

**FEELING LUCKY? SUBMIT AN EXPRESSION OF INTEREST APPLICATION TO PARTICIPATE IN THE ONTARIO CANNABIS LOTTERY (CUT 2)**

By Jennifer Humphrey and Rick Moscone

On July 3, 2019 the provincial regulator for cannabis retail storefronts, the Alcohol and Gaming Commission of Ontario (the "**AGCO**"), announced that it has been given the regulatory authority to conduct a second lottery for 42 private cannabis retail store authorizations (the "**Lottery**").

Rather than rely on the rules for the first lottery conducted in January, 2019 (the "**First Lottery**"), the Ontario government announced that *Ontario Regulation 468/18* has been amended to create new rules to help streamline the licensing process and to help ensure the readiness of cannabis retailers.

To participate, applicants must submit an "**Expression of Interest Application**" through the iAGCO (the AGCO's online portal), comply with all applicable laws, and meet all of the requirements provided for in the *Second Allocation Expression of Interest Lottery Rules* (the "**Rules**").

Licensed retail stores can now be opened in any municipality, regardless of its population size, providing that the municipality did not opt-out of the retail cannabis market. For now, the following number of stores have been assigned to each region ("**Region**"):

- 7 stores for the eastern region (being 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);
- 6 stores for the Greater Toronto Area (being Durham, York, Peel and Halton);
- 13 stores for Toronto;
- 11 stores for the western region (being Dufferin-Wellington, Hamilton, Niagara, Haldimand-Norfolk, Brant, Waterloo, Perth, Oxford, Elgin, Chatham-Kent, Essex, Lambton, Middlesex, Huron, Bruce, Grey, Manitoulin); and
- 1 store in each of the following 5 cities: Kenora, North Bay, Sault Ste. Marie, Thunder Bay and Timmins.

There will also be an allocation of up to 8 stores located on First Nations reserves, which will be conducted on a separate first come, first served basis. An applicant will be eligible to obtain a Retail Store Authorization on a First Nations reserve if it meets the requirements of the *Cannabis Licence*

This publication is intended for general information purposes only and should not be relied upon as legal advice. © FOGLER, RUBINOFF LLP. ALL RIGHTS RESERVED. 2019



[Jennifer Humphrey](#)  
Associate

t: 416.365.3747

[jhumphrey@foglers.com](mailto:jhumphrey@foglers.com)



[Rick Moscone](#)  
Partner

t: 416.941.8858

[rmoscone@foglers.com](mailto:rmoscone@foglers.com)

Fogler, Rubinoff LLP  
Lawyers  
77 King Street West  
Suite 3000, PO Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8



Act, 2018 and if: (i) it demonstrates that the Band Council has approved the location of the prospective cannabis retail store; and (ii) the cannabis retail store is located in the approved location. The pre-qualification requirements noted in the Allocation Lottery Rules do not apply for applicants wishing to operate a store on a reserve. Persons who have been selected in the First Lottery, or who have been selected in the Lottery will not be eligible to apply for these 8 store authorization opportunities.

Upon meeting all requirements, the 50 new private cannabis retail stores will be authorized to open on a rolling basis beginning in October 2019.

### Expression of Interest Application

Less than half of the 25 cannabis retailers selected in the First Lottery were successful at meeting the deadline to open cannabis stores on April 1, 2019. The failure to open these stores, along with the cannabis shortages across the province, are a few of the reasons that Ontario Regulation 468/18 was amended.

To participate in the Lottery, an applicant must:

- submit the full \$75 non-refundable fee for each Expression of Interest Application;
- be a corporation, limited partnership, partnership, trust or sole proprietor;
- ensure that all individuals associated with the Expression of Interest Application (including any director, officer, shareholder, partner and trustee) be of at least 19 years of age;
- be able to provide evidence that it has already secured retail space, including providing details of the street address of the retail space, an attestation that the retail space will be available for the applicant to operate a cannabis retail store as of October 2019, and the name and contact information of a person with a legal interest in the retail space; and
- be able to provide evidence that it has the sufficient capital to open a retail store.

In order to satisfy the latter condition, sufficient capital requirement, applicants are required to submit the following documentation in an acceptable form to the AGCO:

1. a Letter of Confirmation – Cash or Cash Equivalent Capacity from a qualified bank dated no earlier than July 3, 2019, confirming that the applicant is in good standing and has the financial capacity necessary to obtain \$250,000 in cash or cash equivalents.
2. a Letter of Confirmation – Commitment to Provide Letter of Credit from a qualified bank confirming that the applicant has the financial capacity necessary to obtain a Standby Letter of Credit in the amount of \$50,000 and that the Letter of Credit will be provided within 5 business days after the applicant has been notified of its selection by the Registrar.

Applications should also include the following pre-qualification documents and attestation of each Expression of Interest Application confirming that:

- the applicant has not made a false statement or provided false information in the application;
- the applicant will exercise control over the cannabis retail business;
- the applicant is legally permitted to operate a business in Ontario;
- if issued a Retail Operator License and a Retail Store Authorization, the applicant will comply with all cannabis related legislation, including the *Cannabis Licence Act, 2018*, the *Cannabis Licence Act, 2017*, the *Smoke Free Ontario Act, 2017*, as well as the *Registrar's Standards for Cannabis Retail Stores* and the *Allocation Lottery Rules*;
- Ontario and its agencies have not represented that there will be a sufficient quantity of cannabis for the applicant to operate its retail business.

To avoid disqualification, applicants ought not to provide more than one Expression of Interest Application for the same Region, or have two applicants that are affiliates submit an Expression of Interest Application for the same Region.

Former applicants in the First Lottery are eligible to participate in the Lottery providing that it submits a new Expression of Interest Application in accordance to all of the requirements.

**All Expression of Interest Applications must be submitted through the iAGCO portal between 12:01AM EDT August 7, 2019 and 8:00 PM EDT on August 9, 2019.**

**Expressions of Interest Applications will be selected at random using a third-party lottery software on August 20, 2019.**

Successful applicants of a Region will be contacted by the AGCO within 24 hours of the Lottery and be provided with a notification letter from the Registrar.

Within 5 business days of being notified that the applicant is selected, it will be required to submit an original \$50,000 Standby Letter of Credit from an accredited bank (secured until the end of the Allocation Timeline) and a document demonstrating that the applicant has a right to possession of the retail space stated in the Expression of Interest.

Unless otherwise agreed to by the Registrar, selected applicants must be in possession of that retail space by October 1, 2019.

Cannabis retailers may only apply for a retail Operator Licence or a Retail Store Authorization if it has submitted an Expression of Interest Application and if it was selected in the Lottery.

In order to ensure the Lottery and allocation process are conducted fairly, the AGCO will employ a third-party fairness monitor.

For more information please contact Rick Moscone or Jennifer A. Humphrey, and/or refer to the following resources:

- <https://www.agco.ca/cannabis/second-allocation-expression-interest-lottery>

This publication is intended for general information purposes only and should not be relied upon as legal advice. © FOGLER, RUBINOFF LLP. ALL RIGHTS RESERVED. 2019

- 
- <https://news.ontario.ca/mag/en/2019/07/ontario-moving-forward-with-next-round-of-cannabis-stores.html>