

Legislation and Regulations for the Licencing of Cannabis Retail Stores in Ontario Now in Force

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As I [previously reported](#), the [Cannabis Statute Law Amendment Act, 2018](#)^[1] (the “CSLAA”) received Royal Assent on October 17, 2018. Schedule 2 of the CSLAA established the [Cannabis Licence Act, 2018](#)^[2] (the “CLA”), which created a framework for the licencing of privately-run cannabis retail stores in Ontario.

The CLA was not scheduled to come into force until it was proclaimed by the Lieutenant Governor of Ontario. However, on November 14, 2018, the [Government of Ontario announced](#) that the Lieutenant Governor had proclaimed the CLA and its enabling regulations^[3] (the “Regulations”). The [full text of the Regulations](#) was then published on November 15, 2018.

The Alcohol and Gaming Commission of Ontario (the “Commission”) is scheduled to begin accepting online applications on December 17, 2018. The absence of regulations had left several key issues unresolved, which created uncertainty for many potential applicants. However, the publication of the Regulations has now addressed many of these issues.

Meaning of the Term “Affiliates” In Relation to Licenced Producers

The CLA states that a licenced producer *and its affiliates* may not between them hold more than one Retail Store Authorization (“RSA”). However, the term “affiliates” was not defined in the CLA; it instead referred to a proposed definition that would be prescribed in the Regulations.

The Regulations provide a definition for the term “affiliates,” which is much broader than the definition used in the Ontario [Business Corporations Act](#)^[4]. For example, the term includes a corporation of which the licenced producer beneficially owns or controls, directly or indirectly, shares (or securities currently convertible into shares) carrying more than 9.9% of its voting rights. The Regulations also make clear that a corporation will not be eligible for an ROL if more

than 9.9% of that corporation is owned or controlled, directly or indirectly, by one or more licenced producers or their affiliates.

In other words, the Regulations prevent licenced producers from owning more than a minimal interest in a retail operator.

Prescribed Offences Precluding Approval

The CLA states that an applicant will not be eligible for a Retail Operator Licence (“ROL”), RSA, or Cannabis Retail Manager Licence (“CRML”) if they have been convicted of or charged with an offence under: (1) the CLA, (2) the [Cannabis Control Act, 2017](#)^[5] (“CCA”), (3) the [Cannabis Act](#)^[6], or (4) the regulations made under any of them, **if** that offense is prescribed in the Regulations. The Regulations now confirm that the following offences are prescribed:

- An offence under the CLA;
- An offence under Sections 6, 7, 8, 8.1, 13, or 15 of the CCA;^[7] or
- An offence under Division 1 of Part 1 of the *Cannabis Act*.^[8]

Prescribed Non-Compliance Precluding Approval

The CLA states that an applicant will not be eligible for an ROL, RSA, or CRML if there are reasonable grounds to believe that the applicant is carrying on activities that are (or would be if the applicant were the holder of such a licence or authorization) in contravention of a provision contained in the: (1) the CLA, (2) the CCA, (3) the *Cannabis Act*, or (4) the regulations made under any of them, **if** that provision is prescribed in the Regulations. The Regulations now confirm that the following provisions are prescribed:

- Sections 6, 7, 8, 8.1, 13 and 15 of the CCA;^[9] and
- Sections 8, 9, 10, 11, 12, 13, and 14 of the *Cannabis Act*.^[10]

The [Ontario Government’s announcement](#) stated that this ineligibility would apply to illegal cannabis retailers who were still operating on October 17, 2018. However, it also suggested that this ineligibility would not apply to illegal cannabis operators who ceased operating before that date.

Prescribed Offences Not Precluding ROL or CRML Approval

The CLA states that a conviction for certain prescribed offences under the [Controlled Drugs and Substances Act](#)^[11] (“CDSA”), in relation to cannabis, will not preclude the issuance of an ROL or CRML. The Regulations now confirm that the following CDSA offences are prescribed:

- Section 4 (cannabis possession);
- Section 5 (cannabis trafficking);
- Section 7 (cannabis production); and
- Section 7.1 (possessing, producing, selling, importing, or transporting anything intended to be used in the production or trafficking of cannabis).

Noticeably absent from this list is Section 6 (importing or exporting cannabis). Therefore, a conviction under Section 6 will still preclude the issuance of an ROL or a CRML.

Tax Compliance Requirement

The Regulations state that an applicant will not be eligible for an ROL if:

- They are in default of filing a tax return under an Ontario tax statute or of paying any tax, penalty or interest assessed under such a statute, for which payment arrangements have not been made; or
- They have a Canada Revenue Agency (“CRA”) business number and are in default of filing a return under the [Taxation Act, 2007](#)^[12], the [Income Tax Act](#)^[13], Part IX of the [Excise Tax Act](#)^[14], or a statute of another province or territory that imposes a tax on corporations and is administered and enforced by CRA.

Association with Organized Crime

The Regulations state that an applicant is not eligible for an ROL, RSA, or CRML if:

- They are, or have been, a member of a criminal organization as defined in Subsection 467.1(1) of the Canadian [Criminal Code](#)^[15];
- They are, or have been, involved in the activities of such an organization; or
- They contribute, or have contributed to, the activities of such an organization.

Standalone Store Requirement

The Regulations state that an RSA cannot be issued if:

- The retail space where cannabis would be sold:
- Would not be enclosed by walls separating it from any other commercial establishment or activity and from any outdoor area; or
- Could be entered from or passed through in order to access any other commercial establishment or activity, other than a common area of an enclosed shopping mall; or
- The premises where cannabis will be received or stored would be accessible to any other commercial establishment or activity or to the public.

In other words, the cannabis retail store must be a standalone store either on its own or in an enclosed shopping mall. It cannot operate as a department within another retail store or as a kiosk set up in the common area of a shopping mall. In addition, the area where cannabis is to be received or stored must be secure.

Prescribed Minimum Distance from Schools

The CLA states that a cannabis retail store cannot be less than the prescribed distance from a school (as defined in the [Education Act](#))^[16]. However, it was impossible to know what the prescribed distance would be until the Regulations were finalized.

Before he was elected, [Premier Ford previously criticized](#) the former Liberal Government’s decision to open a cannabis retail store within 300 metres of a school. As a result, there were concerns that the prescribed distance would be more than 300 metres.

The Regulations now confirm that the prescribed distance will be 150 metres from a public or private school, calculated as follows:

- If the school or private school is the primary or only occupant of a building, the distance will be measured from the property line of the property on which the school or private school is located; and
- If the school or private school is not the primary or only occupant of a building, the distance will be measured from the boundary of any space occupied by the school or private school within the building.

In addition, the minimum distance restriction will not apply to a private school that:

- Is located on a reserve; or
- Only offers classes through the Internet.

Limit of 75 Cannabis Retail Stores Per Applicant

The Regulations state that an RSA may not be issued if the applicant and its affiliates collectively already hold 75 RSAs. According to the Government of Ontario, the purpose of this limit was to promote opportunities for small businesses and investment in the cannabis retail sector.

Prohibition of Distribution Services

The Regulations state that the holder of an RSA is prohibited from entering into contracts or agreements for the provision of cannabis distribution services. Although the phrase “distribution services” is not defined in the Regulations, the CLA states that “distribute” has the same meaning as in the CCA.

According to the CCA, the term “distribute” includes “administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute or having in possession for distribution.” So this prohibition clearly extends to a broad range of activities.

The Regulations also clarify that the above prohibition does not apply to:

- A contract or agreement with the Ontario Cannabis Retail Corporation or with someone acting under a contract to provide distribution services to or on behalf of the Ontario Cannabis Retail Corporation; or
- A contract of employment with the RSA holder to work in a cannabis retail store.

This was intended to clarify that cannabis retail stores can purchase cannabis from the Ontario Cannabis Retail Corporation and hire employees, without violating this provision.

Revocations and Suspensions

The CLA stated that the Registrar would revoke a licence or authorization, without issuing a proposal to revoke, if the holder was convicted of specific cannabis-related offences. The Regulations now add Section 9 of the *Cannabis Act*, which refers to the unlawful distribution of cannabis.

The Regulations also state that, if an RSA is suspended, the holder shall prominently display a sign disclosing the suspension in a conspicuous place, which is visible from the outside of the public entrance to the cannabis retail store.

Permissible Hours of Operation

The Regulations confirm that a cannabis retail store will be permitted to open between 9:00 am and 11:00 pm on any day.

Additional Items That May be Sold

According to the CLA, a cannabis retail store may only sell 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 *any other items that may be prescribed*. The Regulations now confirm that the following prescribed items may also be sold at a cannabis retail store:

- Cannabis accessories within the meaning of Subsection 2(1) of the *Cannabis Act* (including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers); and
- Shopping bags.

Preventing Entry of Individuals Under 19 Years of Age

The Regulations require the holder or an RSA to ensure that anyone who appears to be under 25 years of age presents proper identification proving that they are least 19 years of age, before permitting them to enter the cannabis retail store.

Training Program Requirement

The Regulations confirm that the following individuals will be required to successfully complete training courses or programs established by the Commission:

- Holders of an RSA;
- Holders of a CRML; and
- Any individuals employed to work in a cannabis retail store.

Requirement to Deliver Resolution to Opt Out

The Regulations state that a municipality that passes a resolution to prohibit cannabis retail stores on or before January 22, 2019, is required to provide written notice of the resolution to the Registrar within three business days. However, in the case of a band council that passes a resolution to prohibit cannabis retail stores on a reserve, they are only required to provide written notice as soon as practicable after the passing of a resolution.

Conclusion

In conclusion, the recent publication of the Regulations provides prospective applicants with sufficient guidance to assess their eligibility for a licence or authorization and to ensure compliance with their continuing obligations once they have received it.

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

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

[3] O. Reg. 468/18.

[4] R.S.O. 1990, c. B.16.

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

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

[7] These offences include: (1) unlawful sale or distribution [Section 6], (2) sale distribution to persons under 19 [Section 7], (3) sale or distribution to an intoxicated person [Section 8], (4) falsely claiming to be an authorized cannabis retailer [Section 8.1], (5) landlord permitting unlawful sale on leased premises [Section 13], or (6) possession of proceeds of an offence [Section 15].

[8] This includes: (1) cannabis possession [Section 8], (2) cannabis distribution [Section 9], (3) selling cannabis [Section 10], (4) importing and exporting cannabis [Section 11], (5) cannabis production [Section 12], (6) possession of anything for use in production or distribution of illicit cannabis [Section 13], and (7) involvement of a young person in the commission of an offence [Section 14].

[9] *Supra*, Note 7.

[10] *Supra*, Note 8.

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

[12] S.O. 2007, c. 11, Sched. A.

[13] R.S.C., 1985, c. 1 (5th Supp.).

[14] R.S.C., 1985, c. E-15.

[15] R.S.C., 1985, c. C-46.

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