

Weed Control: A Municipality's Role In The Legalization Of Recreational Cannabis

October 16, 2018

Municipalities across Canada will be at the frontlines in the implementation and enforcement of new cannabis legislation that comes into effect this week.

Cannabis Availability and Accessibility

On October 17, 2018, recreational cannabis will be available online solely through the Ontario Cannabis Retail Corporation, a Crown corporation operating as the Ontario Cannabis Store (OCS). The OCS will be the exclusive wholesaler and distributor to privately operated licensed cannabis retail stores which are expected to be up and running as of April 2019.

In Ontario, persons 19 years of age and over will be able to purchase up to 30 grams (the equivalent of one ounce) of dried cannabis online from the OCS and have it mailed directly to their residence. Consumers will be required to verify their age to accept delivery and no packages will be left unattended at the door.

The Ontario government has introduced Bill 36, the *Cannabis Statute Law Amendment Act, 2018*,¹ which regulates the use and sale of cannabis and vapour products. Schedule 2 of Bill 36 enacts the *Cannabis Licence Act, 2018*, which establishes a licensing scheme for private cannabis retail stores that will come into effect on April 1, 2019 and which will be administered by the Alcohol and Gaming Commission of Ontario (AGCO). The licensing scheme provides for two types of licences: a retail operator licence/cannabis retail manager licence and a retail store authorization. In order to qualify for a retail store authorization, the applicant must hold a retail operator licence. Applications for retail store licences are made to the Registrar of the AGCO, and various factors will be considered including public interest in light of the needs and wishes of the residents of the municipality. Public notice of the application must be provided as well as an opportunity for written submissions. It is expected that the province will pass regulations setting a geographic "buffer" between cannabis retail stores and schools following further consultation with municipalities. It is expected that the AGCO will start accepting cannabis store applications by December 2018.

As of October 17, 2018, it will be legal in Ontario to grow, from licensed seed or seedling, up to four cannabis plants per residence (not *per person*) for personal use.

Bill 36, if passed, will permit smoking and vaping of cannabis wherever the smoking of tobacco is currently permitted. This includes outdoor public places, designated hotel guest rooms, controlled areas in long-term care homes, retirement homes, provincially-funded supportive housing, and residential vehicles and boats that meet certain criteria. Provisions setting out specific areas where cannabis use is prohibited have been added to the Smoke-Free Ontario Act, 2017, including indoor public places, enclosed work places, and indoor common areas in condos, apartment buildings and university/college residences. Municipalities may also regulate cannabis consumption at municipally owned or managed properties. Further consideration regarding consumption regulation will be required once additional forms of cannabis become available.

Critical Role of Municipalities

The new legislative regime will have far-reaching implications for municipalities across Ontario. Municipalities will play a critical role in implementing and enforcing the new cannabis legislation through policing, zoning laws, by-laws, building standards, land-use regulations, regulations regarding public consumption and public nuisance.

While municipalities have relatively broad powers to control the consumption and growth of cannabis within municipal boundaries, the ability to regulate the operation of licensed cannabis retail stores is largely beyond municipal jurisdiction. However, under Bill 36, municipalities will be able to decide whether to allow privately-operated cannabis stores or to pass a one-time resolution to prohibit stores from operating within municipal boundaries, recognizing the potential impact a cannabis retail store would have on the social and economic character of the neighbourhood. The resolution must be passed by January 22, 2019, after which time municipalities will be prohibited from opting out of the cannabis retail plan.

A municipality that has prohibited cannabis retail stores may, by resolution, later lift the prohibition. Of course, opting out of the retail store scheme does not limit the ability of residents to legally purchase and consume cannabis within the municipality.

It is anticipated that police services will face particular challenges associated with potential increase in impaired driving as the new cannabis regime comes into effect. This will create a need for increased officer training on the use of approved roadside testing devices and training of drug recognition experts. The federal government has granted provinces and territories up to \$81 million over the next five years to attempt to respond to these issues.

Municipalities must consider whether, how and the degree to which it will regulate the "home-grow" issue, recognizing the potential impact on policing resources, nuisance complaints, local residential housing market, municipal utilities/services, etc., as well as the potential engagement of rights under the *Charter of Rights and Freedoms*.

Municipalities will want to consider whether a proactive investigation and enforcement approach or complaint-based approach is most effective and efficient. Enforcement of any such regulatory scheme will undoubtedly give rise to one of the greatest challenges for municipalities under the new cannabis legislation.

Municipalities as employers continue to be responsible for ensuring a healthy and safe workplace, and ensuring there are appropriate human resources policies and employee education programs in place that reflect the new legislation. Employees would continue to be prohibited from being impaired or under the influence of cannabis while at work (or at work events), notwithstanding that cannabis will be a legal recreational drug.

Municipalities will undoubtedly face numerous challenges in implementing and enforcing the new cannabis legislative regime. This will necessarily require the responsiveness and cooperation of all municipal divisions including police, fire services, municipal planning, licensing and standards, public health, social services, legal services, etc. As a collective, municipalities will continue to play a pivotal role in furthering the primary goals of legalizing and strictly regulating access to cannabis, keeping cannabis out of the hands of children and youth, deterring illicit activity and protecting public safety.

¹ Bill 36, *Cannabis Statute Law Amendment Act, 2018* passed second reading on October 4, 2018 and is currently before the Standing Committee on Social Policy.

By

[Natalie Salafia](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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