

How the Province of Ontario Will Regulate Private Cannabis Retail Stores

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On September 27, 2018, the Government of Ontario introduced [Bill 36](#), which became the [Cannabis Statute Law Amendment Act, 2018](#)^[1] (the “SLAA”) once it received Royal Assent on October 17, 2018. Schedule 2 of the SLLA established the [Cannabis Licence Act, 2018](#)^[2] (the “CLA”), which will regulate privately-run cannabis retail stores in Ontario.

The CLA will come into force on a date proclaimed by the Lieutenant Governor. Although it is not known exactly when this will occur, it will happen sometime before April 1, 2019, the proposed start date for the opening of privately-run cannabis retail stores in Ontario.

So how will the Government of Ontario regulate these privately-run cannabis retail stores? A detailed summary of its proposed regulatory framework appears below.

Overview of the Licencing Process

The Alcohol and Gaming Commission of Ontario (the “Commission”) will be the entity responsible for licencing privately-run cannabis retail stores in the Province of Ontario. According to the CLA, the Commission will be responsible for three different types of licences/authorizations: (1) a Retail Operator Licence, (2) a Retail Store Authorization, and (3) a Cannabis Retail Manager Licence. It is expected that the Commission will begin accepting applications for these licences/authorizations in December 2018.

Retail Operator Licence (“ROL”)

In order to operate a cannabis retail store, an interested individual or entity must first apply for an ROL. The CLA does not limit the total number of ROLs that the Registrar of Alcohol, Gaming and Racing (the “Registrar”) may issue. Once issued, ROLs are not transferable.

In order to apply for an ROL, the following requirements must be satisfied:

- a. An individual applicant for a ROL must be at least 19 years of age. In the case of a corporate applicant, every director, officer, and shareholder must be at least 19 years of age.
- b. An applicant who has been previously refused an ROL, a renewal of their ROL, or had their ROL revoked is ineligible to reapply for a period of two years from the date of refusal or revocation, unless the Registrar is satisfied that there has been a significant change in circumstances.
- c. An applicant is not eligible for an ROL if any of the following apply:
 1. There are reasonable grounds to believe that the applicant will not be financially responsible in the conduct of the cannabis retail business, having regard to the financial history of: (i) the applicant; (ii) persons interested in the application; and (iii) any directors, officers, or shareholders of the applicant, or persons interested in those individuals (collectively, the “Relevant Individuals”);
 2. There are reasonable grounds to believe that the applicant will not carry on business in accordance with the law, or with integrity, honesty, or in the public interest, having regard to the past or present conduct of the Relevant Individuals;
 3. A Relevant Individual has been convicted or charged with an offence under the CLA, the *Cannabis Control Act, 2017* (formerly known as the [Cannabis Act, 2017](#)^[3]), the federal [Cannabis Act](#)^[4], or the regulations made under any of these statutes;
 4. There are reasonable grounds to believe that the applicant is carrying on activities that are, or would be, in contravention of any provision of the CLA, the *Cannabis Control Act, 2017*, the federal *Cannabis Act*, or the regulations made under any of these statutes;
 5. The Registrar is not satisfied that the applicant will exercise sufficient control over the cannabis retail business;
 6. The applicant (or their employees or agent) makes a false statement or provides false information in the application; or
 7. Any other circumstances prescribed by regulation (draft regulations have not been published yet).

The CLA also makes clear that an ROL may still be issued even if a Relevant Individual was previously convicted or charged with a prescribed offence under the federal [Controlled Drugs and Substances Act](#)^[5] in relation to cannabis. Although no offences have been prescribed by regulation yet, it is likely that simple possession of 30 grams or less of cannabis will be on the list.

Retail Store Authorization ("RSA")

In addition to an ROL, an applicant must also apply for an RSA for each cannabis retail store that they intend to operate. Once issued, an RSA is not transferable and only authorizes the applicant to operate the specific store that was described in the initial application. The CLA does not limit the total number of RSAs that the Registrar may issue.

Only someone who already holds an ROL or who is an applicant for an ROL may apply for an RSA. In other words, applicants may either apply concurrently for both an ROL and an RSA or apply for one or more RSAs after they have obtained an ROL.

There are restrictions on where a cannabis retail store may be located:

- a. It is not possible to seek an RSA for a cannabis retail store that would be located in a municipality that has passed a resolution (on or before January 22, 2019) to prohibit them; [the media has already reported](#) that Markham and Richmond Hill have stated their intention to prohibit cannabis retail stores. According to the CLA, a municipality that has passed such a resolution may later lift the prohibition on cannabis retail stores by subsequent resolution. However, once it has done so, the municipality cannot reverse its decision and prohibit them again.
- b. It is not possible to seek an RSA for a cannabis retail store that would be located on a reserve where its band council has passed a resolution prohibiting such stores and delivered it to the Registrar. There is no deadline for when the band council may prohibit the issuance of RSAs on its reserve. If a cannabis retail store is already operating on the reserve when such a resolution is passed, any existing RSAs will continue to be valid but will not be renewed.
- c. It is not possible to seek an RSA for a cannabis retail store that would be located less than the prescribed distance from a school (as defined in the [Education Act](#)^[6]), or any other circumstances that may be prescribed by regulation. As no draft regulations have been published, it is unknown what the prescribed minimum distance will be once the CLA comes into force. However, [according to media reports](#), Premier Ford has previously criticized the former Liberal Government's decision to open a cannabis store within 300 metres of a school.

If a municipality chooses not to prohibit the opening of cannabis retail stores, it is not permitted to do the following:

- a. Pass a business licencing by-law under the *Municipal Act, 2001*, which provides for separate system of licences respecting the sale of cannabis; or
- b. Pass a by-law under the *Planning Act*, which has the effect of distinguishing between a use of land, a building, or a structure that includes the sale of cannabis and one that does not.

There are also restrictions imposed on commercial producers of cannabis who are licenced producers under the federal *Cannabis Act*. Although a licensed producer may apply for an RSA, the following restrictions will apply:

- a. The proposed cannabis retail store must be located on or within the site set out in its production licence. In other words, licenced producers will only be permitted to operate a cannabis retail store at their designated production facility (similar to wine producers that operate a retail store on-site at their vineyard).
- b. A licenced producer and its affiliates (to be defined by regulation) may not between them hold more than one RSA. Although the term “affiliate” has not yet been defined by regulation, if the Government of Ontario adopts a broad definition, it may prevent licenced producers from investing in third-party companies that operate cannabis retail stores in Ontario.

As part of the application process, the Registrar will give notice of an application for an RSA:

- a. By displaying a notice at the location of the proposed cannabis retail store specified in the application;
- b. By posting a notice on the Commission’s website; and
- c. In any other manner that the Registrar considers appropriate.

However, public notice is not required if it has already been determined that the RSA application cannot be approved.

An applicant is not eligible to receive an RSA in any of the following circumstances:

- a. The applicant does not (or would not at the time of issuance) hold an ROL, or is in possession of an ROL subject to conditions that would prevent the issuance of an RSA in the circumstances;
- b. A Relevant Individual has been convicted or charged with an offence under the CLA, the *Cannabis Control Act, 2017*, the federal *Cannabis Act*, or the regulations made under any of these statutes;
- c. There are reasonable grounds to believe that the applicant is carrying on activities that are or would be in contravention of any provision of the CLA, the *Cannabis Control Act, 2017*, the federal *Cannabis Act*, or the regulations made under any of these statutes;
- d. The applicant employs or intends to employ an individual who will perform the functions of a cannabis retail manager but who does not hold a Cannabis Retail Manager Licence;
- e. The issuance of an RSA for the proposed store is not in the public interest, when considering the needs and wishes of the residents of the relevant municipality;

- f. In the case of a proposed cannabis retail store that would be located on a reserve, the band council has not approved the location of the proposed store;
- g. The premises, equipment, and facilities of the proposed store are not, or would not be, in compliance with the CLA, its regulations, or standards and requirements established under the CLA;
- h. The Registrar is satisfied that the applicant will not exercise sufficient control over the premises, equipment, and facilities of the proposed store;
- i. The applicant (or an employee or agent) makes a false statement or provides false information in the application; or
- j. Any other circumstances prescribed by regulation (draft regulations have not been published yet).

All decisions of the Registrar to issue or deny an RSA are considered final.

An applicant who has been previously refused an initial RSA, a renewal of their RSA, or whose RSA has been revoked will be ineligible to reapply for an RSA in respect of the same cannabis retail store for a period of two years from the date of the refusal or revocation, unless the Registrar is satisfied that there has been a significant change in circumstances.

The holder of an RSA must ensure that the cannabis retail store begins selling cannabis within one year of the date that the RSA is issued. Cannabis must also continue to be sold at the cannabis retail store after that date.

Cannabis Retail Manager Licence ("CRML")

The holder of a valid ROL may perform the functions of a cannabis retail manager, which include the following:

- a. Supervising or managing employees or a cannabis retail store;
- b. Overseeing or coordinating the sale of cannabis;
- c. Managing compliance issues in relation to the sale of cannabis; and
- d. Having signing authority to purchase cannabis, enter into contracts, or make offers of employment.

However, if the holder of an ROL intends to employ an individual to perform any of the functions described above, that individual must possess a CRML. The CLA does not limit the total number of CRML's that the Registrar may issue. Once issued, a CRML is not transferable.

In order to apply for a CRML, the following requirements must be satisfied:

- a. An applicant for a CRML must be at least 19 years of age;

- b. An applicant who has been previously refused an initial CRML, a renewal of their CRML, or had their CRML revoked is ineligible to reapply for a period of two years from the date of the refusal or revocation, unless the Registrar is satisfied that there has been a significant change in circumstances.
- c. An applicant is not eligible for a CRML if any of the following apply:
 - 1. There are reasonable grounds to believe that the applicant will not, in the capacity of a cannabis retail manager, act in accordance with the law, or with integrity, honesty, or in the public interest, having regard to the past or present conduct of the applicant;
 - 2. Any other circumstances prescribed by regulation (draft regulations have not been published yet).
 - 3. The applicant makes a false statement or provides false information in the application; or
 - 4. There are reasonable grounds to believe that the applicant is carrying on activities that are, or would be, in contravention of any provision of the CLA, the *Cannabis Control Act, 2017*, the federal *Cannabis Act*, or the regulations made under any of these statutes;
 - 5. The applicant has been convicted or charged with an offence under the CLA, the *Cannabis Control Act, 2017*, the federal *Cannabis Act*, or the regulations made under any of these statutes;

The CLA makes clear that a CRML may still be issued even if an applicant was previously convicted or charged with a prescribed offence under the federal *Controlled Drugs and Substances Act* in relation to cannabis. Although no offences have been prescribed by regulation yet, it is likely that simple possession of 30 grams or less of cannabis will be on the list.

Conditions Imposed on Cannabis Retail Stores

The holder of an RSA must comply with the following conditions in relation to the operation of their cannabis retail store:

- a. They must display the prescribed cannabis retail seal in the prescribed manner (details to be provided in the regulations);
- b. They must not sell cannabis unless it has been produced by a licenced producer authorized under the federal *Cannabis Act*;
- c. They may only sell:

1. Cannabis that was purchased by the RSA holder directly from the Ontario Cannabis Retail Corporation (in the packaging in which it was originally purchased), and
 2. Any other items that may be prescribed (details to be provided in the regulations);
- d. They may only purchase cannabis for sale from the Ontario Cannabis Retail Corporation, giving the Ontario Government the exclusive right to distribute cannabis to cannabis retail stores in the Ontario;
 - e. They must not employ an individual under 19 years of age in a cannabis retail store;
 - f. They must not sell cannabis to an individual under 19 years of age;
 - g. They must not sell or distribute cannabis to a person who is, or appears to be, intoxicated;
 - h. If provided for in the regulations, they must not sell cannabis (or a prescribed class of cannabis) at a price that is lower than the prescribed price (details to be provided in the regulations);
 - i. They must ensure that the amount of cannabis sold to an individual in the cannabis retail store in a single visit (whether through single or multiple transactions) does not exceed 30 grams of dried cannabis or the equivalent amount of another class of cannabis determined in accordance with Schedule 3 to the federal *Cannabis Act*, or such other amount as may be prescribed by regulation;
 - j. They must ensure that cannabis sold at the cannabis retail store is sold only through recorded sales;
 - k. They must ensure that all aspects of the sale of cannabis, including ordering and payment, are conducted in person at the store (the Ontario Cannabis Retail Corporation has the exclusive right to sell cannabis in Ontario online or by any means other than by operating retail stores);
 - l. They must keep appropriate records of their activities involving the cannabis in their possession, in accordance with the regulations and any applicable standards and requirements established under the CLA; and
 - m. They must take adequate measures to reduce the risk that any cannabis in their possession will be diverted to an illicit market or activity, in accordance with the regulations and any applicable standards and requirements established under the CLA.

Prohibition on Third Party Promotional Activities

In order to address the potential problem of agents or brokers providing inducements to cannabis retail stores, the CLA specifically prohibits anyone from offering or giving a material

inducement to the holder of an ROL or RSA (or to any of their agents or employees) for the purpose of increasing the sale of a particular type of cannabis.

Conclusion

Notwithstanding the absence of regulations, the CLA provides a reasonably clear understanding of the framework that will be implemented in the Province of Ontario, for the operation of privately-run cannabis retail stores. Although some questions remain, it is expected that they will be answered some time before the first cannabis retail stores open on April 1, 2019.

[1] S.O. 2018, c. 12.

[2] S.O. 2018, c. 12, Sched. 2.

[3] S.O. 2017, c. 26, Sched. 1.

[4] S.C. 2018, c. 16.

[5] S.C. 1996, c. 19.

[6] R.S.O. 1990, c. E.2.