

Cannabis Statute Law Amendment Act, 2018: Ontario government passes cannabis regulatory regime

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The Conservative government announced on August 13, 2018 that “the Government of Ontario will not be in the business of running physical cannabis stores.” Instead, Ontario will implement a private retail model by April 1, 2019; a dramatic shift from the previous Liberal government’s plan for 150 brick-and-mortar Ontario Cannabis Stores (then planned to be a subsidiary of the Liquor Control Board of Ontario) outlets by 2020.[1]

To effect this change, the Ontario government passed Bill 36, the *Cannabis Statute Law Amendment Act, 2018* on October 17, 2018. The legislation amends the *Cannabis Act, 2017* (now named the *Cannabis Control Act, 2017*), the *Ontario Cannabis Retail Corporation Act, 2017*, the *Liquor Control Act* and the *Smoke-Free Ontario Act, 2017* as well as making a consequential amendment to the *Highway Traffic Act*. The legislation also enacts the *Cannabis Licence Act, 2018*. [2] Some highlights of the new legislation include:

- **Changes for the Ontario Cannabis Retail Corporation (OCRC):** The OCRC will be granted the exclusive right to sell cannabis in Ontario online but is expressly prohibited from operating retail stores directly or indirectly. Instead, retail stores will be privately operated. The OCRC will also have the exclusive right to sell cannabis in Ontario to a retail store for resale. [3]
- **Licensing scheme:** The *Cannabis Licence Act, 2018* sets out the licensing scheme for private cannabis retail stores and will be administered by the Alcohol and Gaming Commission of Ontario (AGCO), the regulatory body for the adult-use cannabis market.
- **Licences and authorizations:** In order to operate a cannabis retail store, an individual must apply for and be granted both a retail operator licence and a retail store authorization. [4] The retail store authorization may only be issued to the holder of or an applicant for a retail operator licence and authorizes its holder to operate a particular cannabis retail store. [5] A separate authorization is required for each store and permits the holder to sell only cannabis purchased directly from the OCRC and any other prescribed items. [6] The federal government intends to authorize the legal sale of cannabis edible products and concentrates no later than 12 months following the coming into force of the *Cannabis Act* (Canada). In the interim, individuals are permitted to make edibles for personal use. [7]
- **Illegal retail operations:** The *Cannabis Licence Act, 2018* also permits an individual who has been convicted or charged with a prescribed offence under the *Controlled Drugs and*

- Substances Act* (Canada) for cannabis to be eligible to apply for a retail operator licence.^[8] However as Finance Minister Vic Fedeli stated, “if you are still operating an illegal retail operation after October 17, you would not be able to get a licence in Ontario.”^[9]
- **No ceiling or “cap”:** The proposed legislation does not set a limit to the number of retail store licences in Ontario. However, the legislation would afford the government flexibility needed to address issues with concentration of stores in individual markets and the number of individual stores that a single retailer may have. According to Attorney General for Ontario Caroline Mulroney, the objective is to ensure that the market is not dominated by one or two parties.^[10]
 - **Sale by federally licensed producers:** Federally licensed producers will be allowed to establish retail stores, however they will be limited to a single retail store that must be onsite at a production facility.^[11]
 - **Public consumption:** The *Smoke-Free Ontario Act, 2017* and the *Cannabis Control Act, 2017* are amended to the effect that individuals in Ontario will be able to smoke or vape cannabis wherever the smoking or vaping of tobacco is permitted as well including in public areas.^[12] This would represent a dramatic change from the previous state of the *Cannabis Control Act, 2017* which currently prohibits the consumption of cannabis in any public place.^[13] Smoking or vaping cannabis in enclosed public places, workplaces, vehicles or boats however is still be prohibited.^[14] If prescribed requirements are met, there are also exemptions allowing for the smoking or vaping of cannabis in certain long-term care homes, retirement homes, supportive housing residences, psychiatric facilities, veterans facilities as well as hotels, motels and inns.^[15]
 - **Municipality control:** Municipalities are able to pass a resolution by January 22, 2019 to opt out of retail sale in their communities.^[16] This prohibition can be lifted in the future, however once cannabis retail stores are permitted it will not be possible to implement a prohibition later.^[17] Should a municipality “opt in” and allow retail sale in their community, the AGCO will have the authority to decide how many and where retail outlets will be permitted. While the municipality and its residents may make written submissions within 15 days after notice of a proposed retail store is posted, the AGCO will ultimately reserve the right to make a final decision.^[18] Further, the legislation prohibits municipalities from passing by-laws designating cannabis retail as a separate land use or creating their own system of licensing.^[19]
 - **Reserves:** A retail store authorization may not be issued unless the council of the band has approved the location of the proposed retail store on the reserve.^[20] A council of the band may request that the AGCO Registrar not issue retail store authorization for cannabis retail stores to be located on the reserve. The Registrar must comply with such a request, as well as with any future request to amend or rescind the original request.^[21]
 - **Standards and requirements:** The AGCO will also be able to establish standards and requirements respecting the conduct of licence and authorization holders on matters including: (1) store premises, equipment, surveillance and security; (2) the prevention of unlawful activities, including prohibiting or restricting certain individuals from entering cannabis retail stores; (3) advertising and promotional activities; (4) training relating to

cannabis; (5) the protection of assets, including money and money equivalents; (6) the keeping of records, including financial records; (7) reasonable measures to maintain the confidentiality and security of records, including measures to securely dispose of records and to prevent unauthorized access to records; (8) compliance with the national Cannabis Tracking System; and (9) any other matter relating to the conduct of licence and authorization holders or to the operation of cannabis retail stores that may be prescribed.^[22]

- **Inducements and promotion:** The legislation would prohibit any inducement or promotion to the holder of a licence or authorization in order to increase sale of a particular type of cannabis.^[23]

[1] Ministry of Finance, "Ontario Announces Cannabis Retail Model" (August 13, 2018), online: [Government of Ontario](#); Bill 36, *Cannabis Statute Law Amendment Act*, 2018.

[2] *Supra*, note 2.

[3] Ministry of Attorney General, "Cannabis Statute Law Amendment Act, 2018" (September 27, 2018), online: [Government of Ontario](#).

[4] *Supra*, note 4.

[5] *Cannabis Licence Act, 2018* at s 4(1).

[6] *Supra*, note 6 at s 4(5) and s 18.

[7] Government of Canada, "Introduction of the Cannabis Act: Questions and Answers" (March 13, 2018), online: [Government of Canada](#).

[8] *Supra*, note 6 at s 3(6).

[9] Shawn Jeffords & Paola Loriggio, "Ontario government says recreational cannabis can be smoked wherever tobacco smoking allowed (September 26, 2018), *The Canadian Press*, online: [Global News](#).

[10] *Supra*, note 4; Rob Ferguson, "Ontario won't set limit on number of private marijuana stores" (September 26, 2018), *The Toronto Star*, online: [The Star](#); Justin Giovannetti, Christina Pellegrini & Marina Strauss, "Ontario proposes capping number of stores for cannabis growers, open market for recreational sales", (September 26, 2018) *The Globe and Mail*, online: [The Globe and Mail](#).

[11] *Supra*, note 6 at s 4(4).

[12] *Supra*, note 2 at s 11 of Schedule 1.

[13] *The Cannabis Control Act, 2017*, RSO 2017, c 26 at s 11(1)(a).

[14] *Supra*, note 4.

[15] *Supra*, note 2 at Schedule 2, s 5.

[16] *Supra*, note 6 at s 41(1).

[17] *Supra*, note 6 at s 41(3) and (4).

[18] *Supra*, note 6 at s 4(7), 4(9), 4(11) and 4(14).

[19] *Supra*, note 6 at s 42.

[20] *Supra*, note 6 at ss 4(6)(6).

[21] *Supra*, note 6 at s 43.

[22] *Supra*, note 6 at s 26.

[23] *Supra*, note 6 at 36.