

Goodmans^{LLP} Update

Ontario Retail Cannabis Update... The Limited-Licence Lottery System

On December 13, the Ontario government [announced](#) significant changes to the province's planned rollout of its retail cannabis regime. Ontario made regulation [497/18](#) (the "**Amending Regulation**") under the *Cannabis Licence Act, 2018* (the "**CLA**") that amends Ontario Regulation 468/18 to restrict the number of store authorizations to 25 in allocated regions across the province. Ontario also announced retail operator licences will be awarded by lottery, based on an "expression of interest" submission. These developments come as a surprise to prospective applicants, as the government previously announced an application process would open December 17. Below is a summary of what we learned from our review of the Amending Regulation and from a webinar hosted by the Alcohol and Gaming Commission of Ontario (AGCO) on December 14.

Background

Ontario's private retail model is governed by the *CLA*, its *Cannabis Licence Regulations* (CLR) and the AGCO *Registrar's Standards for Cannabis Retail Stores* (the "**Standards**"). More information on the *CLA* and CLR is detailed in our November 29, 2018 Update, *Ontario (Late to the Party) Retail Cannabis Update...With More to Come...* and further information on the Standards is detailed in our December 6, 2018 Update, *Ontario Retail Cannabis Update...New Rules Rolled Out for Future Cannabis Retailers*.

What We Know

1. Ontario will restrict the number of retail stores due to a national cannabis shortage.

Ontario appears to be pressuring the federal government to deal with the national legal cannabis supply shortage. The province says it is limiting the amount of stores to ensure they have enough cannabis to retail and remain open.

Ontario promises that when it determines the federal government has provided for a reliable supply, it will communicate next steps for additional retail stores. The Amending Regulation includes a one-year sunset clause so the lottery system is intended to be temporary. Also, the province may shorten (or lengthen) the lifespan further by another regulation (which is an order-in-council only and does not require Ontario legislature approval).

2. Retail licences will be awarded in phases.

The Amending Regulation restricts retail store authorizations that may be issued and in effect at any given time. The initial phase of store authorizations will be limited to 25. Subsequent waves of licences may be granted, at Ontario's discretion, once cannabis supply levels improve.

3. Allocation rules limit the number of stores per region.

The Amending Regulation divides the province into five regions and allocates a maximum number of stores per region, as follows:

- a. **Five** retail stores in the Toronto Region;
- b. **Six** retail stores in the GTA Region (Durham; York; Peel; Halton; but not Toronto);
- c. **Five** retail stores in the East Region (Stormont, Dundas and Glengarry; Prescott and Russell; Ottawa; Leeds and Grenville; Lanark; Frontenac; Lennox and Addington; Hastings; Prince Edward; Northumberland; Peterborough; Kawartha Lakes; Simcoe; Muskoka; Haliburton; Renfrew);

- d. **Two** retail stores in the North Region (Nipissing; Parry Sound; Sudbury; Greater Sudbury; Timiskaming; Cochrane; Algoma; Thunder Bay; Rainy River; Kenora);
- e. **Seven** retail stores in the West Region (Dufferin; Wellington; Hamilton; Niagara; Haldimand-Norfolk; Brant; Waterloo; Perth; Oxford; Elgin; Chatham-Kent; Essex; Lambton; Middlesex; Huron; Bruce; Grey; Manitoulin) (each a “**Region**”, and collectively, “**Regions**”).¹

As a further location restriction, the Amending Regulation provides a cannabis retail store *cannot* be located in a municipality with a population of less than 50,000.

4. Prospective retailers must provide an “expression of interest” to enter the lottery pool.

AGCO Lottery Process

The AGCO is implementing a lottery process to determine the first 25 eligible applicants for a licence for the specified Regions. Prospective applicants for a licence must submit an expression of interest (EOI) online between January 7-9, 2019. The submissions will be put into the lottery pool for a draw, which will take place on January 11. The lottery results will be posted to the AGCO website within 24 hours.

Once the 25 EOIs are drawn, those selected may be asked to submit a full retail operator licence application. The application and review process is expected to be 30 to 45 days. We anticipate that if one or more of the applicants are not successful in the licence application process, the AGCO will contact the subsequent EOIs drawn in the lottery to submit a licence application.

The AGCO will retain a third-party fairness monitor and will provide them with the rules of the lottery. The AGCO will publish these rules as soon as they are available and host a webinar to explain the lottery rules and procedures (to be scheduled in the first week of January). Given the short timeline, it is expected the lottery process will be a true lottery with no prequalification requirements.

Expressions of Interest

Given this proposed process and timeline, it is expected an EOI will only require basic information such as name and nature of applicant (*i.e.*, corporation, partnership, individual) and not require detailed information such as those for the licence application (*i.e.*, the applicant’s constating documents, schematic diagram, shareholders, financial statements, tax return, and personal history). In addition, an EOI must identify the Region in which the person wishes to locate a cannabis retail store.

Additionally, with an intent to avoid prospective applicants from ‘stuffing the ballot box’, the Amending Regulation provides:

- **Affiliates *cannot* double up on entries for the same Region.** If two or more affiliates each submit to the Registrar an EOI with respect to the same Region, neither of those affiliates would be allowed to apply for a retail operator licence, even if successfully drawn in the lottery. The definition of affiliate in the Amending Regulation is the same as the CLR (*i.e.*, including persons with a 9.9%+ voting interest held directly or indirectly).
- **Affiliates can double up on entries for different Regions, but only one can apply for a licence.** Two or more persons who are affiliates of one another may each submit an EOI with respect to different Regions, however, *only one affiliate* will be able to apply for a retail operator licence. So, if there is a situation where two affiliates are successfully drawn for different Regions, they will have to decide in which Region to open their store.
- **One Region per successful EOI.** A person may submit an EOI for more than one Region, however, may only be selected to apply for a licence in relation to one of those EOIs. We expect that if the AGCO draws an additional EOI by the same person, or their affiliate, it will be disregarded.

What's Next

The AGCO says it will make the lottery rules and process available shortly, which will give guidance on how prospective retailers should prepare for the January 7-9 submission period and lottery draw on January 11. The Goodmans Cannabis Group will continue to monitor new information pertaining to the licensing process in the coming weeks and months as the government continues to adapt to changing demands.

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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¹ Under the Standards, Ontario municipalities have a one-time option to opt out of having cannabis retail stores in their jurisdiction. The deadline to opt out is January 22, 2019. To date, a number of municipalities have opted out, including: Markham; Mississauga; Erin; Frontenac Islands; Ingersoll; King Township; Lake of the Woods; and Papineau-Cameron. A current list of municipalities that have opted out (and opted in) is available on the [AGCO's website](#).

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