



TOUSAW LAW CORPORATION

Dear clients:

As you know, the Ontario government recently released its plans for retail cannabis distribution in the province. In effect, that plan sets up a government monopoly on all retail sales. Ontario intends to open 150 cannabis stores throughout the province and to implement an in-province mail order system separate and apart from the existing LP direct-to-consumer mail order system that is currently in place.

The choice of a government monopoly largely though not completely (alcohol can and is sold by private stores in the province) mirrors Ontario's approach to alcohol. It is also decidedly unlike virtually all other jurisdictions that has legalized cannabis for adult recreational consumption.

In addition, the Ontario government threatened to crack down on those operating outside it's monopolistic system. It is unclear whether this crack down will come by way of law-enforcement utilizing the CDSA or the criminal law power retained in the upcoming Cannabis Act to raid, arrest, and prosecute those operating, for example, private cannabis dispensaries.

Another tool at the Province's disposal is the use of the civil courts, and the city of Toronto and Hamilton are already attempting to use the court system to shut down dispensaries. Tousaw Law Corporation is actively defending cases in both jurisdictions on Charter grounds as well as arguing that doing so is outside the jurisdiction of the municipal governments. We have had one success and were able, in Hamilton, to rebuff the city government's attempt to obtain an interlocutory injunction (an injunction granted prior to the end of a trial) against a medical cannabis dispensary.

I believe that Ontario's plan is misguided and doomed to fail for a variety of reasons. This memorandum attempts to illustrate some of the problems with a monopoly approach in the context of an existing and vibrant cannabis industry coupled with existing lawful supply chains by licensed producers who sell currently via mail order direct to medical consumers in Ontario.



TOUSAW LAW CORPORATION

First, it is decidedly unlikely that there will be sufficient supply in the lawful production system to meet consumer demand when legalization is implemented. Even if every licensed producer in the country, including those licensed between now and July 1, 2018, were to devote it's entire production capacity to servicing only the government of Ontario, there would still be insufficient amounts of cannabis on the shelves. Several of the larger licensed producers have already indicated that they will prioritize their existing medical consumers over the recreational market. Two of the largest (Canopy Growth and Organigram) have signed Memorandums of Understanding promising to supply New Brunswick with cannabis post-legalization. This dramatically limits the possible supply available to Ontario residents.

Related to these chronic supply shortages is a simple economic reality. It is clear that Ontario seeks to cash in on the upcoming recreational cannabis market. This is likely because Ontario has one of the largest sub-sovereign government debts in the entire world. Putting aside questions about how that debt was accrued and whether the Ontario government is even capable of running a recreational cannabis industry profitably, if it does seek to increase its revenue, it will of necessity use its purchasing power to attempt to obtain cannabis at significantly lower prices than retail. It will then tax and mark up that product before sale to the consumer.

There appears to be no real financial incentive for existing licensed producers to sell cannabis to the Ontario government at wholesale pricing when they currently have enough customers in the medical side to sell every gram produced at a retail price point. Furthermore, the federal government has signaled that in provinces that do not implement their own retail distribution systems, the licensed producers will be permitted to sell direct-to-consumer via mail order as they have been doing for medical patients. Again, there appears to be little economic incentive for licensed producers to sell at wholesale pricing to the Ontario government when they are at capacity meeting the demand at retail pricing to their mail order clientele.



TOUSAW LAW CORPORATION

Another significant issue is the potential that residents of Ontario will be faced with higher price points for the purchase of cannabis in Ontario's monopoly stores than they would if they were medical patients obtaining from licensed producers directly. This could lead to a situation, such as that alleged to be occurring in California and elsewhere, in which there is widespread participation in the medical system by persons who are not necessarily consuming cannabis for medical purposes. If insurance begins to cover medical cannabis this problem will be exacerbated. An individual consumer able to find a supportive physician might be able to access cannabis at significantly reduced cost via mail order instead of purchasing from Ontario's stores.

Another significant problem with the Ontario model is it simply does not contemplate enough stores. At the height of the dispensary boom in Toronto there were in excess of 100 dispensaries operating and they had lines out the door. That was just one city. Granted, the largest city in Canada, but that demand is not going to decrease after legalization. If anything, it will increase. The idea that 150 stores are sufficient in a province as vast and populous as Ontario is absolutely ludicrous. By comparison, there are 650 LCBO operated alcohol stores in the province of Ontario.

Ontario may respond to the criticism of not enough physical storefronts by pointing to its mail order system. However, there are currently dozens if not a hundred or more online dispensaries operating in Canada. There are 50 licensed producers selling via mail order direct-to-consumer today. With this range of choices available to the consumer, there appears to be no reason why any consumer would purchase from the Ontario mail order system, particularly when that system is likely to be charging the highest prices.

Of course, because the Cannabis Act currently does not include edibles or other derivative cannabis products, the Ontario system will also not include those products. While this is a flaw of the federal government's program, the ripple effect will undoubtedly impact Ontario's intended



TOUSAW LAW CORPORATION

market. Again, with so many other options available to consumers, it is fundamentally unclear why anyone would prefer to purchase at a CCBO with a limited range of products at higher prices than what one can obtain in the gray or black market.

Furthermore, because the province plans to ban advertising and require plain packaging, the consumer will not be exposed to the range of products available from the government stores. The purchasing experience will be boring. Product knowledge will be limited and any CCBO employees with cannabis sales experience will need to disclose participating in the unlawful industry, because that is currently the only way to obtain storefront cannabis sales experience. The cannabis industry is vibrant, colorful and exciting now. Ontario's plan to make it boring and generic can only backfire as consumers seek out interesting and fun experiences rather than plain packaging and industrial stores.

In terms of enforcing its monopoly, given the massive failure of repeated police raids and special project files in the city of Toronto to put an end to the illegal dispensary industry there (and similar failures elsewhere), it is significantly unlikely that anything that occurs post Cannabis Act will eliminate that existing consumer pathway. To enforce its monopoly, then, the province will need to engage in police state tactics that are incredibly draconian and destroy lives and infringe the liberty of the citizens of the province.

Any dispensaries which continue to exist in Ontario once the Wynne government's plan comes into force will likely only have a viable defense to CDSA or Cannabis Act criminal charges on medical and compassionate grounds. At present and after the Ontario plan comes into force there is still a powerful argument to be made on behalf of storefront medical cannabis dispensaries. If the ACMPRs are ruled unconstitutional insofar as they have failed to implement Justice Phelan's (of the *Allard* case) vision of 'reasonable access' then it may be possible to force government to license and regulate private storefront medical cannabis dispensaries. To be able to best make out medical cannabis arguments if necessary to do so,

2459 Pauline Street, Abbotsford, BC V2S 3S1  
p: 604.836.1420 f: 866.310.3342 e: [info@tousawlaw.ca](mailto:info@tousawlaw.ca) w: [tousawlaw.ca](http://tousawlaw.ca)



TOUSAW LAW CORPORATION

dispensaries should take steps to have policies in place to demonstrate restriction of clientele to medical consumers. One way to do so is, for example, to improve compliance with the medical cannabis guidelines set forth by the Canadian Association of Medical Cannabis Dispensaries, though that is not the only method.

The Ontario plan has drawn significant criticism from pundits, industry leaders, some Ontario municipal leaders and Ontario's other political parties. Ontario is conducting provincial elections on or before June 7, 2018. I urge interested persons, particularly those operating dispensaries in the province, to increase political advocacy and organizing efforts. Encourage your clientele to become or increase their political participation. Critical to this effort are (a) joining local riding associations; (b) voter registration drives; (c) attending all-candidates meetings; (d) voter turn-out efforts on election day.

In addition to political advocacy, Tousaw Law Corporation, spearheaded by our Ontario primary counsel Jack Lloyd, will be exploring all possible legal avenues. We have filed intervention pleadings in a case called *R v Comeau*, currently pending in the Supreme Court of Canada. That case involves a challenge to interprovincial trade barriers in the alcohol industry and is the first major challenge to these trade barriers in almost 100 years. While the effect of *Comeau* may not directly impact Ontario's plan, if neighboring provinces enact working recreational retail systems, Ontario may feel market pressure to liberalize its current approach. Other legal challenges may exist, and we are exploring various options should it become necessary to litigate these issues in the criminal or civil courts of Ontario.

Your very truly,

Kirk Tousaw  
Tousaw Law Corporation

2459 Pauline Street, Abbotsford, BC V2S 3S1  
p: 604.836.1420 f: 866.310.3342 e: info@tousawlaw.ca w: tousawlaw.ca