

ONTARIO CLARIFIES CANNABIS RETAIL RULES

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The Ontario government proclaimed the *Cannabis License Regulations* on November 14, 2018, clarifying some of the anticipated ownership restrictions on private cannabis retailers and public interest considerations the Alcohol Gaming Commission of Ontario (“AGCO”) can take into account when it authorizes individual retail cannabis stores.

The *Cannabis License Regulations* complete the about-face announced by the Progressive Conservative Ford government shortly after the last provincial election, stepping away from the government-run retail monopoly put in place by the prior Liberal government. Ontario has now moved to the hybrid market model, similar to the hybrid market models adopted in British Columbia and Alberta. The Ontario Cannabis Store (“OCS”) remains the sole-source purchaser of recreational cannabis from federally Licensed Producers and the sole wholesale source of legal recreational cannabis to private cannabis retailers. The OCS will continue to operate the only online retail platform for the sale of recreational cannabis in Ontario.

The AGCO will publish guidelines in advance of accepting applications for licenses and store authorizations. It anticipates that it will begin accepting applications for retail licenses in mid-December.

Classes of Licenses

The *Cannabis License Act* creates classes of licenses and authorizations for the sale of recreational cannabis: a retail operator license (“Operator License”) as well as a cannabis retail manager license (“Manager License”). Each cannabis retail store must have a separate retail store authorization (“Store Authorization”), which the AGCO will only issue to a holder of an Operator License. Anyone who will supervise or manage employees in a cannabis store, or carry out other key functions in the operation of the cannabis store, must hold a Manager License or an Operator License.

All applicants must be 19 or older (including corporations and partnerships, where all directors or partners must be at least 19).

Anyone who has applied for and been refused an Operator License, Manager License or Store Authorization, or whose license or Store Authorization has been revoked, may not reapply for the license or Store Authorization for two years unless the AGCO is satisfied that there has been a significant change in circumstances.

Providing the AGCO with false information will immediately disqualify an applicant.

Ownership Restrictions

The *Cannabis Retail Regulations* clarify the extent to which the government has chosen to promote broad-based ownership and participation in the Ontario recreational cannabis retail markets. The *Cannabis Retail Regulations* are intended to prevent larger corporations from dominating the Ontario recreational cannabis retail market:

- Federally Licensed Producers are subject to ownership and participation restrictions that effectively limit the ability of Licensed Producers to enter the recreational retail market. Licensed Producers can only operate one retail store, which must be located in the facility indicated on their federal license. Ontario-based Licensed Producers can open a retail store similar to those operated by Ontario wineries at their premises but otherwise cannot open their own retail stores.
- Restrictions on indirect ownership of retail stores will greatly limit the concentration of ownership among larger industry players. The definition of “affiliates” in the *Cannabis Retail Regulations* extends far beyond the corporate law definition of “affiliate” (which generally includes subsidiaries and indirect subsidiaries under common ownership) and sweeps in anyone holding more than 9.9% of shares carrying voting rights in another corporation as an affiliate. This has significant implications for Licensed Producers that own shares in corporations that intend to operate retail cannabis stores in Ontario.
- No person with an Operator License (either alone or with its affiliates) can hold more than 75 Store Authorizations.

Cannabis Stores in the Community

Municipalities and Reserves may Ban Retail Cannabis Stores

The *Cannabis License Act* gives municipalities until January 22, 2019 to pass resolutions to exercise a one-time option to prohibit cannabis retail stores in the municipality. Municipalities that prohibit cannabis retail stores may lift their prohibitions, but once a municipality lifts its prohibition, it cannot then later re-impose a ban.

Band councils may similarly prevent cannabis retail stores from opening on reserves by passing a resolution requesting that the Registrar not issue store authorizations located on the reserve. The Registrar must comply with such requests.

Stand-alone Stores

Each retail cannabis store must be a stand-alone retail space, separate from another commercial establishment (except for common areas of a shopping mall). Receiving areas must be not be accessible to any

other commercial establishment or to the public.

Retail operators should expect further guidance from the AGCO on specific store requirements, as well as steps the applicant will need to take to confirm that it meets all other operational requirements imposed under the *Cannabis Act (Canada)* and the *Cannabis License Act*.

Public Interest Considerations

The primary consideration of the AGCO in authorizing a retail cannabis is whether the store is in the public interest. The *Cannabis License Regulations* narrow these public interest considerations to:

- protecting public health and safety;
- protecting youth and restricting their access to cannabis; and
- preventing illicit activities in relation to cannabis

Keeping Cannabis from Youth

The *Cannabis License Regulations* may disappoint those interested in keeping cannabis retail stores away from local schools. Retail cannabis stores need only be 150 metres from any school (public or private) with exceptions for private schools located on reserve or private schools which only offer classes through the internet. The 150 metre restriction may offer little comfort to communities, which had previously expressed concern about the proximity of several OCS retail stores to local schools when they were announced by the prior Liberal government.

Cannabis retail stores must check acceptable identification of anyone entering the store who appears to be under the age of 25 and all license holders and retail store staff must take an AGCO approved training course, similar to the training requirement for alcohol sales and service.

Stores may only sell cannabis and cannabis accessories, as defined under the federal *Cannabis Act*.

Elimination of the Black Market

The *Cannabis Retail Act* and the *Cannabis Retail Regulations* take steps aimed at preventing criminal involvement in the legal recreational cannabis market. Anyone who is convicted of certain offences under Part 1 of the *Controlled Drugs and Substances Act*, the *Cannabis Act (Canada)* or Ontario's cannabis legislation will be ineligible for a license as will anyone who has been involved in a criminal organization. This restriction applies to individual applicants, but also places the directors, officers and key personnel of corporate applicants under scrutiny.

The AGCO will also have discretion to refuse an application if there are reasonable grounds to believe that the

applicant will carry on activities in contravention of the Act or other cannabis related legislation, or will not be financially responsible in the conduct of the retail business. All applicants should expect to submit to background checks which will look not only at criminal activity, but which will include financial diligence as part of the application process. The type of information required by the AGCO likely will be clarified further, once its guidelines are published.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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