

Cannabis Lounges and Cafés on the Horizon in Ontario

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By Robert Eisenberg,

In an effort to move towards an open market for cannabis, the Ontario Government recently launched an online consultation to ask the public, businesses, health sector, and other stakeholders about potential new consumption venues – such as lounges and cafés – as well as “special occasion” permits for events such as outdoor festivals and concerts.[\[1\]](#)

If cannabis lounges and cafés are legalized, businesses will be permitted to offer edibles and cannabis-infused beverages to consumers in social settings. However, the Government is not currently considering changes to the *Smoke-Free Ontario Act, 2017* as part of the consultation; smoking and vaping cannabis will continue to be prohibited in indoor public places for the foreseeable future.[\[2\]](#)

Tips for Landlords and Tenants

The Government’s online consultation will examine whether it is feasible to sell finished cannabis-infused drinks and edibles in retail spaces for on-site consumption.

In negotiating commercial leases for on-site cannabis uses, the considerations are similar to negotiating a lease for a bar or a restaurant space. In particular, landlords and tenants should keep in mind the following issues when negotiating leases for cannabis lounges and cafés.

- **Permitted Use Clause:** For existing leases, landlords and tenants should review the use clause to determine whether operating a cannabis lounge or café would fall within the scope of the already-permitted use. If a new lease will be negotiated, the parties should ensure that the clause reflects their specific concerns: tenants will want a broad clause with sufficient wording to permit an evolution of their business and an expansion of products and services as they become available and as the law and market develop. Conversely, landlords should ensure that the use clause is as narrow as possible to restrict the permitted use to only those specific uses contemplated by the parties. The lease should specifically delineate whether the cannabis-infused products will be purchased for on-site or off-site consumption, whether the business will be selling “take-home kits”, and what types of foods or beverages will be sold by the business.
- **Exclusive Use Clause:** Tenants will want to have broad rights over cannabis and cannabis-infused products. Landlords will again want to restrict any exclusive to the sale of cannabis itself, or perhaps limit an exclusive to only cannabis-infused products that are sold by the café or lounge *as a principal use*. The risk here is that other restaurants or bars on site may wish to sell a cannabis beverage or food as an ancillary use, but the new exclusive could prevent this. Landlords should also make sure to carve out existing tenants.
- **Compliance with Laws:** Landlords and tenants should ensure that cannabis-related businesses maintain a current licence under the *Cannabis Licence Act* throughout the term of their lease and that their premises comply with all relevant laws and by-laws (e.g. fire and electrical safety, moisture control, waste management, and others).
- **Impact on Other Tenants:** Tenants should ensure that their leases do not afford their landlord automatic or unfettered termination rights should a neighbouring tenant take issue with odour, smoke, or other issues related to the cannabis lounge

or café. Both the landlord and tenant should ensure that the lease includes a workable and realistic mechanism to address and rectify any issues. From a landlord's point of view, some anchor-type tenants may have cannabis-related restrictive covenants in their leases and, as such, landlords should check that they are not prevented from leasing to cannabis-related businesses.

- **Security:** The lease should be clear as to who will bear the responsibility for safety, security, and any related property upgrades. Similar to leases for bars, if a tenant is permitted to serve cannabis-infused products, the landlord should require the tenant to pay for security or reimburse the landlord for additional security required at the property to protect against the effect of over-indulgence by the tenant's patrons.
- **Ventilation:** A cannabis consumption café or lounge where the products are prepared on-site would require additional ventilation to prevent odours from escaping into the common areas or neighbouring premises. Landlords should take seriously the issue of ventilation, since a failure to properly ventilate/ensure that premises are ventilated may invite claims of a breach of the covenant of quiet enjoyment from afflicted tenants or even nuisance calls to the city from neighbours.
- **Insurance:** Similar to businesses where alcohol is sold, a much higher insurance coverage may be required for cannabis lounges and cafés as opposed to a retail outlet. Any additional costs in the landlord's insurance should be passed on to the tenant, and the landlord should be entitled to terminate the lease if its insurance is put in jeopardy due to the tenant's business. Tenants will certainly want a notice and cure period to remedy any such potential cancellation.
- **Restoration Clause:** If tenants are creating cannabis-infused products on-site, landlords should review the restoration clause in their leases to determine if they adequately address the humidity and mould pressures that such operations exert on the building. Landlords may wish to require the tenant to both mitigate these impacts and restore the premises and building upon expiry or termination.
- **Termination Rights:** Due to the heightened risk of liability when a tenant is selling cannabis products for on-site consumption, landlords should consider providing for specific termination rights in the lease. Such termination rights would allow a landlord to terminate the lease for causes such as criminal charges, cancellation or expiry of a tenant's cannabis licence, or where there is the threat of a cancellation of the landlord's insurance.
- **Patios:** If a tenant requests to have a patio or outdoor seating area for the cannabis lounge or café, the landlord should ensure that the tenant's cannabis licence and insurance covers the patio area. The tenant should also be obligated to maintain the patio area and remove all trash and debris, as well as provide security. There should be strict controls on what happens in the event that the tenant fails to abide by its obligations or the tenant's patrons become a nuisance.

As a bottom line, landlords and tenants should ensure that their leases are clear about what the cannabis cafés or lounges will look like and how responsibilities are allocated between the landlord and the tenant. Although we are still in the consultation stage, landlords and tenants should start looking at their existing leases and turning their minds to future negotiations if they want cannabis lounges to become a part of the Toronto pub and restaurant scene!

UPDATE: Next Steps for Prospective Cannabis Retail Store Applicants Announced

In December 2019, the Ontario Government announced that the temporary cap on the number of private cannabis stores in the province would be removed.^[3] For additional information on this update, please see our update from December 2019: [Blazing A New Trail: Ontario To Adopt an Open Cannabis Retail Market](#).

Since Ontario announced that it would open the legal cannabis market, the Alcohol and Gaming Commission of Ontario ("AGCO") has received more than 700 applications for Retail Operator Licences. Beginning on March 2, 2020, the AGCO will start accepting new applications for Retail Store Authorizations.^[4]

^[1] "Ontario Launches Consultations on Expanding Cannabis Business Opportunities: Province Looking to Offer More Choice for Consumers and More Business Opportunities" (10 February 2020), online: *Government of Ontario*

<<https://news.ontario.ca/mag/en/2020/02/ontario-launches-consultations-on-expanding-cannabis-business-opportunities.html>>.

[2] *Smoke-Free Ontario Act, 2017*, SO 2017, c 26, Sched 3.

[3] "Ontario Opening Cannabis Retail Market: Province helping build safe and convenient retail system to combat illegal market" (12 December 2019), online: *Government of Ontario*

<https://news.ontario.ca/mag/en/2019/12/ontario-opening-cannabis-retail-market.html?utm_medium=email&utm_campaign=SUBSCRIBERS-Cannabis-Announcem&utm_source=Envoke-English&utm_keyword=Ontario-Government-announces-m>.

[4] "How to Apply for a Retail Store Authorization" (18 February 2020), online: *Alcohol and Gaming Commission of Ontario*

<<https://www.agco.ca/cannabis/how-apply-retail-store-authorization>>.

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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