

# Jack Pot: Winners of Provincial Lottery Set to Open First Ontario Cannabis Stores Today

April 1, 2019

On April 1, 2019, 25 fortuitous private retailers are expected to open the first brick and mortar cannabis stores in Ontario, dramatically increasing the availability of legal cannabis for adult consumers.

## Municipality Opt-Outs

Ontario municipalities had until January 22, 2019 to pass a resolution under the *Cannabis Licence Act, 2018* (CLA) prohibiting cannabis retail stores from operating within their geographical boundaries,<sup>1</sup> although municipalities may later opt in. Of the 414 municipalities in Ontario, 337 opted in and 77 opted out. Municipalities that opted out include Mississauga, Markham, Niagara-on-the-Lake, and Vaughan.

Those municipalities that opted in or were deemed to opt in are now faced with navigating the complex retail cannabis regime.

## The Licensing Process

In Ontario, the Alcohol and Gaming Commission of Ontario (AGCO) is responsible for licensing, authorizing and regulating the retail cannabis regime. In true gaming fashion, 25 retailers who will be permitted to open cannabis stores on April 1, 2019 were chosen by random lottery on January 11, 2019 from nearly 17,000 applicants<sup>2</sup>. The 25 lottery winners became eligible to apply for a licence under the strictly regulated licensing process.

Each of the 25 retailers is required to post a public notice process placard at their proposed store location for a 15-day period. During this period, the relevant municipality and its residents may make written submissions to the registrar (under the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*) regarding the proposed store. The licensing applicant will then have five days to submit a reply. The registrar will consider submissions regarding enumerated matters of public interest only, being protecting public health and safety, protecting youth and restricting their access to cannabis, and preventing illicit activities in relation to cannabis.<sup>3</sup> The registrar will then issue a Retail Operator Licence or reject the application.

As of March 22, 2019, only 22 of the 25 lottery winners had secured premises and commenced the licensing application process<sup>4</sup> in the following locations across the province:

- Toronto: 4
- Ottawa: 3
- London: 3
- Hamilton: 2
- Kingston: 2
- Sudbury: 2
- Niagara Falls: 1
- St. Catharines: 1

- Burlington: 1
- Brampton: 1
- Oshawa: 1
- Ajax:1

One further potential retailer located in Toronto and two located in the Greater Toronto Area have yet to announce locations or to commence the licensing process.

### **AGCO Inspections**

A rigorous inspection process must be completed before a retail cannabis store can be open for business on April 1, 2019. The AGCO will conduct a site inspection prior to issuance of a Retail Store Authorization to confirm that all eligibility requirements have been met, including:

- ensuring the public notice process placard is posted visibly on the proposed store front
- ensuring cannabis products and accessories are not visible from the outside of the store
- establishing that a secure, high-resolution surveillance system will be in working order at all times; that the cameras capture 24 hour coverage of the interior of the store, entrances and exits, point of sale areas, receiving areas, sales floor and cannabis storage areas; and video recordings will be retained for a minimum of 30 days and be available to the AGCO upon request
- ensuring that all cannabis products will be stored securely at all times and only available to staff from the time it arrives at the store to the time of sale, destruction or return to the Ontario Cannabis Retail Corporation (OCRC)
- ensuring the store cannot be entered into or passed through to access any other commercial establishment (other than a common area of an enclosed shopping mall)
- ensuring all entry points to the store, including doors and windows, are secure and protected against unauthorized access
- confirmation that the store will be managed by a licensed retail operator or licensed retail manager

A Retail Store Authorization will be issued once all eligibility requirements have been met. Before the retail store can open, it must also comply with any store-specific terms and conditions that may be included in the authorization.

Once authorization has been issued, all retail cannabis stores will be subject to a pre-opening inspection that includes *inter alia* the following requirements:

- outdoor store signage must identify the business and it is prohibited from: providing information regarding price or distribution of cannabis or accessories; appealing to young persons; providing testimonials or endorsements; using persons, characters or animals; providing information that suggests cannabis is associated with a positive or negative emotion or way of life that includes glamour, recreation, excitement, vitality, risk; providing false or misleading information about cannabis; providing information regarding medicine, health or pharmaceuticals; or providing information referring to cannabis use while driving a vehicle

- a minimum 17 cm wide by 20 cm long Provincial Seal of Authorization must be displayed and visible from the exterior of the public entrance to the store
- all products must be securely stored at all times
- only cannabis products purchased from the OCRC and in its original purchase packaging may be sold
- ensure that all staff is 19 years of age or older, they have subjected to criminal background checks and completed the required AGCO Board-approved CannSell<sup>5</sup> training before starting work, and ensure they act in accordance with the law and demonstrate honesty and integrity
- confirm measures that will be taken to ensure patrons who look under 25 years of age are not permitted to enter the store unless they provide valid identification proving they are at least 19 years of age
- ensure the point of sale system records information required by the Registrar's Standards for Cannabis Retail Stores, and the records are retained for at least three years and made available to the AGCO upon request
- any sensory display containers which allow patrons to see and smell cannabis products are locked and tamper-proof to prevent patrons from touching the products and are not able to be removed from the store

Once open, retail cannabis stores will be subject to random inspections by AGCO compliance officials to confirm on-going compliance with the CLA and Registrar's standards. Store operators must comply with the inspection, which may include requests to provide relevant records, allow photographs or other recordings, and provide information regarding financial transactions, records or other relevant matters. Importantly, store operators must also ensure they make the *Health Canada Consumer Information – Cannabis*<sup>6</sup> document available to patrons to educate them on the responsible use of cannabis.

#### **April 1, 2019, Or Else**

Given the rigorous licensing and inspection requirements facing new retail cannabis store operators, it remains to be seen how many of the 25 lottery winners will be up and running by April 1, 2019. Those who are unable to meet the requirements may face significant financial consequences. The registrar has the right to draw \$12,500 from the authorized operator's letter of credit if it is not operating on April 1, an additional \$12,500 if it is not operating on April 15, 2019, and a further \$25,000 if it is not operating on April 30, 2019.<sup>7</sup>

#### **Municipalities' Important Role**

Going forward, municipalities will continue to play an integral role in enforcing the regulations that govern the cannabis retail industry, including police services' (and in some circumstances other persons as designated by the registrar) responsibility for investigating contraventions of the CLA or its regulations and investigating licensed cannabis retailers for *inter alia* failure to comply with staff training requirements, permissible hours of operation, restrictions on items to be sold, quantities sold to individual customers, and prohibited advertising practices. Municipalities will continue to be at the forefront of enforcement relating to the unlicensed sale or distribution of cannabis.

However, under the new cannabis statutory regime, municipalities may not pass by-laws that deal with licensing respecting the sale of cannabis or by-laws that have the effect of distinguishing between land use for sale of cannabis and other land use.<sup>8</sup>

#### **Future of the Retail Cannabis Store Regime**

Current regulations governing the 25 cannabis retailers permitted to open on April 1, 2019 will expire on December 13, 2019. While provincial politicians have suggested that the restriction on licences is temporary and will be lifted once the cannabis supply increases, it is unknown how or to what extent the current regime will change following December 13, 2019.

<sup>1</sup> *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Sched. 2.

<sup>2</sup> The AGCO reported that of 17,320 applications submitted, 415 were disqualified;  
<https://www.agco.ca/cannabis/expression-interest-lottery-topline-results>

<sup>3</sup> <https://www.agco.ca/content/public-notice-for-a-cannabis-retail-store-authorization>

<sup>4</sup> [Status of current Cannabis Retail Store Applications, AGCO.](#)

<sup>5</sup> CannSell is a mandatory 4-hour course created by Lift & Co. in partnership with MADD Canada and approved by the AGCO, with the "overarching objective... to educate cannabis retail employees on the responsible sale of cannabis, as well as their legal and regulatory obligations." The course must be completed by all Ontario cannabis retail employees and holders of retail store authorizations and holders of cannabis retail manager licences.

<sup>6</sup> <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act/consumer-information.html>

<sup>7</sup> <https://www.agco.ca/cannabis/expression-of-interest-lottery-rules>

<sup>8</sup> Section 42(1), *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Schedule 2

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