

Ontario establishes regulations and provides detail regarding the licensing and operation of private cannabis retail stores

NOVEMBER 22, 2018 5 MIN READ

Related Expertise

- [Advertising and Marketing](#)
- [Cannabis](#)
- [Capital Markets](#)
- [Corporate and Commercial Disputes](#)
- [Corporate Governance](#)
- [Financial Services](#)
- [Indigenous](#)
- [Mergers and Acquisitions](#)
- [Private Equity and Investment Fund Disputes](#)
- [Product Liability](#)
- [Retail and Consumer Products](#)

Authors: [Michael Watts](#), [Susan Newell](#), [Marty Putyra](#)

Ontario has released regulations under the *Cannabis Licence Act, 2018*^[1] (the Act) to clarify certain matters relating to the licensing and operation of private cannabis stores (the Regulation).^[2] As addressed in the [Osler Update](#) regarding the Ontario cannabis regulatory regime, the Conservative government previously passed legislation that, once in force, will establish Ontario's private recreational cannabis retail system on April 1, 2019 under the oversight of the Alcohol and Gaming Commission of Ontario (AGCO).^[3] According to Attorney General Caroline Mulroney, the purpose of the newly released regulations is to "keep kids safe and to ensure all people operating in this tightly-regulated retail system behave with integrity, honesty, and in the public interest."^[4]

Supplementing the Act, the Regulation provides additional detail regarding (1) the licensing application process, (2) market concentration limits, (3) implications for the ability of federally licensed producers (LPs) to establish retail stores and (4) other matters.

(1) Licensing application process

The application process for private cannabis retail store licences will begin on December 17, 2018. Once again, the government reiterated that illegal cannabis retailers operating after October 17, 2018 are not eligible for Ontario cannabis sales licences.^[5] Until April 1, 2019, cannabis can only be legally purchased from the online Ontario Cannabis Store. Further, licences will not be issued to any person or organization who has an association with organized crime, and applicants must demonstrate their tax compliance status to show they are in good standing with the government.^[6]

(2) Market concentration limits

The government also announced a "market concentration limit" of 75 retail stores per operator.^[7] According to the Ministry of the Attorney General, this limit has been set to prevent a high degree of market consolidation, promote opportunities for small businesses and promote investment in the cannabis retail sector.^[8]

(3) Implications for LPs

The Regulation now provides further information with respect to how LPs may be involved in Ontario's cannabis retail space by (i) adding additional restrictions and (ii) defining the term "affiliates" under the Act.

The Act limits each LP and its affiliates to one retail store authorization between them.^[9] However, it is not entirely clear as to how this authorization can be issued given that (a) retail store authorizations may only be issued to a holder of (or applicant for) a retail operator licence, and (b) the new Regulation states that a corporation is not eligible to be issued a retail operator licence if more than 9.9% of the corporation is owned or controlled, directly or indirectly, by one or more LPs or their affiliates.^[10]

The Regulation also includes a broad definition of what constitutes an "affiliate." This effectively places certain limits on LPs in terms of the use of strategies such as majority or minority share ownership, joint ventures, partnerships, trusts and other structures to circumvent the "one retail store authorization per LP and its affiliates" restriction referred to above.^[11] The Regulation also captures situations in which a party is acting jointly or in concert with another person to hold beneficial interest in shares of a corporation carrying at least 50% of the votes for the election of directors of the corporation or having at least 50% of the fair market value of all the issued and outstanding shares of the corporation.^[12] The Regulation also states that a person is deemed to be an affiliate if the LP has any "direct or indirect influence that, if exercised, would result in control in fact of that person."^[13]

The foregoing is not an exhaustive list of these new restrictions on LPs in Ontario. However, together with the market concentration limits, it is clear that the Regulation communicates an intent to ensure that the cannabis retail market is not monopolized by large players. This is in line with Finance Minister Vic Fedeli's previous comments that "we want to open up the marketplace, [this] is an opportunity for small business to get involved [and] we want to have as many participants as possible be involved."^[14]

(4) Other matters and highlights.

- **Standalone stores:** The Regulation also stipulates that cannabis must be sold in standalone stores, meaning that commercial establishments such as pharmacies or grocery stores will not be able to sell cannabis and entry to those under 19 will not be permitted.^[15]
- **Objection for public interest:** While the Act allows municipalities to object to retail store authorizations for matters of public interest, the Regulation states that the AGCO will only consider the following to constitute "matters of public interest": (1) protecting public health and safety; (2) protecting youth and restricting their access to cannabis; and (3) preventing illicit activities in relation to cannabis.^[16]
- **Limits on additional items that may be sold:** In addition to cannabis purchased from the Ontario Cannabis Retail Corporation, only cannabis accessories and shopping bags may be sold at a cannabis retail store.^[17]
- **No cannabis distribution agreements:** The holder of a retail store authorization cannot

enter into contracts or agreements with any person or entity for the provision of cannabis distribution services other than with the Ontario Cannabis Retail Corporations or employees of the holder.^[18]

- **Other practical details:** Retail stores will be permitted to be open daily from 9 a.m. to 11 p.m.^[19] Anyone working at one of these stores will be required to complete a government-approved training program in the responsible sale of cannabis.^[20] The stores must be at least 150 metres away from a school.^[21] The government also announced that it will provide \$40 million over two years to help municipalities with the implementation costs.^[22] For more detail regarding the Ontario cannabis regulatory regime, please see our previous Osler Update on this topic.

[1] SO 2018, c 12, Sched 2. [CLA]

[2] O Reg 468/18. [*Regulation*]

[3] Ministry of the Attorney General, "Ontario Establishes Strict Regulations for the Licensing and Operation of Private Cannabis Stores", (November 14, 2018) Online: Government of Ontario. [MAG]

[4] MAG, *supra* note 3.

[5] *Ibid.*

[6] *Regulation*, *supra* note 2 at section 3(2).

[7] *Regulation*, *supra* note 2 at section 12.

[8] MAG, *supra* note 3.

[9] CLA, *supra* note 1 at section 4(4).

[10] See CLA, *supra* note 1 at section 4(4) and also *Regulation*, *supra* note 2 at section 7.

[11] *Regulation*, *supra* note 2 at section 2(1).

[12] *Regulation*, *supra* note 2 at section 2(2).

[13] *Regulation*, *supra* note 2 at section 2(3).

[14] Justin Giovannetti, Christina Pellegrini & Marina Strauss, "Ontario proposes capping number of stores for cannabis growers, open market for recreational sales." (September 26, 2018), Online: The Globe & Mail.

[15] *Regulation*, *supra* note 2 at section 9.

[16] *Regulation, supra* note 2 at section 10.

[17] *Regulation, supra* note 2 at section 18.

[18] *Regulation, supra* note 2 at section 14.

[19] *Regulation, supra* note 2 at section 17.

[20] *Regulation, supra* note 2 at section 21.

[21] *Regulation, supra* note 2 at section 11.

[22] *MAG, supra* note 3.