

# Goodmans<sup>LLP</sup> Update

## Ontario (Late to the Party) Retail Cannabis Update... With More to Come...

On October 17, 2018, Ontario enacted the *Cannabis Licence Act* (CLA) to permit the sale of recreational cannabis in privately owned stores. The CLA and its regulations, the *Cannabis Licence Regulations* (CLR), came into force on November 16, 2018.<sup>1</sup>

### Ontario's Private Retail Model

Before the CLA, the government-run Ontario Cannabis Retail Corporation (OCRC) was the exclusive authorized retailer of recreational cannabis in Ontario. The CLA changed that regime to allow private businesses to become licenced to sell recreational cannabis *in store*. The OCRC will remain the only *wholesaler* and *online retail* provider in the province. Privately licenced retailers are expected to begin operations in April 2019 (with December 17, 2018 being the date the AGCO will first accept applications).

The CLA establishes three levels of approval required for a retailer to operate and sell recreational cannabis in Ontario:

1. Every retailer requires a Retail Operator Licence (ROL);
2. *Each* store operating under the ROL needs a *separate* Retail Store Authorization (RSA); and
3. Every licensed store needs an individual with a Cannabis Retail Manager Licence (CRML) to perform supervisory tasks including, overseeing the sale of cannabis and managing compliance issues.

On November 27, the AGCO hosted a webinar to provide further details on the application process and its requirements. A second webinar is scheduled for December 6.

Below is a high-level overview and summary of Ontario's regulatory landscape thus far.

### Approvals Required to Retail Cannabis

#### (1) Retail Operator Licence

The ROL permits the operation of one or more retail stores in Ontario. The applicant is *not eligible* for a ROL if the applicant:

- is less than 19 years old or, if the applicant is a corporation, any of its directors, officers or shareholders is less than 19 years old;
- is carrying on activities that are or would contravene cannabis-related laws;
- will not exercise sufficient control over the applicant's cannabis retail business;
- an employee or agent of the applicant provides a false statement or information in the application; or
- is in default of filing a tax return (in any province or federally) or of paying any tax, penalty or interest assessed under Ontario tax laws.

Also, the AGCO will not award a ROL if the applicant or *a person interested in the applicant*:

- will not be financially responsible in the conduct of business;
- will not carry on business in accordance with the law, or with integrity, honesty or in the public interest; or
- has been convicted of or charged with certain cannabis-related offences.

"Person interested in the applicant" is defined broadly in the CLA to include a person who:

- has a beneficial interest of any kind in the business;
- exercises direct or indirect control over the business; or
- provided direct or indirect financing to the business.

In addition, if the applicant is a corporation, then its directors, officers and shareholders are subject to AGCO review, along with “persons interested in each director, officer and shareholder of the applicant”.

## *Specific Items Required for the ROL Application*

According to the AGCO, ROL applications will require the following from each applicant:

1. *AGCO Account.* Register at [www.agco.ca/iagco](http://www.agco.ca/iagco), to create an account where the application will be submitted online (only). If an applicant has an existing AGCO account (i.e., for liquor license or gaming license), the same account can be used for cannabis retail applications.
2. *Constituting documents.* Provide articles and by-laws of the applicant corporation.
3. *Schematic Diagram.* Outline the applicant's parent, subsidiaries and affiliates.
4. *Details of Shareholders.* Include % of shares held in the applicant, by each owner.
5. *Financial Statements.* Provide at least one year's worth.
6. *Tax Return or Tax Assessment.* Include Tax Compliance Verification number, which can be obtained from the Ontario Ministry of Finance tax compliance online portal. It is expected the AGCO will give further information about these requirements on December 1.
7. *Personal History.* No specifics are currently available on what information will be required. However, the AGCO portal will have a form and the AGCO is expected to provide further details at the December 6 webinar.

The ROL application fee is \$6,000 for an initial two-year term, with a renewal fee of \$2,000 for a two-year renewal term or \$4,000 for a four-year renewal term.

## **(2) Retail Store Authorization**

In addition to obtaining the ROL, retailers must obtain a RSA for *each* store. Applicants who hold a ROL, together with their *affiliates*, can obtain a maximum of 75 RSAs. The fee for each RSA is \$4,000 for an initial two-year term, with a renewal fee of \$3,500 for a two-year renewal term or \$7,000 for a four-year renewal term.

### *Affiliates & Licensed Producers*

In addition to customary thresholds based on majority control of voting shares or the ability to elect directors, the CLR defines *affiliates* broadly to include a 9.9%+ voting interest (inclusive of convertible securities that are then convertible), held directly or indirectly.

The CLR also includes as *affiliates* of a corporation any person, or a group acting jointly or in concert (whether or not pursuant to an agreement or arrangement) who (a) own beneficial interests in such number of shares having a fair market value, including control premium, if applicable, of at least 50% of the fair market value of all issued shares of the other person or (b) has any direct or indirect influence that, if exercised, would result in control in fact of the person.

Licensed producers under the federal *Cannabis Act* are expressly singled out in the CLR; licensed producers and their *affiliates* are restricted to having only *one* licensed retail store in Ontario, which must be located at the producer's licenced production facility. In addition, the CLR expressly prohibits any corporation from being issued a RSA if more than 9.9% of the corporation is owned or controlled, directly or indirectly, by one or more licensed producers of their *affiliates*.

Some of the other key requirements for an RSA are as follows:

### *Eligibility Requirements*

Applicants for an RSA must meet similar eligibility requirements as those for an ROL. Importantly, the eligibility requirements also apply to “persons interested in the store”, which is defined to include landlords or owners of the premises for the proposed store, mortgagees or any

person with an interest in the assets of the license holder, the business or the store property, fixtures or inventory.<sup>2</sup> Applicants for an RSA must also not enter into contracts or agreements for the provision of cannabis distribution services, except for agreements with the OCRC.

## *Standalone Store and Adequate Distance*

An RSA will not be granted unless the retail space is a standalone store either on its own or in an enclosed mall. The retail store is prohibited from operating as a department within another retail store or as a kiosk within the common area of a mall. The proposed retail store must also be located at least 150 meters from any public or private school.

## *Public Interest*

The AGCO will also consider an RSA application based on the results of a public notice process:

- The applicant of the RSA must post a notice on their storefront.
- The municipality and its residents have 15 calendar days to make written submission(s) to the AGCO.
- The Registrar then considers the submissions and provides copies to the applicant.
- The applicant has five calendar days to respond after which the Registrar decides whether to issue or refuse the RSA.
- To challenge the decision, the applicant must bring the decision under judicial review.

When considering written submissions, the Registrar will *only* focus on:

1. protecting public health and safety;
2. protecting youth and restricting their access to cannabis; and
3. preventing illicit activities in relation to cannabis.

## *Operational Requirements*

Another key ground for denying a RSA is if the AGCO determines the applicant will not operate the store in a way that complies with the applicable laws. This would include the operational requirements under the CLA, which mandate that licensed retail stores only:

1. operate between 9:00 a.m.- 11:00 p.m. (Monday to Sunday), unless the local retail by-laws provide otherwise;
2. sell cannabis, cannabis accessories (as defined in the Federal *Cannabis Act*) and shopping bags; and
3. allow persons 19 years of age or older to enter the store.

## *Employee Training*

All in-store employees must undergo AGCO-run training before their first day of work in the retail store. The holder of the RSA and the CRML must undergo the same training. The training is expected to be available in February 2019.

## **(3) The Cannabis Retail Manager Licence**

The CLA requires at least one manager of *each* authorized store location to acquire a CRML. An individual is required to obtain a CRML if they are in a supervisory or managerial role, oversee or co-ordinate the sale of cannabis, manage compliance issues; or have signing authority to purchase cannabis or enter into contracts.

To obtain a CRML, the applicant must provide information on their personal history for all employment and/or unemployment and provide a tax return or tax assessment. The fee, required for *each* store, is \$750 for an initial two-year term, with a renewal fee of \$500 for a two-year renewal term or \$1,000 for a four-year renewal term.

## Additional Guidance Forthcoming

We expect the AGCO's webinar on December 6 will provide further information on application and operational requirements for future cannabis retailers in Ontario. Also, the AGCO's Registrar Standards are expected to be published shortly, which will provide more guidance on the specific requirements for each retail store.

## 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](#).

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<sup>1</sup> As discussed in our July 30, 2018 Update, *Ontario's Cannabis Retail Industry: Private Retail Cannabis Sales are Coming to Toronto*, the then-newly-elected Ford government shifted course to allow private retailers of cannabis in Ontario. Subsequently, our August 28, 2018 Update, *Provincial Government Taking Steps to Develop Legal Regime Governing Retail Cannabis Sales*, outlined our anticipation of new legislation to effect same, and the appointing of the Alcohol and Gaming Commission of Ontario (AGCO) to oversee the licensing and/or other regulation of retail cannabis stores.

<sup>2</sup> As we noted in our August 28, 2018 Update, *Provincial Government Taking Steps to Develop Legal Regime Governing Retail Cannabis Sales*, the CLA prohibits landlords from knowingly permitting their premises to be used for the purpose of illegal cannabis sales, and provides substantial penalties for breach of those provisions, including, for corporations, fines of up to \$1 million (for a first offence), escalating to \$500,000 for each day during which the offence occurred (for subsequent offences), and for individuals, fines of up to \$250,000 (for a first offence), escalating to \$100,000 per day, plus imprisonment of up to two years less a day.

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