

Cannabis legislation update: Ontario government announces exclusive cannabis retail distribution regime

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Ontario announces proposed framework for sale of cannabis

On September 8, 2017, the Province of Ontario announced its proposed framework to establish a government agency for the exclusive retail sale of [cannabis](#) in Ontario.^[1] This announcement was the first Ontario response to the federal government's proposal to legalize cannabis following the [introduction to Parliament of Bill C-45 "An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts"](#) (the Cannabis Act).^[2] Among other things, the Cannabis Act delegates authority to the provinces and territories of Canada with respect to the development of a regulatory regime governing the possession, use and sale of cannabis, in each case subject to certain restrictions as set out in the Cannabis Act.

Ontario has indicated that proposed legislation will be introduced this fall, following the conclusion of province-wide consultations and further, has stated that the proposed legislation will be influenced by the province's experience in regulating alcohol and tobacco sales. Several foundational elements to the approach were put forward, most significantly being Ontario's proposal to launch cannabis stores that have exclusive retail distribution rights for cannabis in Ontario, with a subsidiary of the Liquor Control Board of Ontario (LCBO) taking responsibility for overseeing the legal retail sale of cannabis in Ontario.^[3] It is anticipated that this approach would be accomplished through the establishment of new standalone cannabis stores to be supplemented by an online order service. In other words, cannabis will not be sold in LCBO's existing retail stores. Other highlights of the proposed regime include the continued disallowance of illicit dispensaries, a minimum legal use and possession age of 19 years as well as restricting the place of consumption to private residences only.^[4] The rationale behind this model is to leverage LCBO's experience with the sale of regulated and restricted products. For example, LCBO already has in place pertinent infrastructure for age checking, monitoring and inspection, security and training.^[5]

There are different approaches being proposed in other provinces for the sale of cannabis. For example, Alberta has proposed a minimum legal use and possession age of 18 years, and both Alberta and Manitoba have indicated that they will not set a "private residence use" only restriction.^[6] Other provinces have yet to provide further details regarding the sale of recreational cannabis.^[7]

Pricing & revenue

More recently, the Minister of Finance of Ontario suggested setting a government-regulated price of \$10 per gram. This came in response to the government of New Brunswick announcing supplier agreements with a suggested retail price of approximately \$10 per gram.^[8] Critics of the Ontario proposal have argued that a government exclusive retail distribution regime with such a regulated, fixed pricing structure could “lock in” the dominance of Canada’s largest cannabis producers and hinder the ability of smaller cannabis producers to differentiate their premium or “craft” products.^[9] The Minister of Finance also stated that Ontario is looking at gross taxation revenue on recreational cannabis in the range of \$100 million per year.^[10]

Prime Minister Justin Trudeau recently announced a proposed tax regime for cannabis to the provincial premiers. The proposed plan would impose a 10% federal tax on recreational cannabis. The resulting tax revenue would be split 50-50 between the federal government and the provinces. A number of the provincial premiers objected to this proposed tax share. The proposed scheme would implement a \$1 per gram tax on purchases under \$10, and a 10% tax on amounts above \$10. It is expected that negotiations over the proposed taxation regime will continue and discussions are currently scheduled for a December finance minister meeting.^[11]

Reactions to Ontario’s proposed approach

Ontario’s proposed LCBO-managed model for the sale of recreational cannabis has been met with mixed response. On the one hand, the Task Force on Cannabis Legalization and Regulation (the Task Force) noted strong support for centralized government control over the sale of recreational cannabis similar to how alcohol sales are managed.^[12] On the other hand, there is early criticism of the number and location of retail locations. In particular, 40 stores have been initially proposed province-wide as compared to the over 100 illicit retail stores and delivery services currently operating and advertising in Toronto.^[13] To put this into perspective, there are currently 651 government-run liquor stores, more than 450 Beer Stores and more than 200 grocery stores permitted to sell beer and wine in Ontario. Critics are concerned that so few legal store locations for recreational cannabis will significantly limit access (especially in rural areas) and could cause consumers to pursue illegal sources.^[14] Despite the province encouraging an online delivery system aimed at addressing these concerns, critics argue that if legal cannabis is more expensive and less accessible than illegal sources, many (especially youth) may be motivated to turn to the illegal market.^[15]

Notably, some of the Task Force’s recommendations for a retail model are mirrored in the proposed Ontario regime, including the prohibition against alcohol or tobacco sales at the same location as where cannabis is sold, limits on the density and location of storefronts (e.g., appropriate distance from schools, community centres and public parks), dedicated storefronts with well-trained, knowledgeable staff, and proposing access through a direct-to-consumer mail order system.^[16]

Next steps

Ontario announced its expectation that by July 1, 2018 (being the date currently proposed by the Government of Canada for legalization of recreational use cannabis), 40 LCBO-managed

cannabis stores will be open for business, with an expected total of 80 stores by the end of 2018 and a total of 150 stores opened by 2020. It is anticipated that an online order service will be launched concurrently by the province in order to supplement the number of physical retail stores.^[17] Ontario has now taken steps to engage all municipalities across the province, sharing with them the next steps for establishing retail store locations. The two stated primary considerations in site selection will be geographic distribution across the province and the reduction of illegal stores currently in operation.^[18] The LCBO recently launched the website “LCBO Cannabis Updates” where it is expected that updates will be posted as they become available.^[19]

Ontario’s government agency exclusivity approach to recreational cannabis sales is intended to implement legalization in a manner that will focus more generally on public health and safety, promoting prevention and harm reduction, discouraging consumption and eliminating the illegal market.^[20] To this end, it is expected that any illicit dispensaries currently operating in Ontario will be targeted for closure through a co-ordinated effort involving municipalities, local police, OPP and the federal government.^[21]

Two other areas that Ontario plans to address are enforcement and workplace safety. The province will host an enforcement summit to engage with policing partners, public health experts and other important stakeholders.^[22] Further, issues related to product variety remain to be considered. Under the proposed Cannabis Act only dried and fresh cannabis, cannabis oil, seeds and plants for personal cultivation will be made available for legal purchase. The Government of Canada has stated that regulations for the sale of edible products will be developed and published only once the Cannabis Act comes into force.^[23] Under a new amendment recently proposed by the House Standing Committee on Health, if approved by Parliament, regulations governing cannabis edibles and concentrates would be released no later than 12 months after legalization.^[24]

^[1] Ministry of Attorney General, “Ontario Releases Safe and Sensible Framework to Manage Federal Legalization of Cannabis,” (September 8, 2017), online: [Government of Ontario](#).

^[2] Health Canada, “Canada takes action to legalize and strictly regulate cannabis,” (April 13, 2017), online: [Government of Canada](#).

^[3] Gray, Jeff & Posadzki, Alexandra, “LCBO subsidiary to manage Ontario marijuana sales,” (September 8, 2017), online: [The Globe and Mail](#).

^[4] *Supra* note 1.

^[5] Sen, Anindya, “Joint Venture: A Blueprint for Federal and Provincial Marijuana Policy,” (April 20, 2016), online: [C.D. Howe](#).

^[6] Cryderman, Kelly, “Alberta unveils plan for legalized marijuana, sets legal age at 18,” (October 4, 2017), online: [The Globe and Mail](#).

^[7] Other provinces have engaged in activity such as public consultation and discussion. See: [British Columbia \[PDF\]](#); [Saskatchewan](#); [Quebec](#); [New Brunswick](#); [Nova Scotia](#); [Prince Edward Island](#); [Newfoundland & Labrador](#).

^[8] Crawley, Mike, "Ontario considers pricing recreational pot at \$10 a gram," (September 20, 2017) online: [CBC News](#).

^[9] The Canadian Press, "Ontario government's marijuana monopoly could weed out craft growers," (September 8, 2017), online: [The Financial Post](#).

^[10] *Supra* note 8.

^[11] Curry, Bill, Fife, Robert and Stone, Laura, "Trudeau's plan for marijuana tax catches premiers off guard," (October 4, 2017), online: [The Globe and Mail](#).

^[12] The Task Force on Cannabis Legalization and Regulation, "A Framework for the Legalization and Regulation of Cannabis in Canada," (November 30, 2016), online: [Government of Canada \[PDF\]](#).

^[13] Wyonch, Rosalie & Sen, Anindya, "Ontario makes a hash of marijuana retail distribution," (September 8, 2017), online: [The Globe & Mail](#).

^[14] *Supra* note 12.

^[15] The Canadian Press, "Ontario government's marijuana monopoly could weed out craft growers," (September 11, 2017), online: [Ottawa Business Journal](#).

^[16] *Supra* note 12.

^[17] Kolm, Josh, "LCBO will handle weed sales in Ontario," (September 8, 2017), online: [Strategy Online](#).

^[18] Ministry of Finance, "Ontario Taking Next Steps to Identify Cannabis Store Locations," (October 27, 2017), online: [Government of Ontario](#).

^[19] Liquor Control Board of Ontario, "LCBO Cannabis Updates," (October 27, 2017), online: [LCBO Cannabis Updates](#).

^[20] *Supra* note 1.

^[21] *Supra* note 1.

^[22] *Supra* note 1.

^[23] Government of Canada, "Introduction of the Cannabis Act: Questions and Answers," (April 19, 2017), online: [Government of Canada](#).

^[24] David Brown, "HESA passes amendment to allow cannabis edibles, concentrates in C-45",

(October 3, 2017), online: [Lift News](#).