

ONTARIO'S EVOLVING CANNABIS RETAIL MODEL

By Don Bourgeois

Minister of Finance Vic Fedeli and Attorney General Caroline Mulroney announced on August 13, 2018 a new "regulated private retail model" for cannabis. The Ministers' announcement emphasized three public policy objectives:

- To put in place a safe, legal system for cannabis retail that will protect consumers,
- To undermine the illegal market, and
- To protect public safety, in particular children and youth, neighbourhoods, and roads.

The Government will consult over the next several months and intends to put in place a private retail model for cannabis by April 2019. The Government will consult with the Association of Municipalities of Ontario, the City of Toronto, Indigenous communities, police, the cannabis industry association and other stakeholders to ensure safe, responsible sales. The consultation will help determine:

- The types of eligible businesses and the rules by which they would operate,
- The roles of municipalities and First Nations,
- How to protect youth and children in our communities, and
- How to protect against intervention by organized crime and the diversion of product.

While the Government was short on details in several areas – perhaps to reflect the ongoing consultation period – there were some policy announcements:

- Ontario Cannabis Store (OCS) will be the sole source of lawful recreational cannabis as of October 17, 2018.
 - Individuals 19 years of age and older will be able to purchase cannabis online through the Ontario Cannabis Store's website,
 - Purchases will be limited to 30 grams of dried recreational cannabis,
 - Online orders will be delivered safely and securely to the consumer's home, and



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- Consumers will need to verify age by ID cards to accept delivery – no packages will be left unattended.
- The Government will introduce legislation that, if passed, would open up a tightly regulated private retail model for cannabis.
- It is expected that the Ontario Cannabis Store will also retain its exclusive wholesale function and being the sole source of legal cannabis for the private retail model.
- Ontario will provide \$40 million over two years to municipalities to assist with the costs related to legalization of cannabis – the funding will be allocated on a per household basis, with no municipality receiving less than \$10,000.
- Municipalities will have a one-time "opt out" for cannabis retail stores being located in their municipalities.
- Some of the rules that the Government intends to put in place include:
 - The use of an official "Ontario Cannabis Retailer Seal" to identify licensed retailers and providers so that consumers know they are purchasing federally-quality controlled products from a legitimate retailer,
 - Products cannot be visible or sold to youth and must be sold from behind the counter,
 - Promotions will be limited to factual information and cannot be appealing to youth,
 - Sponsorships and endorsements will not be allowed,
 - Municipalities will have a one time "opt out" authority, and
 - Consumers will only be allowed to use recreational cannabis in a private residence, including the outdoor space of a home, subject to the building's rules or lease agreement.
- Minister Fedeli noted that the Government does not want to do business with people who are running illegal businesses – the implication seems to be that if illegal businesses cease now, they may be eligible in the future for a cannabis retail store licence.

While not part of the announcement, it is expected that the private retail stores will be regulated by the Alcohol and Gaming Commission of Ontario. The AGCO carries out similar functions for other sectors, including gaming premises, lottery retailers, liquor licenses and so forth. It is also a law enforcement agency and is integrated into Ontario's broader law enforcement through the Bureau of the Ontario Provincial Police at the AGCO.

The Government's consultation process allows the sector to have an impact on the regulatory direction for the private retail model. It will be important to ensure that there is a balance in the regulatory model that achieves the public policy objectives announced by the Government while doing so in an efficient and effective manner.

The licensing process will probably be similar to that currently in place for other sectors regulated by the AGCO. That process involves a risk-based assessment process and includes a detailed due diligence investigation. Once licensed, the AGCO uses a standards-based regulatory model that emphasizes entity level controls based on risk assessments, strong governance structure, and independent audits of compliance. The AGCO also carries out inspections and investigations of its licensees and registrants.

Fogler, Rubinoff LLP and its legal professionals are available to assist during the consultation process and, for post-April 2019, the licensing and compliance processes that private retail stores will experience.

Don Bourgeois is counsel to Fogler, Rubinoff LLP. He is the former General Counsel and Director of Legal Services for the Alcohol and Gaming Commission of Ontario where he was the architect of the AGCO's current risk-based and standard-based regulatory approach.