

“Just Say No”: Retail Sale of Cannabis in Whitby



Warren Mar

Commissioner of Legal and By-law Services/Town Solicitor

Cannabis Legalization

- October 17, 2018: federal government's Bill C-45 (the *Cannabis Act*) came into effect
- Bill C-45 legalized the recreational use of cannabis, while controlling and regulating the production, distribution, and sale of cannabis
- In Ontario, legalization allows adults 19 years of age and older to purchase dried recreational cannabis; possess up to 30 grams of dried recreational cannabis; and grow up to 4 cannabis plants per residence

Cannabis Legalization

- Under the federal *Cannabis Act*, provinces and territories are responsible for establishing models for licensing the distribution and retail sale of recreational cannabis, subject to minimum federal conditions
- Provinces are also responsible for carrying out the associated compliance and enforcement activities under their own regulatory regime
- Legalization of cannabis edible sales delayed until October 17, 2019, with a 60-day notice period before sales can occur (December 16, 2019)

Provincially-Operated Ontario Cannabis Store (OCS)

- At the time that the plan for legalization of cannabis was set out by the federal government, the Ontario government (then led by the Liberals) set out the framework for the government-run retail stores under the Ontario Cannabis Store (OCS) banner, similar to how the LCBO operates
- November 1, 2017: Bill 174 (*An Act to enact the Cannabis Act, 2017, the Ontario Cannabis Retail Corporation Act, 2017, and the Smoke-Free Ontario Act, 2017*)

Provincially-Operated Ontario Cannabis Store (OCS)

- November 3, 2017: Province identifies the first 14 municipalities intended for stand-alone cannabis retail stores
- Whitby was notified by the province that it would be a host-municipality
- December 7, 2017: Staff met with provincial representatives to discuss the province's placement of an OCS location in Whitby – intended to be open by legalization
- Municipalities were informed that they could delay, but not opt out of, having a government-run cannabis retail location

Whitby Response to Government-Operated OCS Location

- December 11, 2017 Council resolution:

“That the Council of the Town of Whitby **supports** being a location for an Ontario Cannabis Retail Corporation (OCRC) store provided that: (a) a revenue sharing formula has been developed and conveyed that provides a fair fixed percentage of annual net revenues to the Town of Whitby (and the Region of Durham); and (b) that the location be chosen in consultation with the Town of Whitby and sited to avoid negative social impacts, particularly in relation to our youth.”
- December 12, 2017: Whitby publicly named as the location for an OCS outlet, including Ajax and Oshawa; Bill 174 receives Royal Assent, creating the OCRC

Government-Operated OCS Retail Layout

- Flow-through design for stores
- Patrons enter pre-screening area where an OCS employee will check ID and ask questions to determine the patron's ability to purchase cannabis (e.g., sobriety)
- Proceed to secondary room where the patron will be able to see and discuss products/varieties; OCS employees behind a counter similar to a jewellery store
- Patrons will then proceed to a third area to purchase the product from another OCS employee, and then leave the store via a secondary hallway out to the main exit

Change in Dealer

- June 7, 2018 provincial election: Progressive Conservatives take power, promise to move to a private retail model
- Lower-tier municipalities given the opportunity to opt-out of hosting a retail location – deadline of January 22, 2019 to make a decision to opt-out
- As of legalization on October 17, 2018, a person can only legally purchase recreational cannabis through the OCS website
- Province targets April 1, 2019 to have the first private retail stores open – shortages in legal cannabis supply expected

PC Government Plan

- Bill 36: *The Ontario Cannabis Statute Law Amendment Act*
- Market concentration of 75 stores per operator; no cap on the number of stores that would be licensed in any municipality (once fully implemented)
- Hours of operation limit: 9am to 11pm, 7 days a week
- Minimum distance of 150m (500ft) between retail stores and schools, including private schools (not post-secondary)
- Does the 150m buffer apply to properties owned by school boards and designated for a school, but the school is not yet built or operational? – unclear

PC Government Plan

- AGCO licenses and regulates private retail stores
- AGCO posts notice for a cannabis store licence on its website; 15 day public notice period (no proactive notice)
- AGCO will review licence application to determine if it is in the “public interest”, having regard to the needs and wishes of residents in the municipality
- “Public interest”: (a) protecting public health and safety; (b) protecting youth and restricting their access to cannabis; and (c) preventing illicit activities in relation to cannabis

PC Government Plan

- Municipalities can opt-out of hosting a retail location if they pass a resolution directed to the AGCO by January 22, 2019
- If a Council decides to opt-out initially, but later changes their mind after the deadline, they can opt-in; however, once a Council decides to opt-in, the decision is final
- Municipalities do not have the ability to impose their own system of business licenses on privately-run cannabis stores, cannot levy a tax on sales, and cannot restrict their locations through land-use provisions in zoning by-laws
- Opt-in cannot be restricted to certain areas of a municipality

Provincial Funding

- \$40 million in provincial funding over 2 years, distributed in three tranches
- Lower and upper-tier municipalities share funding allocation 50/50 based on household numbers in the lower-tier
- Caveat: access to full funding for each upper-tier is dependent on the opt-out decision of constituent lower-tiers
- 1st tranche of \$15 million provided to all municipalities, with a minimum payment of \$5,000
- Whitby received \$57,082, with ~0.8% of the total number of households in Ontario in 2018 according to MPAC

Provincial Funding

- 2nd tranche of \$15 million distributed to municipalities that did not opt-out by the deadline (minimum of \$5,000); municipalities that opted-out received only \$5,000
- 3rd tranche of \$10 million allocated to address unforeseen municipal costs related to cannabis legalization; priority is given to opt-in municipalities, but no details about whether opt-out municipalities have access to these funds
- Any municipality that opted-out by the deadline, but opts-in later, will not have access to the full amount of funding available in the 2nd and 3rd tranches, or additional funding

Provincial Funding

- If Ontario's portion of the federal excise duty on recreational cannabis over the first 2 years exceeds \$100M, the province will provide 50% of the surplus to municipalities that did not opt-out
- Federal Parliamentary Budget Officer expects excise tax revenue for cannabis legalization to reach \$135M total in the first 2 years – based on the 75 (provincial)/25 (federal) excise tax revenue-sharing agreement, Ontario's share is not expected to exceed \$100M in the first 2 years
- Supply shortage of recreational cannabis

Funding Limitations

- Ontario Cannabis Legalization Implementation Funds can only be used for the purpose of paying for implementation costs directly related to cannabis legalization, e.g.: increased enforcement; increased response to public inquiries (education); increased paramedic and fire services; and by-law/policy development
- Funds cannot be used to pay for costs that have been, or will be, funded by any government body or private party, or for expenses unrelated to cannabis costs
- Province has a right to audit the use of funds

Use of Cannabis

- Provincial Liberal government restricted the use of cannabis to private residences (including outdoor spaces), and units in condos or apartments (and on balconies), depending on the rules and lease agreements in place – use was prohibited in any public place, including road allowances (sidewalks)
- PC government, through Bill 36, permitted the use of cannabis in the same areas where tobacco use is permitted (*Smoke Free Ontario Act*) – subject to municipal by-laws governing smoking

Use of Cannabis

- Some municipalities passed by-laws banning the use of cannabis in all public spaces, using previous provincial legislative restrictions
- Previous wording of section 115 of the Municipal Act, 2001:
 - 115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces.
 - (2) A by-law under this section binds the Crown.
 - (3) A by-law under this section shall not apply to a highway but may apply to public transportation vehicles and taxicabs on a highway.
- Allowed municipalities to ban cannabis use on sidewalks

Use of Cannabis – Legislative Change

- Dec. 6, 2018 – Bill 57: *Restoring Trust, Transparency and Accountability Act, 2018* – added reference to cannabis and clarified that e-cigarettes could be regulated
- New wording of section 115 of the Municipal Act, 2001:
 - 115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces. (...)
 - (3) A by-law under this section shall not apply to a highway but may apply to public transportation vehicles and taxicabs on a highway.
- Municipal restrictions regarding cannabis use on public sidewalks no longer permitted – ultra vires

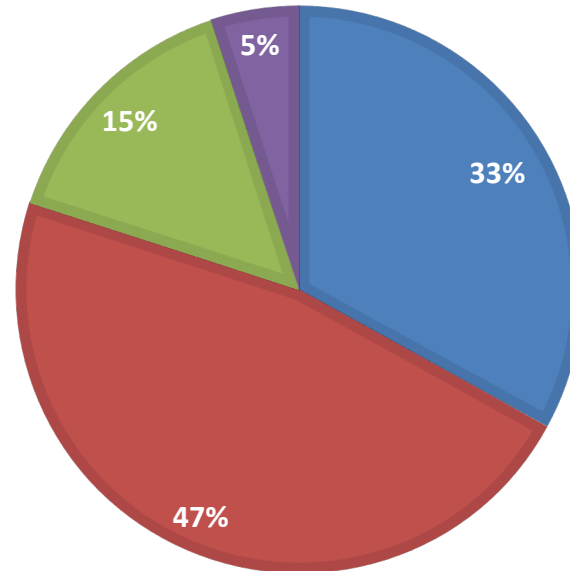
Use of Cannabis – Whitby

- Dec. 11, 2018 – Council passes standalone by-law restricting the use of cannabis (Cannabis By-law #7463-18)
- Bans smoking of cannabis in all public places (subject to the limitations set out in the Municipal Act, 2001), with an exception for the legitimate medical use of cannabis
- Minimum fine of \$300
- No formal complaints or charges laid to date
- Enforcement is difficult – “moment-in-time” offences; By-law Services lack resources for proactive enforcement
- Setting community standards vs. true enforcement

Opt-Out Public Consultation

- Town retained Forum Research to conduct a telephone survey of people who live/work in Whitby to determine their support or opposition to private retail stores in Whitby
- 412 responses collected, beginning on December 14, 2018
- Statistically accurate $\pm 4.83\%$, 19 times out of 20
- Town hosted an online survey between December 13-28, requiring people to input their postal code; 96% of respondents indicated they lived or worked in Whitby
- 2,219 responses submitted to the online survey

Forum Research Survey Results

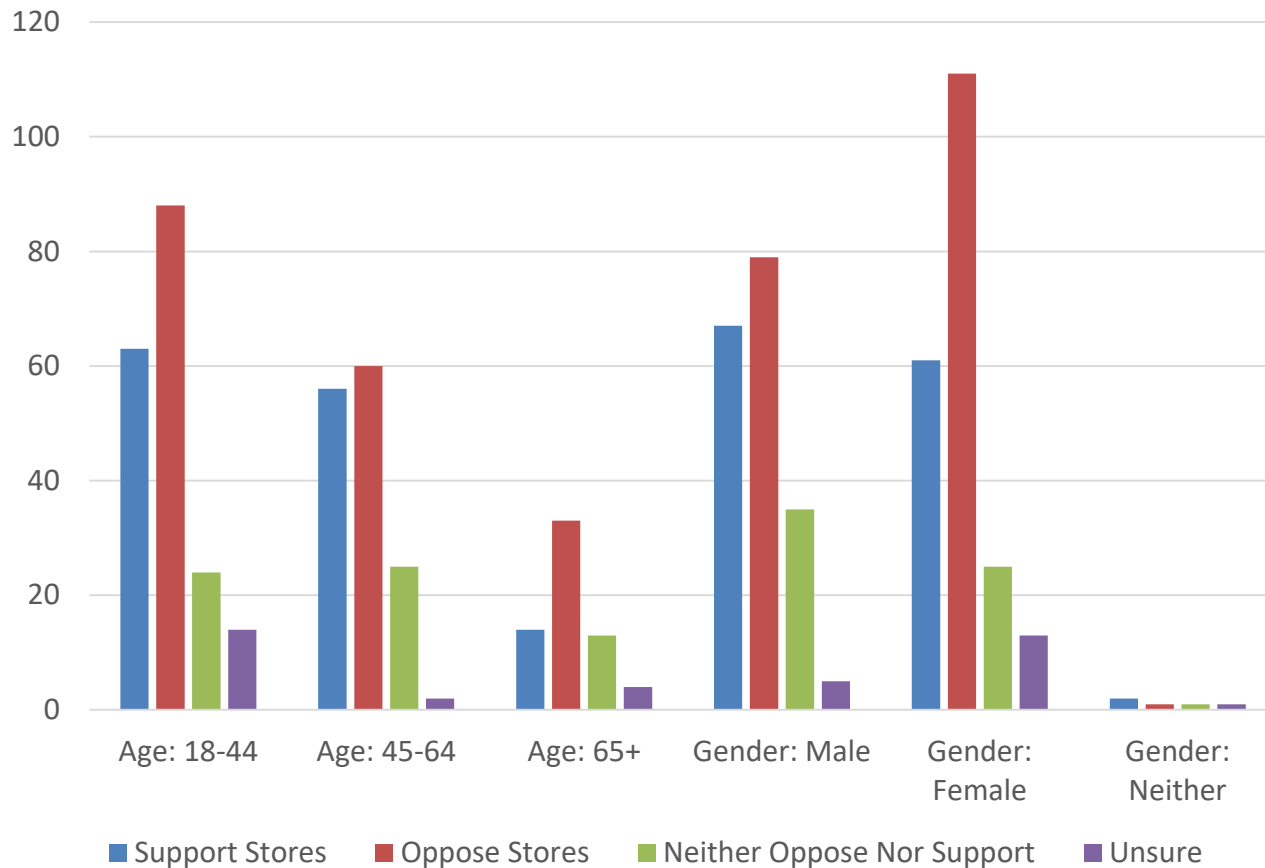


- Support Retail Stores (135 - 33%)
- Oppose Retail Stores (196 - 47%)
- Neither Oppose Nor Support (62 - 15%)
- Unsure (19 - 5%)

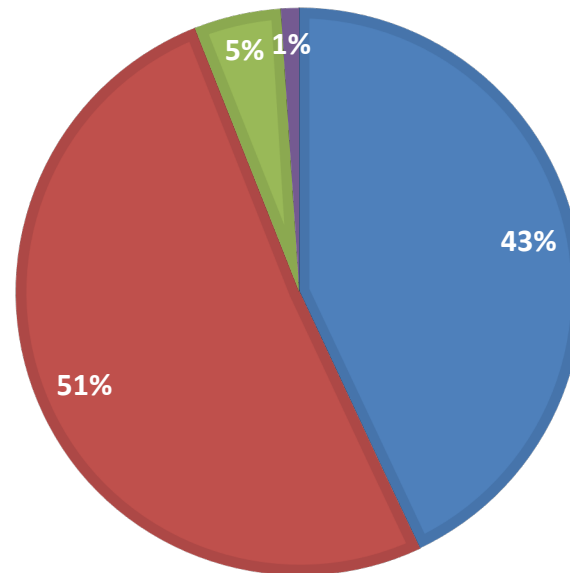
Forum Research Survey Results

- 210 people (51%) were very/somewhat concerned about cannabis legalization
- 195 people (47%) were not very/not at all concerned about cannabis legalization
- 276 people (67%) were very/somewhat aware of the provincial plans/impacts regarding cannabis sales
- 119 people (29%) were not very/not at all aware of the provincial plans/impacts regarding cannabis sales

Forum Research Survey Results



Town Website Survey Results

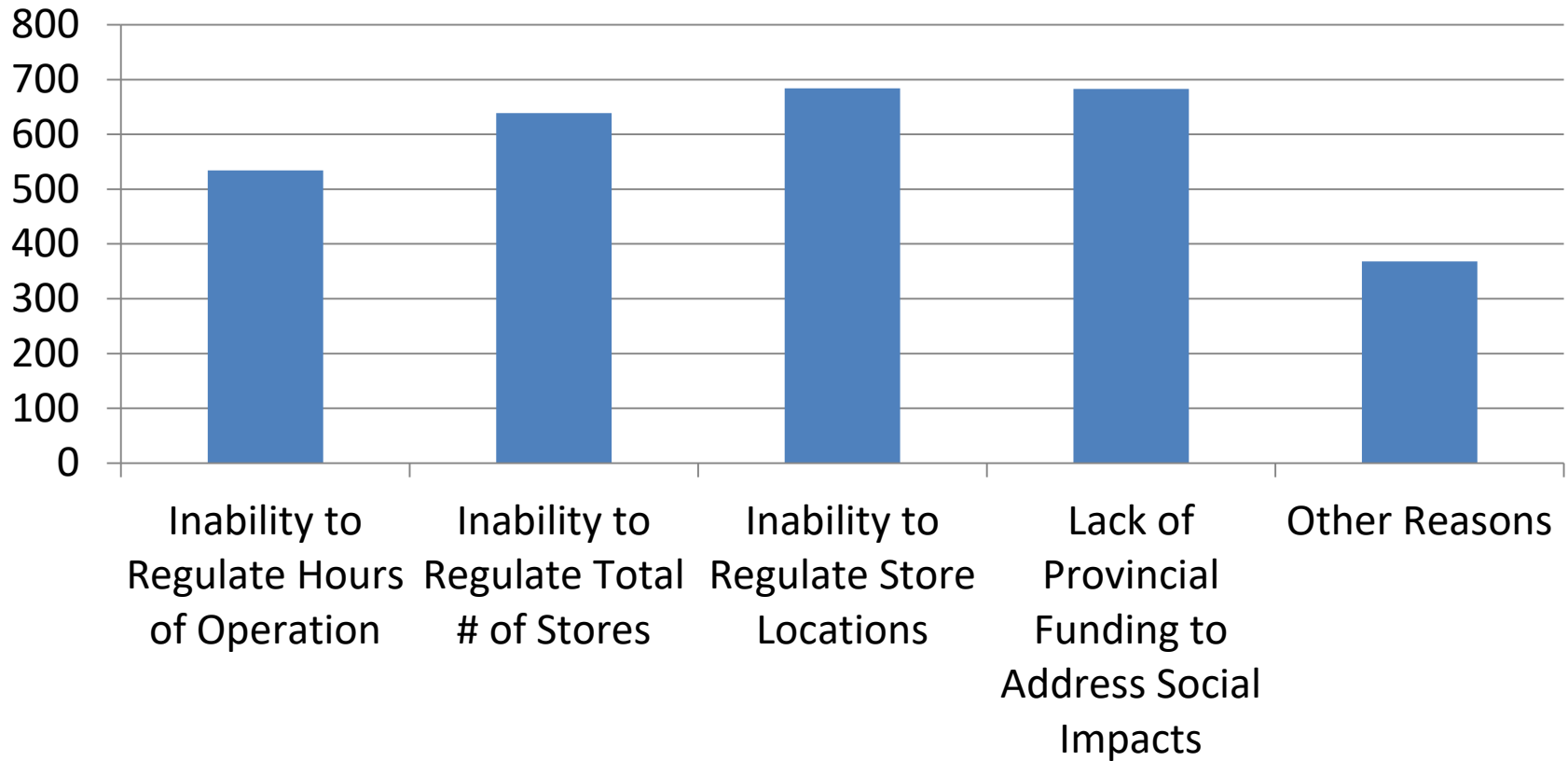


- Support Retail Stores (946 - 43%)
- Oppose Retail Stores (1135 - 51%)
- Neither Oppose Nor Support (108 - 5%)
- Unsure (30 - 1%)

Town Website Survey Results

- High percentage of respondents (95%) were aware of the impacts of cannabis legalization; however, 55% of respondents had some level of concern with the way that cannabis legalization was being handled
- Respondents who completed the survey and who were opposed to the private cannabis retail stores had a number of options to indicate why they were opposed
- Respondents were able to choose one, some, or all of the presented reasons, and were also able to submit other reasons for their opposition

Town Website Survey Results



Town Website Survey Results

- Results were organized by the 5 postal code “forward sortation areas” in Whitby (first three characters) – assisted ward councillors with understanding how their constituents felt (not an exact match to ward boundaries)
- Also included results and comments from people outside of Whitby who completed the survey (169 people)
- Regardless of whether a person opposed or supported retail stores in Whitby, respondents could leave comments

Town Website Survey Results

- Comments fell into a number of general themes, from respondents who supported retail stores in Whitby:
 - 76 people liked the idea of new tax revenue, economic development, and jobs
 - 51 people supported stores if there were more rules and restrictions
 - 41 people said that legal storefronts would help eliminate illegal cannabis dealers
 - 33 people said that cannabis is legal – get with it!
 - 12 people wanted better access for medical users of cannabis

Town Website Survey Results

- Comments fell into a number of general themes, from respondents who opposed retail stores in Whitby:
 - 126 people simply did not want retail stores in Whitby
 - 103 people worried about the impact of retail sales on children
 - 73 people were concerned about the lack of proper regulations and enforcement resources
 - 55 people were concerned about cannabis legalization generally
 - 42 people worried about increased crime
 - 29 people preferred the LCBO government-run model
 - 23 people said wait for now, and see what happens
 - 8 people were worried that cannabis was a “gateway” drug

Council Decision

- January 21, 2019: Council passes resolution prohibiting cannabis retail stores from being located in Whitby – final vote was 6 to 3
- Council discussion points:
 - whether or not opting-in or opting-out of cannabis retail sales would affect the public consumption of cannabis
 - whether or not opting-in or opting-out would result in more private property owners growing recreational cannabis on their properties
 - the possibility of receiving odour complaints from the outdoor cultivation of cannabis

Council Decision

- Council discussion points (continued):
 - the need to provide a safe place to purchase recreational cannabis and the benefits of using funding for education about cannabis
 - potential economic benefits of private cannabis retail stores in the Town
 - that Council had previously supported the concept of a government-operated cannabis retail store
 - the possibility of opting-out now and then opting-in at a later date, and reviewing best practices from other municipalities
 - that opting-out may allow for the illegal sale of cannabis to continue
 - the lack of complaints received by the Town about public use of cannabis

Council Decision

- Council discussion points (continued):
 - the results of the Town's telephone and online surveys which showed that the majority/plurality of respondents supported the Town opting-out of private retail cannabis stores
 - the lack of ability for the Town to control the location and total number of private cannabis retail stores
 - that approximately 80 municipalities in the province have chosen to opt-out (but Ajax and Oshawa decided to opt-in)
 - concerns about the financial model proposed by the provincial government – prefer the revenue-sharing and taxation/licensing model from Colorado for municipalities that opt-in

Impacts of Council's Decision

- Prior to legalization, there were 3 police-known illegal stores in Whitby – no complaints received by By-law Services regarding illegal stores since legalization
- Costs of survey, staff planning and policy-making, and public education (website) to be covered by OCLIF
- No charges for cannabis use contrary to the Cannabis By-law – enforcement patrolling Heydenshore Waterfront Park
- Prior to the second set of retail store licences being released, staff received regular calls from people wondering if Whitby opted-in

Cannabis-Related Developments

- Whitby's Zoning By-law permits cannabis grow-operations and processing plants
- Businesses selling grow-op equipment and paraphernalia have set-up shop – had a booth at Rib Fest (Town event)
- Review of HR policies to address cannabis impairment
- Continued collaboration with upper-tier municipality (Durham Region Department of Health – Smoking Enforcement Officers)
- Societal evolution of norms regarding cannabis use – not social revolution

Thank You!

Disclaimer:

Please note that the opinions and advice stated in this presentation are those of the author/presenter, and are not meant to represent the official opinions or positions of The Corporation of the Town of Whitby, its Council, or other staff members/employees.