar situation exists with regard to the distribution of tax monies derived from the cannabis industry. While the federal government retains 25 percent of the income and the provincial administration, 75 percent, the First Nations receive nothing.

To put all this into context, it must be taken into account that the plant's regulatory market has become a multi-million-dollar industry. The BCAFN states that in 2018 alone, once the Cannabis Act came into effect, the income generated by commercialization came to Can\$5.5 billion. It also estimates that in 2020, total sales were approximately Can\$36.9 million in British Columbia, with around 126 federal licenses operating in the province. Lastly, they state that only a very small number of those licenses were issued to their communities.

In addition, the BCAFN working group in charge of looking at Cannabis Act possibilities for economic development has identified other kinds of difficulties that these communities face for becoming part of the cannabis market. One of these is access to capital, since financial bodies tend to vacillate when asked for support from small

and medium-sized companies. Another is access to information, experience, and training for obtaining and developing skills. Simply the paperwork needed to ask for a license is a challenge, not to mention its cost and the length of the administrative process.

For all these reasons, the British Columbian First Nations think that, despite the fact that the federal and provincial governments have followed the Declaration on the Rights of Indigenous Peoples, they have not included these peoples in creating the laws, regulations and tax frameworks for the cannabis industry. While the UN declaration gives them the right to self-determination and to economic development, the Cannabis Act does not include or create the these communities' jurisdiction. By contrast, it confers the exclusive responsibility to the federal and provincial governments. That is to say, in this, as in other issues, they continue to treat them as they did in the colonial period, in the segregationist and assimilationist phases. This means that they treat them as if they were incapable of deciding for themselves, of participating

actively in the construction of their own future and in the situations that come up continually as the world changes.

Until now, despite the BCAFN commission's work to deal with these difficulties and the different recommendations that have been made to the institutions in charge, neither the federal nor the provincial government has offered a resolution to any of this. The First Nations of British Columbia think that their jurisdiction under the Cannabis Act should be included by both provincial and federal governments as a sign of a real interest in combatting these communities' precarious situation, but, above all, as recognition of their rights as indigenous peoples. **MM**

Notes

- 1 The main information source for this article is "Cannabis Tool Kit," developed in 2021 by the British Columbia Assembly of First Nations (BCAFN), available at <https://www.bcafn.ca/priority-areas/cannabis/cannabis-toolkit>.
- 2 Ibid., p. 122.

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Revista Mexicana de Política Exterior
 PUBLICACIÓN CUATRIMESTRAL
 124
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