

## Planning for Cannabis Retail Operations

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### Introduction

On April 12, 2017 the federal government released Bill C-45, the *Cannabis Act*,<sup>1</sup> laying out the federal framework for the new regime legalizing non-medicinal cannabis. With the current target date for legalization set for July 2018, there are still many unanswered questions about how cannabis retail operations will be regulated. In planning for retail opportunities, it will be important for the industry to understand what permits and approvals may be required, and what land use restrictions to expect. This paper will explore the regulatory responsibilities of each level of government to determine how current and upcoming decisions from various levels, particularly the provincial and municipal spheres, will impact retail cannabis operations.

### Current Statutory Framework

The federal government is responsible for setting boundaries of legality such as dictating the minimum age and possession and growth limits of cannabis. There will be no period of decriminalization, meaning that, while in recent practice there has been limited police enforcement, until the *Cannabis Act* comes into effect all recreational cannabis possession and sales remain illegal. Even once the *Cannabis Act* is passed, sales will be limited as adults may only possess up to 30 grams of legal dried cannabis or equivalent. Dried and fresh cannabis, as well as cannabis oil will all be available for sale, though edibles will not until approximately 12 months following the coming into force of the legislation.<sup>2</sup>

Primary responsibility for establishing the retail framework within the federal parameters rests with the provinces. Provinces and territories will also have other powers such as the ability to increase the minimum age and further restrict where cannabis can be consumed or how much can be possessed or grown.<sup>3</sup> In many ways the cannabis retail regime will be similar to alcohol sales in that the minimum age may differ between provinces, and some will allow private sales while others will implement a control board or similar public structure to control retail distribution of cannabis.

As municipal responsibility and authority will be governed by the provincial framework, there is still a great deal of uncertainty regarding how retail operations may be further regulated or restricted. Municipalities will have the opportunity to impose zoning restrictions on private retail operations, as with cannabis production, and may also impose business licensing requirements. There is less certainty surrounding areas where there may be provincial and municipal overlap, such as decisions about retail locations and public consumption.<sup>4</sup>

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<sup>1</sup> Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, 1st Sess, 42 Parl, 2015-2017 [Bill C-45].

<sup>2</sup> Bill C-45, *supra* note 1. See also Health Canada, "Legalizing and strictly regulating cannabis: the facts", (19 February 2018), online: <<https://www.canada.ca/en/services/health/campaigns/legalizing-strictly-regulating-cannabis-facts.html>> [Health Canada].

<sup>3</sup> *Ibid.*

<sup>4</sup> Federation of Canadian Municipalities, "Cannabis legalization primer: how municipalities can get ready", (11 September 2017), online: <<https://fcm.ca/home/issues/emergency-preparedness-and-response/cannabis-legalization/cannabis-legalization-how-municipalities-can-get-ready.htm>> [FCM].

### Summary of Current Provincial/Territorial Regulations

It is important for the retail industry to understand the provincial scheme, as provinces are primarily responsible for legislating and regulating the retail framework for cannabis. Further, municipal regulation will be influenced heavily by provincial oversight.

In Western Canada, each province has opted to take an approach to cannabis retail that will closely mirror the system currently in place for alcohol, and will embrace hybrid systems that allow for regulated private sales. In British Columbia the Liquor Control and Licensing Branch (LCLB) will oversee licensing and monitor the retail sector. Cannabis will be available for purchase through both public and private retailers. Wholesale distribution of non-medicinal cannabis will be solely through the Liquor Distribution Branch (LDB).<sup>5</sup> Similarly, Alberta has opted to have the Alberta Gaming and Liquor Commission (AGLC) oversee the location and licensing of retail stores<sup>6</sup> and in Saskatchewan retail cannabis sales will be overseen by the Saskatchewan Liquor and Gaming Authority (SLGA). The SLGA will issue approximately 60 cannabis retail permits to private operators.<sup>7</sup> All three provinces will also make cannabis available online. In BC and Alberta the online platform will be government operated, while in Saskatchewan licensed retail stores will have the option to operate online as well.

The regime in Manitoba is less settled but the proposed model is a similar hybrid of public and private sales. In late 2017 it was announced that the Liquor and Gaming Authority of Manitoba will be renamed the Liquor, Gaming and Cannabis Authority of Manitoba and will be responsible for licensing cannabis stores and cannabis distributors.<sup>8</sup>

Ontario has opted to make sales available solely through the public sector. The Liquor Control Board of Ontario (LCBO) will oversee sale and distribution through a subsidiary corporation called the Ontario Cannabis Retail Corporation (OCRC). Cannabis will be sold in stores, though not alongside alcohol, and will also be available online.<sup>9</sup> Quebec plans to create a body called the Société québécoise du cannabis (SQC), which will sell cannabis products through stores and a website.<sup>10</sup>

Largely, Eastern Canada has also opted for public sector distribution models. In New Brunswick NB Liquor plans to create a subsidiary that will operate recreational cannabis retail stores. An

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<sup>5</sup> Ministry of Public Safety and Solicitor General & Ministry of Attorney General, "Cannabis", (16 February 2018), online: *Province of British Columbia* <<https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis>>.

<sup>6</sup> Bill 26, *An Act to Control and Regulate Cannabis*, 3<sup>rd</sup> Sess, 29<sup>th</sup> Leg. Alberta, 2017-2018 (assented to 15 December 2017) [Bill 26]. For a summary of key points see: "Alberta Cannabis Framework and legislation", online: <<https://www.alberta.ca/cannabis-framework.aspx>>

<sup>7</sup> Government of Saskatchewan, "Cannabis To Be Sold by Private Retailers, Regulated by SLGA", (8 January 2018), online: <<https://www.saskatchewan.ca/government/news-and-media/2018/january/08/cannabis-retail-stores>>.

<sup>8</sup> Bill 11, *The Safe and Responsible Retailing of Cannabis Act*, 3<sup>rd</sup> Sess, 41<sup>st</sup> Leg, Manitoba, 2017. For information for retailers see Liquor and Gaming Authority of Manitoba, "Cannabis and the LGA", (16 February 2018), online: <<http://lgamanitoba.ca/cannabis-and-the-lga/>>.

<sup>9</sup> Bill 174, *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act*, 2<sup>nd</sup> Sess, 41<sup>st</sup> Leg, Ontario, 2017 (assented to 12 December 2017) [Bill 174].

<sup>10</sup> Bill 157, *An Act to constitute the Société québécoise du cannabis, to enact the Cannabis Regulation Act and to amend various highway safety-related provisions*, 1<sup>st</sup> Sess, 41<sup>st</sup> Leg, Quebec, 2017.

online platform will be used to ensure access for smaller communities.<sup>11</sup> In Nova Scotia, the Nova Scotia Liquor Corporation (NSLC) will be responsible for sales both online and in existing NSLC stores.<sup>12</sup> The system in PEI will be very similar with four dedicated government-owned retail locations and an e-commerce platform.<sup>13</sup>

Newfoundland and Labrador, however has adopted a hybrid private sector distribution model like those in Western Canada. The Newfoundland and Labrador Liquor Corporation (NLC) will grant licenses and regulate private retail stores.<sup>14</sup>

Hybrid models may also be implemented in the territories, though there remains some uncertainty and initial rollout will be handled by the public sector. Nunavut has lagged behind other areas and as of February 2018 has not released an official framework, though the plan is seemingly to offer online sales, potentially through the private sector.<sup>15</sup> The Government of Yukon plans to maintain control of cannabis distribution initially, though there is discussion of private retail options in the future.<sup>16</sup> In the Northwest Territories the Liquor Commission will be responsible for the importation and sale of cannabis, with initial sales to take place in existing liquor stores.<sup>17</sup> A summary of the proposed provincial models for retail sales is attached at Appendix A.

The regulation of cannabis lounges or other potential sites of public consumption is also expected and may impact the types of commercial uses that should be planned for. While cannabis lounges are permitted by the federal framework, many provinces have not finalized their views on this issue. The province of Ontario recently sought feedback from the public on the idea of allowing licensed cannabis lounges to operate legally once the *Cannabis Act* comes into effect.<sup>18</sup> The Task Force on Cannabis Legalization and Regulation recommended allowing lounges to operate.<sup>19</sup> Though the specifics are not yet settled, the Government of Alberta has committed to allowing consumption “in some public spaces where smoking tobacco is allowed”.

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<sup>11</sup> Bill 16, *Cannabis Control Act*, 4<sup>th</sup> Sess, 58<sup>th</sup> Leg, New Brunswick, 2017 and Bill 17, *Cannabis Management Corporation Act*, 4<sup>th</sup> Sess, 58<sup>th</sup> Leg, New Brunswick, 2017. See also: Government of New Brunswick, “Retail model for recreational cannabis announced”, (24 April 2017), online: <[http://www2.gnb.ca/content/gnb/en/news/news\\_release.2017.10.1374.html](http://www2.gnb.ca/content/gnb/en/news/news_release.2017.10.1374.html)>.

<sup>12</sup> Government of Nova Scotia, “Cannabis Legalization”, (30 January 2018), online: <<https://novascotia.ca/cannabis/>>.

<sup>13</sup> Government of Prince Edward Island, “Cannabis legislation”, (2018), online: <<https://www.princeedwardisland.ca/en/service/have-your-say-cannabis-legislation>>.

<sup>14</sup> Government of Newfoundland and Labrador, “Provincial Government Releases First Details on Cannabis Legalization in Newfoundland and Labrador”, (23 November 2017), online: <<http://www.releases.gov.nl.ca/releases/2017/exec/1123n01.aspx>>.

<sup>15</sup> Weber, Bob. “Nunavut lagging behind in ramp-up to marijuana legislation”, *CTV News* (18 February 2018), online: <<https://www.ctvnews.ca/business/nunavut-lagging-behind-in-ramp-up-to-marijuana-legislation-1.3808475>>.

<sup>16</sup> Yukon Government, “Yukon’s Proposed Framework for Legalized Cannabis”, online: <[http://www.gov.yk.ca/pdf/Cannabis\\_Framework\\_Legal\\_web.pdf](http://www.gov.yk.ca/pdf/Cannabis_Framework_Legal_web.pdf)>.

<sup>17</sup> Government of Northwest Territories, “Cannabis Legalization in the Northwest Territories The Way Forward”, online: <[https://www.eia.gov.nt.ca/sites/eia/files/the\\_way\\_forward\\_-\\_nov\\_20\\_final.pdf](https://www.eia.gov.nt.ca/sites/eia/files/the_way_forward_-_nov_20_final.pdf)>.

<sup>18</sup> The Canadian Press, “Ontario considers allowing cannabis lounges as legalization deadline looms”, *CBC* (21 January 2018), online: <<http://www.cbc.ca/news/canada/toronto/cannabis-lounge-legalization-marijuana-toronto-1.4497434>> [CBC].

<sup>19</sup> Government of Canada, “A framework for the legalization and regulation of cannabis in Canada”, (2016) online: <<http://healthycanadians.gc.ca/task-force-marijuana-groupe-etude/framework-cadre/alt/framework-cadre-eng.pdf>>.

Notably, consumption at cannabis retail sites is specifically prohibited so in any event lounges will need to be completely separate from retail locations in Alberta.<sup>20</sup>

### Expected Municipal Regulation of Retail Operations

As plans are finalized at the provincial level, municipalities will be planning for their role in recreational cannabis regulation. Municipalities will play a major role in determining how the practical details of cannabis retail will occur. While federal and provincial authorities will set many of the regulations, municipalities will have primary jurisdiction on seeing those regulations enforced. Municipalities will also be involved in public health and education initiatives.<sup>21</sup>

Zoning and land use planning policies and regulations are key areas over which municipalities have a great deal of control. Land use by-laws will be particularly important where retail sales will be permitted through private stores, as municipalities will be able to dictate where such uses will be permitted, as well as impose other land use restrictions. For example, zoning by-laws could be used to limit how close to schools or child care centers cannabis can be sold,<sup>22</sup> similar to restrictions commonly imposed on the adult entertainment sector. It is expected that many municipalities will create distinct zoning categories for cannabis production, lounges and retail stores, and impose distinct land use regulations on each. For example, Edmonton has amended its zoning by-law in anticipation of legalization to create special classifications for Cannabis Retail Sales and Cannabis Lounges to distinguish these from general retail stores, bars, and pubs.<sup>23</sup> Of particular note, Cannabis Retail Sales has not been added as a permitted use in any zone.

If lounges or similar types of public consumption locations are permitted at the provincial level, municipal regulation should also be expected. Some municipalities, specifically tourist locations and large cities, have found the notion of cannabis lounges attractive for economic development. For example, Niagara Falls will be the site of at least one cannabis retail store and private citizens have urged council to consider the benefits of cannabis tourism and encourage the provincial government to allow public consumption in hotels and “Amsterdam-style cafes”.<sup>24</sup> In the City of Toronto, one councillor has urged the province to step in with clear regulations for lounges, stating “A private lounge is a wonderful alternative as long as it’s legislated and regulated”.<sup>25</sup> A key argument in favour of permitting public consumption is that for those living in multi unit buildings, consumption at home may be a nuisance or even prevented by condominium or rental rules. These concerns are especially prevalent in densely populated city centers. In the September 2017 Report for Action, the City of Toronto requested that the

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<sup>20</sup> Bill 25, *supra* note 6.

<sup>21</sup> Association of Municipalities Ontario, “Marijuana legalization and municipal impacts”, (August 2017), online: <<https://www.amo.on.ca/AMOCContent/Backgrounders/2017/MarijuanaLegalizationandMunicipalImpacts>>.

<sup>22</sup> FCM, *supra* note 4.

<sup>23</sup> City of Edmonton, “Zoning bylaw changes and future cannabis legalization” (2018), online: <[https://www.edmonton.ca/city\\_government/documents/PDF/CannabisLegalizationArchivedProjectWebsite.pdf](https://www.edmonton.ca/city_government/documents/PDF/CannabisLegalizationArchivedProjectWebsite.pdf)>.

<sup>24</sup> Spiteri, Ray, “Niagara Falls pondering Amsterdam-style pot lounges”, *The Hamilton Spectator*, (25 January 2018), Online: <<https://www.thespec.com/news-story/8092173-niagara-falls-pondering-amsterdam-style-pot-lounges/>>.

<sup>25</sup> CBC, *supra* note 18.

government of Ontario consult with the city on the issue of sites of public consumption.<sup>26</sup> In Ontario this discussion will continue for some time, with comments on the current proposal set to close on March 5<sup>th</sup>, 2018.<sup>27</sup>

In addition to zoning regulations, many municipalities will also choose to regulate retail operations through business licensing by-laws.<sup>28</sup> While a licensing by-law cannot be used to prohibit or regulate land use, additional requirements and regulations may be placed on businesses. These requirements can impact a business' ability to qualify for and maintain a business license to legally operate. Licensing by-laws will need to be consulted in order to determine compliance with all applicable laws.

Across all provinces, local enforcement and policing should also be given special attention. The number of currently operating illegal cannabis dispensaries illustrates how important the local enforcement of federal rules can be. For example, although it is currently the City of Toronto's position that "Storefront marijuana dispensaries are operating in contravention to City of Toronto's Zoning bylaws"<sup>29</sup>, not to mention federal criminal law, the reality is there are still many operational dispensaries. It may be the case that once legislation is finalized enforcement efforts will increase, as cities have called upon provincial governments to provide support for policing and other enforcement efforts.<sup>30</sup>

#### Additional Considerations for Retailers

Retailers should closely monitor, and actively get involved in municipal decisions as they will have a real impact on the retail sector. It will be important to stay alert to regulations, and with legalization set for July 2018 the process will move quickly. Some municipalities have already begun to pass by-laws that could immediately impact the legality of a business. For example, Kamloops, BC has already amended their by-laws to make landlords responsible for ensuring tenants have a valid cannabis license.<sup>31</sup> As July approaches more regulations will come into effect and enforcement efforts will follow.

As the Kamloops example illustrates, there are a number of considerations for landlords getting involved in the cannabis industry. As a general rule, landlords should require that tenants are complying with all relevant laws, including licensing and zoning by-laws. In the case of cannabis, it is especially important to ensure compliance as accepting rental payments from a known criminal source could meet the elements of the criminal offense of money laundering.<sup>32</sup> There are also potential quasi-criminal or regulatory penalties that could stem from having a tenant operate an illegal dispensary.

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<sup>26</sup> City of Toronto Municipal Licensing & Standards, "Recommendations for cannabis legalization", (13 September 2017), online: <<https://www.toronto.ca/legdocs/mmis/2017/ls/bgrd/backgroundfile-106876.pdf>> [City of Toronto Recommendations].

<sup>27</sup> CBC, *supra* note 18.

<sup>28</sup> FCM, *supra* note 4.

<sup>29</sup> City of Toronto "Bylaw enforcement – marijuana dispensaries", (2018), online: <<https://www.toronto.ca/311/knowledgebase/kb/docs/articles/municipal-licensing-and-standards/investigation-services/zoning/bylaw-enforcement-marijuana-dispensaries.html>>.

<sup>30</sup> City of Toronto Recommendations, *supra* note 26.

<sup>31</sup> CBC News, "Kamloops amends business licence and zoning bylaws ahead of marijuana legalization", *CBC News* (20 December 2017), online: <<http://www.cbc.ca/news/canada/british-columbia/kamloops-bylaws-marijuana-1.4458506>>.

<sup>32</sup> *Criminal Code* RSC, 1985, c. C-46 s. 462.31(1).

Landlords have been targeted by police in previous attempts to crack-down on dispensaries. In Toronto, the Municipal Licensing and Standards Division has informed news outlets that owners are responsible and liable for illegal use of their property.<sup>33</sup> After legalization, it will still be important, as with any other type of business, to ensure that a tenant is complying with applicable law. Landlords should conduct thorough due diligence as zoning and licensing by-law offences often apply to owners of land and are typically drafted as a strict liability offense, meaning that a party may be liable even without intent.

For those seeking to sell cannabis there are a number of considerations. First, as detailed above, private cannabis sales will only be allowed in certain jurisdictions. In provinces such as Ontario that have opted for a strictly public sector distribution model, no private sales will be permitted. In provinces where private stores are permitted, retailers should ensure they obtain the proper provincial licenses, follow the distribution and supply protocol outlined by the province, and adhere to all local by-laws and regulations.

It is also important to note that additional regulations will apply to retail operations related to cannabis, even those not directly selling cannabis. The federal *Cannabis Act* contains restrictions on the promotion, display, and packaging of cannabis. Generally, display of cannabis or cannabis accessories is prohibited unless authorized under the Act. More specifically, it limits packaging and display that appeals to young persons, or that communicates a testimonial or endorsement.<sup>34</sup> The sale of cannabis accessories or the promotion of a cannabis brand may be further restricted by provinces and municipalities. Provinces and municipalities may pass laws about what activities can or cannot occur in the same space, such as the sale of cannabis or sale of related accessories, and consumption of cannabis, tobacco and/or alcohol. As mentioned, Alberta has already stated it will not permit the sale and consumption of cannabis in the same location, but will permit consumption of cannabis in some spaces where tobacco consumption is already permitted.<sup>35</sup>

In Ontario, the provincial government recently sought feedback on its proposed regulation of the display and promotion of cannabis. Part of this consideration is determining what restrictions will apply to cannabis, tobacco and vaping products.<sup>36</sup> It remains to be seen how cannabis products will interact with existing or other new legislation that restricts non-tobacco smoking activities such as vaping or e-cigarette devices which may be compatible with cannabis products. The *Smoke Free Ontario Act*<sup>37</sup> governs smoking and tobacco in Ontario and prohibits the display or permitted handling of tobacco products in any place where tobacco products are sold. Similarly, the *Electronic Cigarettes Act* contains sections soon to come into force that prohibit the display of devices that “contain a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth”.<sup>38</sup> It is likely that certain devices compatible with cannabis would meet this definition. These Acts are being combined into the new *Smoke Free Ontario Act* to ensure cannabis smoking and

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<sup>33</sup> Offman, Craig and Grant Robertson, “Toronto targets landlords in pot-shop crackdown” *The Globe and Mail* (18 May 2016), *online*: <<https://www.theglobeandmail.com/news/national/toronto-targets-landlords-in-pot-shop-crackdown/article30089082/>>.

<sup>34</sup> Bill C-45 *supra* note 1.

<sup>35</sup> Alberta Government, “Alberta Cannabis Framework and legislation”, <<https://www.alberta.ca/cannabis-framework.aspx#p6241s4>> [Alberta Cannabis Framework].

<sup>36</sup> Government of Ontario, “Ontario seeks feedback on cannabis regulations”, (18 January 2018), *online*: <<https://news.ontario.ca/mag/en/2018/01/ontario-seeking-feedback-on-cannabis-regulations.html>>

<sup>37</sup> *Smoke-Free Ontario Act*, SO 1994, c. 10.

<sup>38</sup> *Electronic Cigarettes Act*, 2015, SO 2015, c. 7, Sched. 3.

cannabis smoking accessories are included.<sup>39</sup> Cannabis retailers in all provinces should expect similar provincial legislation to create restrictions for the display and promotion of cannabis related goods, in addition to those restrictions imposed by federal law.

### Conclusion

Given the lack of clear guidance at the provincial and municipal levels, there remains a number of questions for cannabis retailers, whether or not they intend to sell cannabis itself. While some questions have been answered at the federal level, there is still uncertainty about exactly what cannabis retail will look like and what will be permissible in various municipalities across the country. Though the overall federal scheme has been made clear, it is the yet unknown provincial and local framework that will most affect retailers. It will be important for stakeholders in the retail sector to stay up to date on changes at every level that may impact the legality of their business.

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<sup>39</sup> Bill 174 *supra* note 9.