

Ontario Government Makes Policy U-Turn: Doug Ford's Plan for the Private Retail Sale of Cannabis

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By Robert Eisenberg

Fresh off his convincing electoral victory, Premier Doug Ford has announced that he plans to begin the process of scrapping Ontario's existing approach to the retail sale of cannabis, which had been introduced by the predecessor Liberal government.

Under the previous Liberal regime, recreational cannabis would only be sold at government-run "Ontario Cannabis Stores", to be operated by the Ontario Cannabis Retail Corporation, a crown corporation established as a subsidiary under the LCBO. For more details on the previous regime, click [here](#).

However, following through on his campaign musings about preferring a private retail sales model, Ontario's PC government announced yesterday that it would permit recreational cannabis to be sold in privately-owned and operated retail stores, while the provincial government will continue to be responsible for online sales.

Once recreational cannabis becomes legal nationwide on October 17, 2018, Ontarians will be able to purchase cannabis *online only* through the Ontario Cannabis Store (OCS) website. Under the new plan, the OCS will not operate any physical storefronts, but will instead only have the online presence. Moreover, the OCS will act as a provincial wholesaler, similar to the role played by government bodies in other private-model provinces, meaning that all private retailers will need to purchase their cannabis from the OCS.

The provincial government has announced that it intends to permit private retailers to be operating stores by April 1, 2019, following a process of public consultation with the possibility for municipal opt-out. Individuals will be allowed to purchase up to 30 grams of dried cannabis at one time for personal consumption.

In terms of this decision's impact on the commercial real estate market, the province has reiterated its commitment to crack down on illegal dispensaries – which means every physical location selling cannabis anywhere in the province, even after October 17. As a result, despite federal legalization, for some period of time Ontarians can only legally purchase recreational cannabis online through the OCS website. It remains an open question how the province will proceed with the physical OCS locations that it had already planned to open (the former plan called for 40 stores to be opened province-wide in 2018).

Furthermore, the provincial government's decision to allow municipalities to opt-out (apparently only a one-time opt out) from permitting any cannabis stores within their boundaries will add significant ambiguity to retailers' planning, as they will be hard-pressed to commit to unconditional leases until they know if their business will be permitted in a specific municipality. There also remains significant questions about the number of retail permits that will be available, and how retailers will qualify for such permits.

As we now move into a new environment of private retail sales of cannabis, Ontario's marketplace has been thrown into a state of flux. Until more clarity is provided on the permitting system, as well as whether specific municipalities will choose to prohibit the sale of recreational cannabis, both landlords and tenants should proceed with caution and think carefully about inserting appropriate

conditions into any offers to lease and leases for recreational cannabis stores.

If you have any questions about Ontario's new cannabis sales model, or would like any 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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