

Province of Ontario's Regulations for Recreational Cannabis, Establishment of Ontario Cannabis Store (OCS), and the AGCO Private Cannabis Retail Regime

Key Provisions:

1. *General Cannabis Regulations in Ontario – the Cannabis Control Act, 2017* (formerly the *Ontario Cannabis Act, 2017*).

The stated purposes of this legislation, as set out in its Section 1, include protecting public health and safety, protecting youth and restricting their access to cannabis, and ensuring the sale of cannabis in accordance with the provincially-regulated sales regime.

The *Cannabis Control Act, 2017* establishes the following key regulatory provisions with respect to recreational cannabis in Ontario:

- as of October 17th, it prohibits the sale of recreational cannabis by anyone other than the government-run Ontario Cannabis Store (or "OCS") for online sales, or a cannabis retailer duly licensed by the (AGCO), beginning in April 2019
- prohibits the purchase of cannabis from any source other than the OCS or a cannabis retailer duly licensed by the AGCO, beginning in April 2019
- establishes 19 as the legal age for the purchase, possession, consumption, distribution and cultivation of cannabis in Ontario, and prohibits the sale and distribution of cannabis to any person younger than 19 years
- prohibits driving a vehicle or boat when cannabis is present and allows police officer to search the vehicle or boat if there are reasonable grounds to believe that this prohibition is contravened
- prohibits the sale or distribution of cannabis to anyone who is intoxicated
- prohibits a landlord from knowingly permitting premises to be used for the illegal sale or distribution of cannabis.

The Federal provisions allowing personal possession of up to 30 grams of cannabis apply in Ontario, as does the federally established limit for the cultivation of up to four cannabis plants per household, for personal use.

In addition, the *Cannabis Control Act, 2017*, provides authority to a police officer to seize cannabis or any other thing related to the commission of an offence under the Act. Pursuant to Section 16 to 18 of the Act, police officers are authorized to remove persons from premises where cannabis-related offences are being committed, and to close premises where illegal sales or distribution of cannabis occurred. Offences are

created under the Act for illegal possession, sale, and distribution of cannabis, among other things. The Act establishes maximum fines of \$250,000 for individuals and corporations, depending on the offence, and imprisonment is possible for individuals as well.

2. Creation of the Ontario Cannabis Store (OCS)

Legislation:

The *Ontario Cannabis Retail Corporation Act, 2017* creates the Ontario Cannabis Retail Corporation, operating as the “Ontario Cannabis Store” (“OCS”). Under this Act, the OCS is the only legal source of recreational cannabis in Ontario as of October 17th, 2017 through online sales, and will be the only legal distributor for wholesale cannabis to legally licensed retailers beginning in April 2019.

If residents want to legally purchase cannabis online in Ontario, they must do so through the OCS.

It is also important to note that for those municipalities that do not agree to allow private cannabis retailers next April 2019, the OCS will be the only legal source of recreational cannabis going forward in Ontario.

Operations of the Ontario Cannabis Store:

The OCS is established as an agent of the Province of Ontario. It has authority to buy, possess and sell cannabis and related products online in accordance with the legislation. It can only sell or distribute cannabis that has been produced for commercial purposes by a federally licensed source. It will also determine the price for cannabis in Ontario, as well as what varieties, forms and types of cannabis and related products that it will sell, subject to provincial regulations.

Online Sales Only:

The OCS can only sell cannabis online, and is prohibited from operating any retail stores, either directly or indirectly. This means that in municipalities that do not allow private cannabis retail stores within their borders, residents will only be able to purchase recreational cannabis online.

When it sells cannabis online, the OCS must:

- only sell to individuals 19 years or age or older,
- keep appropriate records of its activities in relation to the cannabis that it possesses, including records related to the Federal National Cannabis Tracking System, monthly sales and inventory records, and any records related to product recall, and

- take adequate measures to reduce the risk of its cannabis being diverted to an illicit market or activities, in accordance with applicable regulations.

Purchasing Cannabis Online at the OCS:

Currently, the Ontario Cannabis Store sells cannabis in the form of dried flowers, pre-rolled product, oil and capsules, as well as various cannabis accessories at various price ranges. Customers receive their products by Canada Post using standard shipping at a cost of \$5.00 + HST (\$5.65).

Clients wishing to purchase cannabis must log onto the OCS website which requires providing a birthdate and acknowledgement that the purchaser is 19 years of age or older and therefore legally able to buy and receive cannabis products.

Clients are required to provide the following information in order to conclude an online purchase of cannabis at the OCS:

- Email address
- First name, last name, address, postal code, phone number
- Credit card information for payment.

OCS Privacy Policy:

As a provincial agency, the OCS will be subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA). Under FIPPA, any information the OCS collects, including any information on its clients, is subject to access to information requests under Part I of that legislation. The OCS will also be subject to the protection of privacy obligations of FIPPA in respect of any personal information it collects, uses or discloses, including client information.

On November 7, 2018, media reports indicated that a privacy breach had occurred on November 1st when the personal information of approximately 4,500 OCS customers had been accessed by an unauthorized party. This incident is reported to have occurred when a third party gained access to a Canada Post package-tracking tool that contained the information of OCS customers. Based on information provided in these reports, it appears that the OCS was working in collaboration with the Information and Privacy Commissioner of Ontario and Canada Post to notify affected customers and address this situation.

Complaints to Ombudsman of Ontario:

The Office of the Ombudsman of Ontario announced on October 31, 2018, that it received over 1,000 complaints from OCS customers since its launch on October 18, 2019. Based on information available on the Ombudsman's website and through media reports, it appears that most complaints about the OCS involved delivery delays potentially due to lack of available product, lack of communication with customers, billing problems, and instances where customer orders were either cancelled without consent or conversely where customers wishing to cancel orders could not do so.

In a statement on October 31st, the Ontario Ombudsman announced that his office was monitoring the OCS's response to customer complaints and that if the OCS could alleviate the issues, no further investigation would be required. No further information has been provided.

3. AGCO Private Cannabis Retail Regime:

Under the *Cannabis Licence Act, 2018*, the AGCO will be solely responsible for licensing and regulating private cannabis retail stores, including determining their locations. Key aspects of the Provincial private cannabis retail regulatory regime are as follows:

Classes of licenses: Under this legislation, three classes of licenses can be issued by the AGCO:

- a retail operator licence
- a retail store authorization, in respect of specific cannabis retail stores
- a cannabis retail manager licence, in respect of individual fulfilling key functions for the operations within the cannabis retail store.

Applicants for all three types of licenses apply to the Registrar of the AGCO who will determine eligibility and issue or renew licenses in accordance with the Act. Only a holder of a retail operator license may apply for a retail store authorization. The Registrar may impose conditions on licenses issued in each of these categories. The sale or transfer of licenses between holders will not be allowed. The Province of Ontario has established ownership concentration limits for private retailers whereby an individual or a corporation (and its affiliates) cannot hold more than 75 retail store authorizations.

The AGCO has announced that it will begin accepting applications for licenses on December 17, 2018, and with priority given to retail operator license applications since these are not site-specific. Review of retail store authorization applications would then follow for applicants located in municipalities that have not "opted-out" of having private cannabis retail stores within their borders.

Prior to granting a retail store authorization, the AGCO has stated that it will conduct site inspections for potential store locations in order to ensure that the standards set by the Registrar and site/premises requirements set through regulation have been met.

Reasons for refusal: Generally, the Act provides that the AGCO must refuse to issue licences under the following conditions:

- There are reasonable grounds to believe that the applicant:
 - will not be financially responsible in the conduct of the retail cannabis store, based on the applicant's financial history,

- will not carry on business lawfully or with integrity, honesty or in the public interest, based on the applicant's past or present conduct,
- is carrying on activities that are in contravention of provincial or federal cannabis laws,
- will not exercise sufficient control over the cannabis retail store;
- The applicant has been charged or convicted of an offence under provincial or federal cannabis legislation (but a charge or conviction under the *Controlled Drugs and Substances Act* is not necessarily a bar to obtaining a license);
- The applicant has provided false statements or information in the application.

Non-eligibility: Pursuant to Section 4(6) of the Act and provisions in the Regulation, an applicant is **not eligible for a retail store authorization** for the following reasons:

- the applicant does not have a valid retail operator license
- the applicant has been charged or convicted of a cannabis offence under provincial or federal cannabis legislation
- there are reasons to believe that the applicant has or would contravene the provincial or federal cannabis legislation
- the applicant employs or plans to employ a retail store manager who does not possess the required retail manager license
- the issuance of a retail store authorization is not in the public interest when considering the needs and wishes of the municipality
- the premises, equipment or facilities of the retail cannabis store do not comply with the *Cannabis Licence Act, 2018*, its regulation or any standards and requirements under it (not available yet)
- the Registrar is satisfied that the applicant will not exercise sufficient control over the cannabis retail store.

Section 9 of the Act provides for inquiries and investigations regarding the character, financial history or competence of the landlord or owner of the premises on which the store will be located, as well as the store applicant's mortgagee and any person with an interest in the assets of the retail store of the applicant or licence holder. If the applicant or license holder is a corporation, its director, officers or shareholders may also be investigated.

Decision final: Pursuant to Subsection 4 (14) of the Act, the decision of the Registrar to refuse a retail store authorization under the Act is final.

Revocation and suspension: The Registrar may revoke or suspend a licence under the Act and may do so without notice where it is required in the public interest. Licensees may not operate a retail cannabis store when a licence has been revoked or suspended, and the Act imposes a 2-year waiting period before the former licence holder may re-apply.

Rules for operations: Licensees under the Act must comply with the following rules regarding cannabis retail stores:

- all transactions must occur in-person, on site, and any other means of transaction (e.g. through e-mail) are prohibited (Section 20)
- only cannabis legally obtained from the Ontario Cannabis Retail Corporation may be sold in a cannabis retail store (Section 19)
- all sales must be recorded, but the type of information to be recorded by the store operator has not yet been specified in the legislation (Section 22)
- a maximum of 30 grams of dried cannabis or an equivalent amount of other authorized forms of cannabis may be sold to an individual in a single visit (Section 21)
- only individuals 19 years of age or older may be employed at the store (Section 23) and may enter the store
- no cannabis can be sold to an intoxicated person (Section 7(5))
- the retailer cannot sell cannabis at a price that is lower than the price prescribed in regulation (not public yet) (Section 7(3))
- authorized retailers will need to display an official Ontario Cannabis Retailer Seal
- licensed producers will be able to operate a single store at a single production facility in Ontario, per company, including all affiliates.

Pending Standards and Requirements: The Act further provides that the Registrar of the AGCO may impose standards and requirements for store premises, equipment and facilities, training for employees on the responsible use of cannabis and cannabis sales, advertising and promotion, record keeping and security of information, and protection of assets such as money.

School Buffer Zone: the Registrar cannot issue a cannabis store authorization for a store location that is less than 150 metres from a school or a private school. No other buffer zones have been established. There is no authority for municipal councils to impose buffers zones of their own.

Enforcement: The AGCO will be responsible for enforcing licensed private cannabis retail stores in terms of its own licensing and renewals as well the stores' compliance with the legislation, prescribed requirements and licensing conditions. The AGCO will also be responsible to conduct inspections of store operations, of the financial practices of the operators, and ensuring rules regarding sales are followed. The AGCO will revoke or suspend store licences, as required by legislation.

Police will enforce both the federal and provincial cannabis legislation, including the presence of illegal cannabis dispensaries, illegal possession and distribution, and drug-impaired driving.

Penalties: Offences for non-compliance by licensees of cannabis retail stores are established. Penalties upon conviction include the following:

- for illegal sales and distribution, individuals may face fines up to \$100,000 or imprisonment of up to one year, or both, and corporations may face fines up to \$250,000
- landlords may face fines of up to \$250,000 and imprisonment up to 2 years less a day, and upon second conviction, a fine of up to \$500,00 per day and imprisonment of up to two years less a day
- for illegal sale and distribution to a person less than 19 years, a corporation may face up a fine of up to \$500,000 and an individual may face a fine of up to \$200,000 or imprisonment of up to one year, or both.

15 Day Notification of Retail Store Authorization Application:

Pursuant to Subsection 4(6) and (7) of the *Cannabis Licence Act, 2018*, the Registrar will provide public notification of a pending application for a retail store authorization:

- by posting it on the proposed store site
- by posting it on the AGCO website, or
- in another manner that the Registrar considers appropriate.

The AGCO has noted that it will not provide specific notification to affected municipalities that an application for a retail store authorization has been received for a location within the municipality.

However, the legislation does provide that municipalities and the public both will have 15 calendar days to provide comments in writing to the Registrar as to whether the store authorization is in the public interest having regard to the needs and wishes of the municipality. The term “public interest” is defined in Regulation 468/18 as meaning: protecting public health and safety, protecting youth and restricting access to cannabis, and preventing illicit activities in relation to cannabis

Pursuant to Section 4(11), the Registrar must consider the submissions of the municipality and the public in making its decision to grant or refuse the store authorization.