

# Goodmans<sup>LLP</sup> Update

## Provincial Government Taking Steps to Develop Legal Regime Governing Retail Cannabis Sales

The Ontario Government is moving forward with its plans to permit the sale of recreational cannabis in privately owned stores.

Currently, the Ontario *Cannabis Act* prohibits all persons, except the Ontario Cannabis Retail Corporation (which will operate the Ontario Cannabis Store), from selling cannabis for recreational purposes.<sup>1</sup> While the government could, in theory, implement its private retail model without amending the legislation,<sup>2</sup> it is more likely that new legislation will be introduced this fall. Until that new regime takes effect (which the government has announced will occur by April 1, 2019), recreational cannabis will only be available to the public through online sales by the Ontario Cannabis Store.

The Province has not yet announced which entity will be responsible for overseeing the licensing and/or other regulation of retail stores. The likeliest candidate is the Alcohol and Gaming Commission of Ontario (AGCO), which would be consistent with the approach taken by Alberta, Saskatchewan and Manitoba. In such circumstances, it seems likely that appeals from cannabis retail licensing decisions would go to the Ontario Licence Appeal Tribunal, a provincially appointed, quasi-judicial body, which currently hears appeals from, among other things, decisions of the AGCO related to alcohol-related licensing.

With respect to the specific rules governing private retail stores, certain parameters have already been effectively fixed by the federal legislation, including most notably that the stores must not be accessible to, nor may the interior be viewed by, persons under the ages of 18. However, there remains significant scope for Ontario to shape the cannabis retail landscape.

The Province has already indicated that municipalities will be given the power to “opt-out” of the licensing regime, thereby excluding cannabis retail stores from the municipal boundaries. A number of mid-sized municipalities (notably, Richmond Hill, Oakville and Markham) have already expressed interest in availing themselves of this power, at least initially.

Beyond that, the Province needs to determine such matters as:

- whether it will regulate the variety of products to be offered by any given retailer (or whether a retailer will be permitted, for example, to restrict its merchandise to cannabis from a single licensed producer);
- whether retailers will be permitted to sell other products on-site in addition to cannabis;
- whether federally licensed producers will be permitted to engage in retail sales;
- whether minimum prices should be set (the need for such regulation is open to question, given the role to be played by the Ontario Cannabis Store as the monopoly wholesaler); and
- the scope of authority that will be given to municipalities to control the number and location of retail stores.

The Province is currently engaging in a consultation process with a wide-range of stakeholders, including municipalities and representatives of first nations, law enforcement and industry, prior to settling upon the details of the regulatory scheme.

What seems unlikely to change are the significant enforcement mechanisms that municipalities can use to combat illegal retailers – mechanisms that are markedly more robust than those currently available. Of particular interest to owners of commercial property, the *Act* prohibits landlords from knowingly permitting their premises to be used for the purpose of illegal cannabis sales. And the *Act* 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. Those fines will be payable to municipal governments, which should provide an incentive for vigorous municipal enforcement.

The sale of recreational cannabis in privately owned stores will also require regulation by municipalities both from a zoning and licensing perspective. For example, in 2013, when the federal government enabled commercial production of medical cannabis, the City of Toronto amended its Zoning By-law to define such facilities and prescribe where such uses would be permitted, including through the use of separation distances from sensitive uses. This defined use is only permitted in certain of the City's employment zones and would not permit the sale of recreational cannabis. We would expect municipalities to implement specific zoning for private sales, rather than relying on the existing definition for retail stores. Further, many municipalities (including the City of Toronto) license matters that would relate to private cannabis sales, including the sale of food in the form of cannabis edibles. This means multiple permissions may be required from each municipality in which private sales would occur.

Finally, it is not yet clear whether companies and individuals that are currently operating dispensaries will be eligible for retail licences. The Government has provided little guidance on that question (which has generated substantial public interest), stating merely that such dispensaries are operating illegally and "need to stop". However, regardless of the eligibility of persons operating dispensaries under the current regime, we believe it likely that the Province will limit (or even preclude) licensing of entities that are found to be operating illegally once the new legislative regime comes into force on October 17, 2018.

The Goodmans Cannabis Team has a depth and breadth of experience with respect to the many areas implicated by the coming change of law discussed above, including extensive experience in 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 more information on any of the above, please contact any member of our [Cannabis Group](#).

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<sup>1</sup> Cannabis for medical uses can be sold directly to qualifying users by federally licensed producers, pursuant to the *Access to Cannabis for Medical Purposes Regulations*.

<sup>2</sup> Specifically by using section 16 of the *Ontario Cannabis Retail Corporation Act*, pursuant to which the Minister can authorize the Ontario Cannabis Retail Corporation to designate third parties as its agents, authorized to sell cannabis to members of the public.