



## Ontario Policy Briefing Notes

On behalf of Eden Medicinal Society, please accept the enclosed copy of our policy briefing notes for consideration as part of the responsible regulation and sale of cannabis in Canada.

We welcome any opportunity to provide further feedback on this forthcoming framework. If we can provide any additional information, or if you have questions with respect to the attached submission, please do not hesitate to contact us.

Sincerely,

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## Policy Briefing Note

### Medical Cannabis Retail in Toronto, Ontario: A Mixed Public/Private Model

#### Prepared by Eden Medicinal Society

Eden Medicinal Society is calling on Ontario to follow the example of British Columbia and the United States by allowing medical cannabis dispensaries to be included in the licensed and regulated retail of cannabis.

Canada's appeal courts continue to uphold the role of medical dispensaries in providing reasonable access to cannabis patients.

Unfortunately, under Ontario's proposed government monopoly, which has been adopted in the recommendations of Toronto's Licensing and Standards committee, medical cannabis dispensaries will be excluded and criminalized, perpetuating the failed approach of prohibition. This path to regulation will ultimately fail, because it:

- Vastly underestimates recreational and medical cannabis demand;
- Will force the public to turn back to the black market; and
- Unconstitutionally restricts access for medical patients (as per *Allard v. Canada*).

Canada's appeal courts continue to uphold the role of medical dispensaries in providing reasonable access to cannabis patients, and as such, Ontario's restrictive retail approach does not uphold the charter rights of Canadians. Accordingly, we **strongly encourage Ontario's municipalities to allow the licensing and regulation of medical cannabis dispensaries**, following the successful example of other Canadian cities.

Medical cannabis dispensaries can coexist alongside government-run cannabis retail. As such, we propose another path forward: **a mixed public/private retail model that can ensure reasonable access and maintain responsible public safety and harm reduction standards.**

#### Who We Are

The Eden Medicinal Society is a federally registered not-for-profit that opened the doors to their first dispensary location in Vancouver in July of 2011, in the heart of Vancouver's Downtown Eastside on East Pender Street in Chinatown.

At that time, there was not a single dispensary in the Downtown Eastside, meaning no alternative support groups for those suffering from substance abuse and ultimately no safe haven to provide access to alternative forms of medicine. Eden chose to serve a neglected demographic of Canadian citizens in need of support both socially and medically. It was not a profitable destination for a business looking to accumulate capital, but rather a destination where compassion was needed the most.

Eden has had a positive impact on the communities we operate in, including a positive relationship with police departments and providing compassionate services free of charge. From the outside, some may think we operate the same as other dispensaries, but we have established a professional and academic following due to our focus on medical cannabis patients.

Eden now operates two of Vancouver's ten municipally licensed cannabis dispensaries and maintains regulatory practices in accordance with the guidelines set forth by the CAMCD (Canadian Association of Medical Cannabis Dispensaries). Eden was the first dispensary in Canada to obtain this accreditation.

Eden also operates two retail locations in Toronto and one in Hamilton. We pay our taxes, we employ many people and provide fair wages, and we care deeply about the communities that we operate in.

## Overview of Shortcoming of the Proposed Cannabis Retail Model

Ontario's proposed government cannabis monopoly will perpetuate the worst problems caused by prohibition:

1. **Too few government retail locations will choke off patient access to medicinal cannabis.** The small and sparse number of retail locations, capped at 150 across the province, will not meet the demand of 13.6 million people across Ontario and over 3 million in Toronto. Many medical cannabis patients will be unable to access a location near their home, and even those who are able to do so will not receive the same level of in-person knowledge and expertise about cannabis products currently offered by medical dispensaries.
2. **Without medical dispensaries providing an accessible and safe retail option, many medical cannabis patients will be forced to turn back to the black market.** In contrast, medical dispensaries currently offer safe, tested products. Dispensaries have proven their ability to comply with municipal licensing in Vancouver and Victoria, and have no issue with limiting their inventory to products from federally licensed producers.
3. **During the consultation period, the Ontario government refused to engage with medical dispensaries or their patients.** Medicinal cannabis patients have long preferred dispensaries for their products and expertise – but their voice was never heard, contrary to the principles of fair and open government.
4. **Failed law enforcement will continue to inflict harm on innocent citizens and costly government run retail stores will waste taxpayer dollars.** Licensed and regulated medical dispensaries can provide access at a profit to government through increased tax revenue – while complying with provincial and municipal public safety requirements.
5. **The provincial plan perpetuates a lack of access and economic opportunities to low income, racialized and disabled persons in Ontario.** Instead of attempting to correct the historic injustices created by cannabis prohibition, which disproportionately harmed minorities and low-income people, the proposed system ensures that they will continue to be marginalized by a lack of access and economic opportunity in a legal market controlled by the government and big business.

## Protecting the Constitutional Rights of Patients

In 2016, the Federal Court ruled (*Allard v. Canada*) that patients who need medical cannabis must be granted “reasonable access” under Section 7 of the Charter of Rights and Freedoms. In this ruling, Justice Phelan stated that “Dispensaries are at the heart of access.”

The Allard decision was recently upheld in a superior court decision regarding the Village Dispensary in Hamilton. The constitutional rights of patients to access medical cannabis is a legal reality that City Council and the Province must keep in mind when setting the rules for cannabis retail in Ontario. Acknowledging the Charter rights of patients to access their medicine how they see fit is not only compassionate, but it would avoid costly expenditures on law enforcement and an unnecessary legal process.

## A Mixed Public/Private Retail Model that Works for Patients, Consumers and Communities

Ontario does not have to reinvent the wheel when it comes to cannabis retail. In the 90 years since the repeal of alcohol prohibition, the province has successfully overseen the import, distribution and retail of beer, wine and spirits.

The LCBO agency model has been in place since 1962, and has allowed the province to exercise control over the alcohol supply while enabling private businesses to participate in retail. To wit:

"...the LCBO Agency Store Program provides retail access in a cost-efficient and socially responsible manner to beverage alcohol consumers who do not have reasonable access to an LCBO store. Under the Program, the LCBO authorizes independent local retailers (usually operators of a grocery store, general store, or tourist outfitter) to sell beverage alcohol in conjunction with other goods. The LCBO uses a competitive process (request for proposals) to ensure that Agency Store Operators are selected in a fair and equitable manner.

(Source: [www.doingbusinesswithlcbo.com](http://www.doingbusinesswithlcbo.com))

Cannabis retail could function in precisely the same way:

- Ontario's new cannabis board would be the sole purchaser of cannabis from federally licensed producers.
- The province would operate retail locations in places that it believed it could turn a profit for the taxpayers.
- Qualified private retailers could apply to Ontario's new cannabis board for an agency license, and distribute board-procured cannabis products out of their own retail facilities.
- All licensed private retailers would be subject to stringent safety and compliance regulations, ensuring the integrity of the system.

In fact, the LCBO itself has operated the very same system for alcohol retail for decades. Its 210 agency stores serve communities across Ontario where residents do not have reasonable access to an LCBO location. These agency stores, which are typically small grocery or convenience stores, are permitted to sell alcohol alongside their other retail offerings. The program has proven to be so successful that the LCBO is in the process of expanding it to more communities. Although the agency store program does not serve urban communities in Ontario, the much smaller number of proposed cannabis retail locations (150 vs. 650) makes a strong case for a similar approach to serve medical cannabis patients across all Ontario communities.

#### How to License and Regulate Cannabis Retail

We want to work with governments to establish a regulatory framework for licensing and taxation of privately-owned adult-use cannabis retail businesses, subject to municipal licensing and zoning, in coordination with provincially-regulated warehousing, distribution and retail delivery of legal cannabis products.

If you are looking for guidance on how to license and regulate medical cannabis dispensaries, look no further than Vancouver, where Eden Medicinal Society currently operates two municipally licensed locations.

Vancouver's licensing rules specify where dispensaries can be located geographically within the city, including minimum distances from schools. Both non-profit compassion clubs and for-profit businesses were able to apply to the city for a license, which were awarded on a point-system basis.

Vancouver's licensing regime adopted the strict certification standards developed by the Canadian Association of Medical Cannabis Dispensaries. Eden Medicinal Society was the first medical cannabis dispensary to achieve this certification, which specifies details requirements covering:

- Patient eligibility, including age, medical conditions and required documentation;
- Patient intake, including applications, registration and education;
- Products and services, including hours of operations, cannabis strains, support and monitoring;
- Dispensing, including verification of identification, quantity restrictions, and the cleanliness and transparency of dispensing practices;
- Supply, including quality control, testing, storage and inventory management;
- Safety, security and privacy; and
- Effective organization, including governance, financial record keeping, insurance, legal and regulatory compliance, remission of applicable taxes, and employment practices.

Eden's voluntary compliance with all of these measures are a big part of why cannabis users prefer medical dispensaries – and why a majority of Ontarians prefer private retail over government-run retail. This is also why Eden only provides cannabis products to those 19 years of age or older, have a medical confirmation of diagnosis, and proper identification.

## **Further Considerations**

### Vapor lounges

With the legalization of recreational cannabis, it is inevitable that consumers will demand places to consume marijuana products. Seattle City Attorney, Pete Holmes articulated why such places are needed in a memo:

Single family homeowners have a legal place to consume marijuana; others, however, such as out-of-town visitors, the homeless, and renters and condominium owners whose buildings do not permit marijuana use, have fewer options. Enforcement against public marijuana use will be more effective if people have alternative locations to use marijuana legally. To this end, the CAO is working with Council member Nick Licata to propose legislation to the City Council to license and regulate a new type of business in Seattle called "marijuana use lounges" that would permit vaporizing or eating marijuana.

These lounges would be open to customers 21 years of age and older with mandatory ID checks, prohibit alcohol, and have minimum ventilation requirements. Because state law does not allow consumption of marijuana where it is sold, patrons would have to bring their own. Lounges could charge a cover and sell food and non-alcoholic beverages.

(Source: <http://blogs.seattletimes.com/opinionnw/files/2015/01/Holmes-memo.pdf>)

Unless the City of Toronto wants its streets and parks full of people using legal cannabis products, it needs to contemplate a common sense regulatory scheme allowing for vapor and edible lounges.

### Finding an appropriate number of retail outlets to license

According to the latest data available from their Department of revenue, Colorado currently has 502 Licensed Medical and Retail Marijuana retail locations in their state. At full capacity, the Ontario plan proposes only 150 retail locations.

According to the latest census data, Colorado only has 40.7% of the population of Ontario. Using Colorado as a real-world model, Ontario would require significantly more locations to meet cannabis demand in this province, even with a mail order system in place.

All of our medicinal customers prefer coming to a brick and mortar dispensary, as opposed to utilizing the confusing and unreliable federal MMPR mail order program. Many of our patients rely on the expert advice of our employees at our retail locations, and appreciate the ability to access cannabis immediately, rather than having to wait for it in the mail. Ontario's proposed online approach fails to recognize that many patients do not have reliable internet access or credit cards.

Under Ontario's proposed model, many medical cannabis patients will be required to travel long distances to access retail cannabis, driving consumers back into the arms of the black market dealers.

This leaves a huge gap between anticipated demand and the current plans for retail. In our assessment, this is the single largest flaw in the proposed cannabis retail plan.

Only a partnership between the government and private retailers can sufficiently meet recreational and medical demand for cannabis, and once and for all stamp out black-market participation.

### How dispensaries contribute to health and public safety

The best way to ensure safe and responsible access to adult-use cannabis products is by allowing existing dispensaries serving medical users to apply for private retail licenses and transition to the regulated market, so that they do not turn back to the black market. Medical cannabis dispensaries ensure that cannabis consumers and patients have access to safe, accessible spaces to obtain in-person advice and access to legal cannabis products that are properly tested, labelled and taxed upon sale:

- Eden provides patients with safe products that have been independently lab tested for Cannabinoid Potency, Terpene Profiles, Microbial Analysis, Contaminants, Pesticides, Heavy Metals and Residual Solvent Detection.
- Patients turn to Eden for our advanced knowledge regarding medical cannabis, providing the kind of personalized attention, education and service that is currently unavailable elsewhere. Our staff provide general information regarding flower, tinctures, capsules and topicals. This allows our patients to make well-informed decisions.
- Eden sells ointments, tinctures and other products that are therapeutic, non-psychoactive and euphoria free, like CBD extract, for pain management and other ailments. Eden does not currently sell edibles in Toronto, at the request of municipal law enforcement.
- By following CAMCD guidelines, we ensure that adult-use cannabis retail staff are knowledgeable and trained about harms of use, prevention of youth sales, and appropriate and responsible use.
- Eden does not seek to normalize cannabis consumption. Our retail locations blend into all other storefronts, with no cannabis products visible from the street or overt cannabis imagery to attract new clients in off the street. We oppose the co-location of cannabis with alcohol and other general retail convenience stores and pharmacies, because we believe this would normalize consumption of cannabis among non-users and youth, and because our clients want a dedicated cannabis retail channel where they can speak with knowledgeable staff about our products.

In addition, we have taken additional steps to address mental health and addictions issues in the communities where we operate:

- The opioid epidemic has killed thousands of Canadians in the last year, and policy makers have been slow to come up with solutions on how to address it. In response to the opioid crisis, Eden Medicinal Society has partnered with the University of British Columbia to study the efficacy of using cannabis in an opioid substitution program. This scientifically rigorous study is underway, and the results so far are extremely promising.
- Eden Medicinal Society has also donated fentanyl test strips to Toronto's "pop-up" safe injection site, and provides them for free at our retail locations.

### **Conclusion**

It is not too late to come up with a successful cannabis retail model for Ontario. Other jurisdictions have provided a straightforward roadmap for success. Many cannabis dispensaries in Ontario have operated in a safe and ethical manner, and are only looking for a path toward licensed and regulated legal status.

If you have any questions, or would like to discuss this further, please do not hesitate to contact us.

Best Regards,

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