

Goodmans^{LLP} Update

Ontario Retail Cannabis Update...New Rules Rolled Out for Future Cannabis Retailers

The Alcohol and Gaming Commission (AGCO) released its Registrar's Standards (the "Standards") which provide further operational rules for cannabis retailers in Ontario. As detailed in our November 29, 2018 Update, [Ontario \(Late to the Party\) Retail Cannabis Update...With More to Come...](#), Ontario's private retail model is governed by the [Cannabis Licence Act](#) (CLA), its [Cannabis Licence Regulations](#) (CLR) and the Standards.

The following highlights certain requirements prescribed by the Standards which apply to (1) holders of retail operator licences (the "Retail Operators") or (2) holders of cannabis retail manager licenses (the "Retail Managers", and together, the "Licensees").

New Rules for Future Cannabis Retailers

- **Employee criminal record checks and oversight are required.** In addition to mandatory AGCO-approved training for every employee, the Standards require that, *at a minimum*, Licensees:
 - complete criminal background checks for potential employees; and
 - ensure all employees understand their obligations pertaining to applicable laws, regulations, standards and policies.
- **Certain changes to the Retail Operator (or its business) require notice or approval.**
 - Notification if a person ceases to be a director or officer (including of a corporation that effectively controls the business) or ceases to be a partner of a partnership in which the Retailer Operator is also a partner.
 - Approval for a new director or officer (including of a corporation that effectively controls the business) or for a new partner of a partnership in which the Retailer Operator is also a partner.
 - Approval for a person or partnership acquiring a beneficial interest in the business (including of a corporation that effectively controls the business).
 - Approval for a person or partnership becoming entitled to any of the profits, or liable for any obligations incurred, from the sale of cannabis at any authorized retail store (under the licence).
 - Notification and approval are required 'within a reasonable time' of the change.
- **Each store must have certain security measures in place.**
 - A secure, high-resolution surveillance system is required, which must be positioned to capture 24-hour coverage of both the interior and immediate exterior of the premises (including entrances and exits, where ID is checked, sales areas, receiving areas and storage areas). Recordings must be retained for a minimum of 30 days and be made available to the AGCO upon request.
 - All cannabis must be stored securely at all times and accessible only by staff, from receipt of product to point of sale, destruction, or return.
 - Cannabis and accessories must not be visible from the exterior of the store.
 - Transportation of cannabis between a Retail Operator's stores must be secure, with the transfer process supervised and properly documented.
- **Sensory display containers are allowed, with limits.** Sensory display containers (to allow customers to see and smell cannabis) must be locked and tamper-proof to prevent patrons from touching the cannabis or removing it from the store.

- **Ineligible cannabis must be stored separately and then destroyed.** Any cannabis that is outdated, recalled, damaged, deteriorated, misbranded, adulterated, returned, or otherwise ineligible to be sold must be kept separate from other cannabis. If the ineligible cannabis cannot be sold or returned to the Ontario Cannabis Retail Corporation (OCRC), it must be destroyed in a way that does not expose any individual to cannabis smoke or vapour. The destruction must also comply with federal, provincial and municipal laws (i.e., environmental protection legislation). The Licensee should be aware of two additional obligations in this regard:
 - if destruction is carried out by the Licensee, the entire cannabis destruction process must be captured on the premises' surveillance system, and must be overseen by a Licensee; and
 - Destruction of cannabis that is ineligible for sale must be performed on a monthly basis, *at a minimum*.
- **Licensee must keep records for a *minimum* of three years.** Licensee must maintain the following records for a minimum of three years:
 - Employee records, including names, addresses, primary job responsibilities, shift schedules, training records, criminal record check results and dates of employment.
 - Cannabis records in the authorized store, including cannabis purchased directly from the OCRC and cannabis transferred between retail stores of the Licensee. At a minimum, the records must contain the following information:
 - the cannabis purchased and received by the Licensee;
 - movement of cannabis between stores of the Licensee;
 - record of cannabis used for display purposes;
 - any cannabis returned to the OCRC or Licensed Producers (as defined in the federal *Cannabis Act*) directly;
 - each sale transaction at the store, traceable to the employee level;
 - any cannabis that has been destroyed, including, *at a minimum* :
 - the name and address of the store;
 - the time and date of destruction;
 - the name of the individual conducting the destruction (if being carried out by the Licensee, or the company name if being carried out by a third party);
 - a certificate of destruction (if carried out by a third party);
 - the product category and SKU;
 - the amount of product;
 - the reason for the destruction; and
 - the method of destruction.
 - **Tracking system records.** The Licensee must keep records to participate in the national cannabis tracking system established under the federal *Cannabis Act* and its regulations.
 - **Records to demonstrate compliance with sections 7 and 8 of the *Cannabis Control Act, 2017*.** These sections prohibit sales to persons under 19 years of age and persons who are or appear to be intoxicated.
- **Other rules.**
 - Licensees must complete full physical inventory counts on a weekly basis, *at a minimum*, or at the request of the AGCO.
 - The name of retail store must match its authorization application name.
 - Licensee must have signage on the exterior of the authorized store that clearly identifies its business and otherwise complies with the CLA, CLR and federal law restrictions on advertising and promotions.
 - Licensees must make the [Health Canada Consumer Information](#) document available to patrons.

- A copy of the retail manager licence must be stored and available for inspection at the retail location.
- Licensees must take reasonable measures to ensure patrons are not purchasing cannabis or cannabis accessories *on behalf of* individuals under the age of 19.
- Licensees must ensure there are reasonable safeguards around data security and protection of data integrity.
- Point of Sales systems must be certified by a recognized industry certification body or organization (e.g., PCI, ISO) and have logging capability for the purposes of monitoring all system access and system changes.

What's Next

Now that the AGCO has published its Standards, we have the full legislative scheme within which future cannabis retailers will operate. However, we are still looking for further AGCO guidance on the licence application process, set to open (online) on December 17. The Goodmans Cannabis Group will continue to monitor new information pertaining to the application process, which we expect the AGCO will make available before December 17.

Goodmans Cannabis Group

The Goodmans Cannabis Group has a depth and breadth of experience with respect to the many areas implicated by the regulatory regime discussed above, including extensive experience advising and assisting clients seeking to provide input to government with respect to policy development, as well as in municipal law matters (including zoning applications to permit private sales and consideration of any municipal licensing by-laws), defence of municipal prosecutions, and appeals of licensing decisions to the Licence Appeal Tribunal.

For further information on any of the information found in this Update, please contact any member of our [Cannabis Group](#).

Authors



Victor Liu
vliu@goodmans.ca
416.597.5141



Danielle Levesque
dlevesque@goodmans.ca
416.849.6967

The authors would like to thank Steve Inglis, Articling student-at-law, for his assistance in writing this Update.

All Updates are available at www.goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2018.