

November 21, 2018

ONTARIO GOVERNMENT RELEASES STRICT REGULATIONS FOR RECREATIONAL CANNABIS RETAILERS

On November 14, 2018, the Ontario government published a news release which declared that the government has passed new, “strict” regulations pertaining to the retail sale of recreational cannabis in Ontario. The regulations themselves were published on November 16, 2018.

THE REGULATIONS

Licensed recreational cannabis retailers will begin operating on April 1, 2019, under the oversight of the Alcohol and Gaming Commission of Ontario. The laws permitting the lawful sale and use of cannabis have been trumpeted for eons, but the regulations were not in place until now. The regulations published by the Ontario government include the following:

- Recreational cannabis retailers will not be permitted to operate within 150 metres of a school (including private and federally-funded First Nation schools off-reserve). The government defines school as a body of elementary or secondary school pupils that is organized as a unit for educational purposes under the jurisdiction of an appropriate board.
- Recreational cannabis retailers will not be permitted to allow anyone under the age of 19 to enter their stores.
- All recreational cannabis retail stores will only be permitted to sell cannabis and cannabis-related items.
- Recreational cannabis retail stores will be permitted to open only between 9:00am and 11:00pm.
- Unlicensed recreational cannabis retailers that were operating after October 17, 2018 will not be eligible for an Ontario recreational cannabis retail store license.
- Individuals or entities who have an association with organized crime will not be eligible for an Ontario recreational cannabis retail store license.
- Individuals or entities who are applying for an Ontario recreational cannabis retail store license must demonstrate their tax compliance status to prove that they are in good standing with the government.

- A licensed individual or entity will only be permitted to operate a maximum of 75 stores in Ontario.
- A municipality may, by resolution passed not later than January 22, 2019, prohibit cannabis retail stores from being located in their respective municipality.

The application process for recreational cannabis retail store licenses will begin on December 17, 2018, suggesting that the municipalities may pass resolutions earlier than January 22, 2019.

THE IMPLICATIONS

Commercial landlords and tenants should turn their minds to how the new regulations will impact their leases. Some considerations are outlined below.

Schools

If parties execute a lease for a premises within 150 metres of a school and a cannabis retail tenant begins to operate in the premises, the tenant will be in breach of the regulations and the lease will be for an unlawful use.

Hours of Operation

A lease cannot require a recreational cannabis retailer to operate before 9:00am or after 11:00pm.

Number of Stores

How will a landlord know if its recreational cannabis retail tenant has proliferated to the point of operating more than 75 stores? How will the landlord know if its store is Store #1 vs. Store #76? Landlords should consider obtaining a representation and warranty from the tenant as to its compliance with the store number restriction.

Retail Products

A lease cannot require and should not permit a recreational cannabis retailer to sell products other than cannabis and cannabis-related items.

Liability of the Landlord

Although the new regulations target the retailers, it is important for landlords to be cognizant of them. If a tenant is in breach of a regulation, the landlord may suffer consequences. If a landlord is aware that a retailer is unlawfully selling recreational cannabis, the landlord can be found liable under the regulations.

The regulations give the Registrar under the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act* the right to conduct investigations into the character, financial history and competence of both the landlord and the tenant.

Most commercial leases require that the tenant comply with all laws and bylaws. If a tenant breaches any of the regulations, a landlord may have to take steps to terminate the tenancy to avoid liability.

OTHER PROVINCES & TERRITORIES

Most other provinces and territories have already released regulations pertaining to the retail sale of recreational cannabis.

In British Columbia, New Brunswick, Northwest Territories, Nova Scotia, Prince Edward Island, Quebec and Yukon, consumers may purchase recreational cannabis at government-operated retail stores or a government-operated online store only.

In Alberta, Manitoba, Newfoundland and Labrador and Saskatchewan, consumers may purchase recreational cannabis at private licensed retail stores or a government-operated online store only.

In Nunavut, there is no “brick and mortar” recreational cannabis retail at this time. Consumers in Nunavut may purchase recreational cannabis through a government-operated online store or over the phone.

Ontario appears to be largely following suit with the regulations that have been established across Canada. Most other provinces and territories are strictly

regulating the distance between recreational cannabis retailers and schools. They have also regulated which individuals and entities are entitled to apply for a recreational cannabis retail store license, how many stores a licensed individual or entity may operate, and the type of training individuals with a recreational store authorization must undergo.

In addition, many other provinces and territories also restrict what products may be sold by a recreational cannabis retailer. It is common across the regulations for the sale of cannabis to be prohibited from the same premises that sells alcohol and tobacco. Most provinces and territories require that cannabis be sold in a store that is only selling cannabis and cannabis-related products. On that note, there was rampant speculation as to the meaning of the statement that all recreational cannabis retail stores would be “stand-alone”, a term that was not defined in the news release. Some media outlets assumed that “stand-alone” meant recreational cannabis retailers would not be permitted to operate in strip malls, shopping centres, multi-tenanted buildings, etc. (This would have been similar to the retail model in New Brunswick, where the provincial government chose to operate its retail stores primarily on stand-alone pad sites.) The term “stand-alone” does not actually appear in the regulations. There is no requirement that recreational cannabis retailers operate on stand-alone pad sites. The government may have used the term “stand-alone” in the news release to describe the requirement that recreational cannabis retail stores sell cannabis and cannabis-related items only.

SO WHAT NOW?

If parties to an existing lease discover their lease does not comply with the regulations, they might wish to amend the lease before operations commence on April 1, 2019. The anticipation of a breach may lead the parties to canvas potential remedies (a.k.a. “outs”).

Commercial landlords and tenants should stay tuned to see how municipalities react to the new regulations and whether the municipalities choose to prohibit cannabis retail stores before January 22, 2019.

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.



Our secret for closing files lies as much in what is taken out as in what is put in. By eliminating exorbitant expenses and excess time, by shortening the process through practical application of our knowledge, and by efficiently working to implement the best course of action, we keep our clients' needs foremost in our minds. There is beauty in simplicity. We avoid clutter and invest in results.

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MARY ANN BADON
416-598-7056
mbadon@dv-law.com

FRANCINE BAKER-SIGAL
416-597-8755
francine@dv-law.com

JEANNE BANKA
416-597-0830
jbanka@dv-law.com

CANDACE COOPER
416-597-8578
ccooper@dv-law.com

DENNIS DAOUST
416-597-9339
ddaoust@dv-law.com

BITALI FU
416-598-7053
bitalif@dv-law.com

GASPER GALATI
416-598-7050
ggalati@dv-law.com

S. RONALD HABER
416-597-6824
rhaber@dv-law.com

PAETRA KAUFMANN
416-479-4357
pkaufmann@dv-law.com

WOLFGANG KAUFMANN
416-597-3952
wolfgang@dv-law.com

LYNN LARMAN
416-598-7058
llarman@dv-law.com

MIMI LIN
416-597-8493
mimil@dv-law.com

MELISSA M. MCBAIN
416-598-7038
mmcbain@dv-law.com

PORTIA PANG
416-597-9384
ppang@dv-law.com

JAMIE PAQUIN
416-598-7059
jpaquin@dv-law.com

BRIAN PARKER
416-591-3036
bparker@dv-law.com

DINA PEAT
416-598-7055
dpeat@dv-law.com

KEN PIMENTEL
416-598-7049
kpimentel@dv-law.com

CLAIRE RENNEY-DODDS
416-488-3568
crenney-dodds@dv-law.com

LUCIA TEDESCO
416-597-8668
ltedesco@dv-law.com

NATALIE VUKOVICH
416-597-8911
nvukovich@dv-law.com

DANIEL WALDMAN
416-597-9306
dwaldman@dv-law.com

DEBORAH A. WATKINS
416-598-7042
dwatkins@dv-law.com

DANIEL WIENER
416-479-9662
dwiener@dv-law.com