

Trudeau, Ford Give Canada Day Cannabis Gifts: New Rules for Edibles and Retail Licensing in Ontario

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By Robert Eisenberg and Dana Kriszenfeld

As Canadians start to wind down for the summer holidays, Prime Minister Justin Trudeau and Ontario Premier Doug Ford have gifted retailers and consumers with new and expansive changes to the recreational cannabis regime.

Federal Government Announces Regulatory Regime for Cannabis Edibles

On June 14, 2019, the Government of Canada announced amendments to the *Cannabis Regulations* made under Bill C-45 (the *Cannabis Act*) that will come into force on October 17, 2019 – the first anniversary of cannabis legalization in Canada. Intended to hit the market just in time for holiday shopping, there will be three new classes of cannabis-infused products available to consumers by mid-December, 2019.

The amended regulations will grant authorized distributors and retailers access to three new classes of cannabis products:

- Cannabis edibles (candy and baked goods);
- Cannabis extracts (oil, wax, shatter, and distillates); and
- Cannabis “topicals” (ointments, oils, makeup).

However, despite the expanded product list, cannabis-infused alcoholic beverages and cannabis products containing tobacco, nicotine, or caffeine will continue to be prohibited, although some goods that contain minimal amounts of naturally occurring caffeine, such as chocolate, will be permitted to be infused with cannabis.

Beginning July 15, 2019, existing federally licensed producers (“LPs”) can apply to Health Canada to sell these new products. LPs must then advise Health Canada of the specific proposed products they wish to sell by October 17, 2019. Starting on October 17, 2019, licenced cannabis retailers (“retailers”) can apply to sell these three new legal types of cannabis. However, as was the case in October 2018 when recreational cannabis first became legal, it will take some time before all of these cannabis products physically become available for purchase by consumers.

To sell the new products, LPs will need to seek an amendments to their licenses and attest that all the regulatory requirements specific to the new cannabis products have been met. After the law takes effect, LPs licensed to sell cannabis must also provide 60 days’ notice to Health Canada of their intention to sell these products, as they are currently required to do. Based on the timelines and regulatory requirements, it is anticipated that the new array of cannabis products will hit the legal market in physical and online stores as early as mid-December.

The federal government acknowledges that it will take quite some time to put the products on the shelves. Consumers should expect to see a limited selection of products appearing in cannabis stores in December, with additional products to follow over time.

Along with the strict limits placed on branding and advertising, the new regulations have emphasized the requirement that cannabis-containing products must be produced in separate buildings from regular food products. This requirement applies to all classes of cannabis (not just to edible cannabis) – that is, the amended regulations will require that any cannabis production occur in a separate building from any food production. The rule, says Health Canada, was introduced to “mitigate the risks of cross-contamination between ingredients and products, and the increased risk of mislabelling and product mixups.” This creates an additional hurdle for commercial companies interested in the cannabis market and will become a significant barrier for companies looking to explore the cannabis space and commercialization of edibles.

At this time, restaurants are not permitted to serve food containing cannabis.

Ontario Government Announces Second Round of Cannabis Retail Store Licenses

Building on the federal government’s recent announcement (or perhaps as a means of stealing Trudeau’s thunder), the Ontario Government has announced that it is commencing the second round of cannabis retail licensing.

Similar to the first round of licensing, this round will largely operate by way of a lottery. Starting in July, interested parties will be able to enter their names into a lottery to be held on or about August 20, 2019 for an additional 42 private retail store authorizations across Ontario. Of these 42 licenses, 7 will be allocated to the “East” Region, 11 to the “West” Region, 6 to the “GTA” Region, 13 to the “Toronto” Region, and the “North” Region will be permitted one store in each of Kenora, North Bay, Sault Ste. Marie, Thunder Bay, and Timmins. Unlike the first phase, stores may be opened in a municipality of any population size, provided that the municipality did not exercise its opt-out right.

In addition, up to 8 licenses will be awarded to First Nations reserves through a separate allocation process on a first come, first served basis.

New for this second phase, Ontario has established a pre-qualification requirement to streamline the licensing process: prospective retailers must first demonstrate that they have already secured appropriate retail space and that they have access to enough capital to open a cannabis store.

Following the lottery, the new private cannabis retail stores will be authorized once they meet all of their requirements and will be approved to open on a rolling basis, beginning in fall 2019.

The provincial government has also made some significant amendments to the Regulations governing the retail sale of recreational cannabis. On December 13, 2019, the existing restrictions capping the number of retail stores by “Region”, as well as restrictions limiting operators to a single store, will be revoked and replaced with a maximum limit of 75 stores.

Impact on the Commercial Leasing Market

Obviously, the provincial announcement is a major boon to prospective cannabis retailers and landlords across Ontario. While many interested parties have already secured real estate, other parties may now be rushing to obtain leases in order to be ready for the summer lottery. For landlords and tenants already holding valid leases, the new licensing blitz holds the promise of tenants being able to finally open their stores for business.

While seemingly less impactful, the federal regulatory changes are also extremely important for retailers and landlords. Once the new product classes of cannabis are legal, retailers (with appropriate licenses) can sell these edible products. When signing new deals, special attention should be given to the uses clauses of these tenants, as parties should be clear about what exactly can be sold and/or consumed on the leased premises. For existing leases, landlords and tenants should review their leases to determine what is already

permitted and whether or not amendments need to be made.

If you have any questions about the recent amendments or would like assistance with your cannabis leasing, please contact **Robert Eisenberg** at reisenberg@weirfoulds.com or by telephone at 416-619-6287.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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Robert Eisenberg is a commercial leasing lawyer who excels at identifying potential landmines and devising clear, creative, and proactive solutions.

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