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Ontario Government to Grow LCBO: Recreational Cannabis to be sold at Government Stores

On September 8, 2017, Ontario's provincial government unveiled its much-anticipated plans for retail distribution of recreational cannabis.¹ Under Ontario's approach, which has been developed in conjunction with the anticipated legalization and regulation of cannabis in Canada by July 2018,² retail sales of recreational cannabis will be restricted to stand-alone outlets run by the LCBO, which currently controls provincial liquor sales.

Ontario is the first province or territory in Canada to publicly articulate a comprehensive plan to regulate the retail sale of recreational cannabis, once recreational cannabis is federally legalized and regulated. Prior to the September 8th announcement, Ontario's Premier, Kathleen Wynne, had stated that the LCBO retail model was well-suited to the retail of cannabis.³ The announced approach signals both how the market will be structured, and how it might be regulated.

¹ The term "recreational cannabis" was used by the Ontario Ministry of the Attorney General and the term is also commonly referred to as non-medical cannabis or non-therapeutic cannabis.

² Ministry of the Attorney General, News Release, "Ontario Releases Safe and Sensible Framework to Manage Federal Legalization of Cannabis: Carefully Controlled With Strict Rules; LCBO to Oversee Stand-alone Cannabis Retail Stores" (8 September 2017) online: Ontario Newsroom <<https://news.ontario.ca/mag/en/2017/09/ontario-releases-safe-and-sensible-framework-to-manage-federal-legalization-of-cannabis.html>>.

³ "LCBO well suited to sell marijuana when legal, Kathleen Wynne says", *CBC News* (14 December 2015) online: CBC News <<http://www.cbc.ca/news/canada/toronto/wynne-marijuana-lcbo-1.3364158>>.

Although legislation relating to the legalization and retail of recreational cannabis has not yet been passed federally or provincially, Ontario's announcement sends a strong signal to stakeholders regarding the anticipated structure of Ontario's cannabis market. The proposed framework provides key insights into the content of the legislation the Province says it will eventually table.

Retail of recreational cannabis will be confined to dedicated stores which will be separate from the retail of alcohol. The proposed retail of cannabis in stand-alone stores run by the LCBO accords with the recommendation of the Final Report ("Report") of the federal government's earlier *Task Force on Cannabis Legalization and Regulation* ("Task Force"). The Report specifically recommended against the co-location of alcohol or tobacco and cannabis sales.⁴ The Report also noted that the LCBO's model for alcohol retail was favoured by some public health and municipal organizations.⁵

The LCBO-run cannabis outlets would have a monopoly on the retail distribution of products in Ontario. Enforcement against the operation of illegal dispensaries is also a stated priority for Ontario's provincial government. In particular, the Province reaffirmed in its announcement a commitment to the closure of "illicit cannabis dispensaries" that "represent themselves as legal retailers of medical cannabis."⁶

Cannabis dispensaries are prolific elsewhere in Canada, including in British Columbia. It is currently uncertain to what extent British Columbia will follow in the footsteps of Ontario by seeking to eliminate the presence of dispensaries through enforcement measures and a regulatory system organized to prevent such entities from establishing or maintaining retail sales of cannabis. At present, the number of dispensaries in locations around British Columbia vary,

⁴ Health Canada, *A Framework for the Legalization and Regulation of Cannabis in Canada: the Final Report of the Task Force on Cannabis Legalization Regulation*, (Ottawa: Health Canada, December 2016) at 4.

⁵ *Ibid* at 99.

⁶ Ministry of Finance, Background, "Ontario's Cannabis Retail and Distribution Model" (September 8, 2017) online: Ontario Newsroom <<https://news.ontario.ca/mof/en/2017/09/ontarios-cannabis-retail-and-distribution-model.html>>.

with a significant amount operating in the city of Vancouver, where it is reported that 11 dispensaries have been issued a license to operate by the municipal government, and 64 other dispensaries have been identified by the City of Vancouver as operating without permits.⁷ The introduction of legislation in British Columbia, and across provincial and territorial governments in Canada, has the potential to cause significant disruption to the current status quo.

With their September 8th announcement, Ontario has also signaled that it will comply with federal advertising requirements relating to cannabis, and will likely adopt a retail environment similar to the current model used for sales of tobacco. Product packaging and labeling will be required to conform to federal regulation; including regulations as to the types of cannabis products available in the Canadian market.⁸ The Province of Ontario also proposes that the minimum age to use, purchase, and possess recreational cannabis in Ontario will be 19 and that the use of recreational cannabis will be prohibited in public places and workplaces. These rules and related issues may have a number of legal implications, including with respect to potential accommodation issues in the workplace.

By 2020, Ontario's announced plan is to have 150 stand-alone retail outlets for the sale of cannabis operational in the province, including opening 80 by July 1, 2019. These retail outlets will aim to service all regions of Ontario, and consultation between the Province and municipal governments is planned. Retail sales at these stand-alone locations is expected to occur in tandem with proposed online distribution.⁹ Online sales of cannabis are anticipated to follow the same mechanisms for community safety and social responsibility as the online sale of alcohol.¹⁰

⁷ Baker, Rafferty, "1st court date set for illegal Vancouver pot dispensaries" (August 16, 2017) online: CBC <<http://www.cbc.ca/news/canada/british-columbia/vancouver-marijuana-dispensaries-injunctions-court-date-1.4250468>>.

⁸ *Supra*, note 6.

⁹ *Ibid.*

¹⁰ *Ibid.*

Ontario's announcement reveals that the government plans to replicate or adopt variations of existing frameworks employed in the retail of restricted substances, rather than re-invent the proverbial retail 'wheel' for the retail of recreational cannabis: such cannabis sales will occur only in LCBO-run retail outlets, marketing and labeling will be similar to the rules restricting tobacco sales, and online retail of cannabis will mirror the system established for the LCBO's online sales of alcohol. The announcement provides significant insight into the market in Ontario that businesses and consumers can expect following the legalization and regulation of cannabis at the federal level, and it has the potential to set the tone for other Canadian jurisdictions.

As July 2018 draws closer, the pressure on the provinces and territories will continue to rise, as they are quickly running out of time to address cannabis regulation and related issues. McMillan's Cannabis Practice Group will continue issuing bulletins on this matter as developments occur.

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a cautionary note

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