

Ontario's Cannabis Private Retail Regulations Released

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On November 16, 2018, after much anticipation, Ontario proclaimed into force its *Cannabis Licence Act, 2018*¹ (the “Act”) and the Regulations² to that Act. The Regulations will be printed in The Ontario Gazette as of December 1, 2018. The Act, which was first released as of the date of federal legalization, October 17, 2018, provided some details as to what retail cannabis will look like in Ontario as of April 1, 2019. The Regulations, however, have provided significantly more clarity than the Act provided.

The Act and Regulations designate the Alcohol and Gaming Commission of Ontario (the “AGCO”) as the provincial regulator of cannabis retail. The AGCO will be responsible for issuing licenses for each aspect of cannabis retail. Successful retailers will be given an opportunity to sell cannabis products, cannabis accessories, and shopping bags.

To be able to legally open a retail store in Ontario, applicants must obtain a Retail Operator License (“ROL”), a Retail Store Authorization (“RSA”), and a Cannabis Retail Manager Licence (“CRML”).

To obtain an ROL, applicants must meet a significant number of eligibility criteria set out in the Act and Regulations. Once obtained, the ROL functions as the top of the umbrella, and allows successful proponents to operate one or multiple retail stores. For each store that an ROL proponent wishes to open, that proponent must have a specific RSA.

Under the Act, federally licensed producers licensed to produce recreational cannabis for commercial sale (“LPs”) under the *Cannabis Act* (Canada) may only have a retail store on or within the site set out in its licence. LPs and their “affiliates” may not hold more than one RSA.³ In addition, if an LP holds an ownership or controlling interest of over 9.9% in an applicant, that applicant will be ineligible for a ROL.

¹ *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Sched. 2, <https://www.ontario.ca/laws/statute/18c12>

² Ontario Regulation 468/18 made under the *Cannabis Licence Act, 2018*, O. Reg. 468/18 https://www.ontario.ca/laws/regulation/r18468?utm_medium=email&utm_campaign=Cannabis-November-15%2C-2018&utm_source=Envoke-Cannabis-English

³ An “affiliate” is defined in S.2 as:

- (a) a corporation that is affiliated with the person for the purposes of the *Business Corporations Act*, as set out in subsection 1 (4) of that Act;
- (b) a corporation that is affiliated with another corporation in the manner referred to in clause (a), if that other corporation is at the same time affiliated with the person in that manner;
- (c) a corporation of which the person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 9.9 per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase such shares or such convertible securities;
- (d) a partner in the same partnership as the person;

Retailers must have a RSA for each store. Each store will need to meet certain eligibility requirements relating to store layout and location. In addition, RSA licensing will need to take into account the ability for local municipalities to opt-out of cannabis retail sales. The *Act* gives municipalities an option to pass a resolution prohibiting cannabis retail stores from being located in their community. In order to opt-out, municipalities will be required to pass a resolution by January 22, 2019. There is a one-time opportunity to opt-out, but those municipalities who have opted out have an option to opt in at a later date.

The *Act* indicates that a list of municipalities in which cannabis retail stores may not be located will be listed on the AGCO's website, along with the dates of the relevant resolutions passed by those municipalities.

RSAs will only be granted to stores which are standalone, meaning the proposed location must be enclosed by walls and inaccessible to any other commercial establishment. The proposed location's loading dock and storage area must similarly be inaccessible to other commercial establishments and the public.

The Regulations preclude any ROL (and its affiliates) from holding more than a maximum of 75 RSAs. The AGCO has not stated a total limit of how many RSAs will be issued in Ontario.

Stores will need to meet the Regulations' setback requirements of 150 metres away from a school as defined in the *Education Act*.

In addition to an RSA, each store location will have one designated licensed manager. That manager will need to meet eligibility criteria set out in the *Act* and the Regulations. Sole proprietors who obtain an ROL and RSA, and will also be in charge of managing a particular store, will be exempt from the requirement to obtain a CRML.

CRMLs as well as other store employees will be required to complete a specified training program respecting: the responsible sale of cannabis, record keeping requirements under the *Act*, and measures required to be taken under the *Act* to reduce the risk of cannabis being diverted to an illicit market or activity.

Cannabis will be supplied to future retailers exclusively through the Ontario Cannabis Retail Corporation (the "OCRC"). The OCRC will be the only legal wholesaler of cannabis to future private retailers. The *Act* is explicit that cannabis retailers will be prohibited from entering "cannabis distribution services" agreements with any third party outside of the OCRC. Private

(e) a trust in which the person has a substantial beneficial interest, whether vested or contingent, or with respect to which the person acts as a trustee;

(f) a member of the same joint venture, unincorporated association, unincorporated syndicate or unincorporated organization as the person; or

(g) a person who is deemed under subsection (2) or (3) to be an affiliate of the person or an affiliate of an affiliate of the person.

retailers will have no option to do online sales, as the Ontario Cannabis Store currently operates, and will continue to operate, the only legal online store for recreational sales.

The AGCO has indicated that it will begin accepting applications as of December 17, 2018. Despite this, the AGCO has not yet released its application process. In addition to its Cannabis Retail Application Guide, the AGCO intends to publish Registrars Standards, which will act as standard operating procedures for future retailers. These will be published in the coming days and weeks.

Those hoping to be among the first applicants have already begun to arrange their affairs based on the requirements suggested by the *Act* and Regulations. Without a doubt, the AGCO's continuous information and disclosure will continue to change the landscape of cannabis retail in Ontario.