

Ontario takes phased approach to cannabis retail licensing, and AGCO announces lottery rules

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In this Update

- Ontario will be taking a phased approach to cannabis retail licensing and published a regulatory amendment which outlined the retail licensing regime
- Initially, up to 25 licences will be issued to allow operators to open for business on April 1, 2019 and stay open
- The Alcohol and Gaming Commission of Ontario (AGCO) recently released the rules governing how these 25 licences would be allocated
- Description of AGCO lottery process and new restrictions on Retail Store Authorizations
- Next steps for Expression of Interest (EOI) applicants

Ontario will be taking a phased approach to cannabis retail licensing. Citing national supply shortages of legal cannabis, the province published a regulatory amendment and announced that, initially, up to a maximum of 25 licences will be issued to allow operators to open for business on April 1, 2019 and stay open.^[1] On January 2, 2019, the province released the rules governing how these 25 licences would be allocated.^[2]

The cap of 25 Retail Store Authorizations will be temporary, applying to the period of time from January 2, 2019 until December 13, 2019, at which point *Ontario Regulation 468/18* will be amended. This period of time is referred to as the "Lottery Process" and has been established by the Ontario government in order to permit the cannabis supply to stabilize.^[3] The government remains committed to an open allocation of licences once supply is stabilized.^[4]

The Lottery Process

The Alcohol and Gaming Commission of Ontario (AGCO) will implement a lottery system (the Expression of Interest Lottery) to determine who is eligible to apply for one of the initial Retail Operator Licences and Retail Store Authorizations necessary to legally operate a cannabis store in Ontario. Interested parties will be able to submit an Expression of Interest (EOI) form online to the AGCO from January 7 to January 9, 2019. These EOIs will then be put into a lottery pool for a draw to be conducted on January 11, 2019, with the results (and wait list) to be posted on the AGCO's website within 24 hours. The lottery process will be overseen by KPMG as a third-party fairness monitor to ensure equality and transparency in the treatment of the EOIs, as well as an appropriate distribution of stores throughout the province. KPMG will issue a public report on its assessment of the lottery.^[5]

The following are categories of applicants who may not submit an EOI application to the lottery: employees and board members of the AGCO; employees and board members of the Ontario Cannabis Retail Corporation (operating as the Ontario Cannabis Store); KPMG LLP (and its partners and employees); Gaming Laboratories International LLC employees; owners and/or board members; and the holder or affiliate of the holder of a cultivation, processing or nursery licence issued by Health Canada under the *Cannabis Act* (federal) and the regulations.^[6]

New restrictions on Retail Store Authorizations

The amended Regulation now sets out five regions in the province and places a limit on the maximum of Retail Store Authorizations per each region as follows:

- “East Region” – a maximum of five retail store allocations
- “GTA Region” – a maximum of six retail store allocations
- “North Region” – a maximum of two retail store allocations
- “Toronto Region” – a maximum of five retail store allocations
- “West Region” – a maximum of seven retail store allocations.^[7]

Other limitations include:

- An applicant and its affiliates may submit an EOI with respect to more than one Region, however may only be selected in relation to one Region.^[8]
- An applicant and its affiliates are not permitted to submit more than one EOI with respect to the same Region.^[9]
- The geographic boundaries of each Region are set out in the Regulation itself under section 8.1(1), available [here](#).

In addition to the restrictions above, until the cap of 25 retail store authorizations is rescinded, Retail Store Authorizations will not be issued to any of the following:

1. the holder of a retail store authorization or a person whose affiliate holds a retail store authorization;
2. a licensed producer or affiliate of a licensed producer; or
3. for a cannabis retail store that would be located in a municipality with a population of less than 50,000.^[10]

Municipal decisions

The Lottery Process has been announced as several municipalities have made decisions on whether or not to allow cannabis retail stores. Under Ontario's *Cannabis Licence Act, 2018*, municipalities are able to pass a resolution by January 22, 2019, to opt out of retail sale in their communities. This prohibition can be lifted in the future, however, if a prohibition is not implemented by a municipality on or prior to January 22, 2019, it will not be possible to implement a prohibition later. Should a municipality “opt in” and allow retail sale in its community, the AGCO will have the authority to decide how many and where retail outlets will be permitted.^[11] As an example, the city councils of Mississauga and Markham have voted “no” and will opt out of retail sale in their communities, while Toronto city council has voted to permit the retail sale of cannabis.^[12] An up-to-date list of municipalities that have formally notified the AGCO of their intent to opt in or opt out is available [here](#).

Next steps for selected EOI applicants

On January 12, 2019, the AGCO will publish the lottery results to its website. Within five business days, a selected EOI applicant is required to provide a standby letter of credit for \$50,000, a Retail Operator Licence application and a non-refundable \$6,000 Retail Operator Licence fee payment.^[13] Notably, the AGCO has stated that Retail Store Authorizations can be submitted up until January 25, 2019, three days following the January 22, 2019 municipality opt-out deadline.^[14] An applicant can apply to open a retail store in any municipality provided the municipality is within the region for which their EOI applies, the municipality has a population of over 50,000 and has not opted to prohibit the retail sale of cannabis. The proposed retail store location must also meet the school distance requirements set out in the Regulation.^[15] The AGCO has stated that they intend to begin issuing Retail Store Authorizations by March 4, 2019.^[16]

The following fees would be applicable to a successful applicant:

	Fee 2-year term	Renewal Fee 2-year term	Renewal Fee 4-year term
Retail Operator Licence	\$6,000	\$2,000	\$4,000
Retail Store Authorization	\$4,000	\$3,500	\$7,000
Cannabis Retail Manager Licence*	\$750	\$500	\$1,000

*A sole proprietor (or a partnership between two or more individuals) that will be both the licensed operator and performing the duties of the retail store manager for a particular store will not be required to obtain a Cannabis Retail Manager Licence for that store.^[17]

Should an EOI applicant be unable to sell cannabis under its Retail Store Authorization by April 1, 2019, the Registrar may draw on the letter of credit in the following manner:

- **If unopened on April 1, 2019** – \$12,500
- **If unopened on April 15, 2019** – \$12,500
- **If unopened on April 30, 2019** – \$25,000

If a selected EOI applicant is disqualified by the Registrar, the letter of credit shall be drawn in full. A disqualified applicant must wait two years to apply again for a Retail operator Licence.^[18]

Please refer to our previous Osler Updates for a more detailed review of the Ontario cannabis retail licensing regime in effect prior to this most recent amendment: [“Cannabis Statute Law Amendment Act, 2018: Ontario government passes cannabis regulatory regime”](#) and [“Ontario establishes regulations and provides details regarding the licensing and operation of private cannabis retail stores.”](#)

[1] Ministry of Finance, “Ontario Takes a Phased Approach to Cannabis Retail Licensing Due to National Supply Shortages” (December 13, 2018), online: [Government of Ontario](#). [MoF]

[2] Alcohol and Gaming Commission of Ontario, “Expression of Interest Rules” (January 2, 2019), online: [AGCO](#). [Rules]

[3] *Rules*, *supra* note 2.

[4] Alcohol and Gaming Commission of Ontario, “Lottery Process Webinar” (January 4, 2019), online: [AGCO](#). [Webinar]

[5] *Rules*, *supra* note 2 at Preamble.

[6] *Webinar*, *supra* note 4.

[7] O Reg 468/18 section 8.1 and 12. [Regulation]

[8] *Regulation*, *supra* note 7 at section 8.2(3) and (5).

[9] *Regulation*, *supra* note 7 at section 8.2(4) and (6).

[10] *Regulation*, *supra* note 7 at section 8.1(4).

[11] *Cannabis Licence Act, 2018* at section 41.

[12] City News “City council votes in favour of hosting privately run cannabis stores” (December 13, 2018) City News, online: [City News](#).

[13] *Rules*, *supra* note 2 at rule 16.

[14] *Webinar*, *supra* note 4.

[15] *Regulation*, *supra* note 7 at section 11.

[16] *Webinar*, *supra* note 4.

[17] Alcohol and Gaming Commission of Ontario, “Fees and Payment – Licence and Authorization Fees”, Queen’s Printer for Ontario, online: [AGCO](#).

[18] Alcohol and Gaming Commission of Ontario, “Cannabis Retail Regulation Guide”, online: [AGCO](#).