



RAISING THE BAR

IFA LEGAL SYMPOSIUM
MAY 5-7, 2019 | WASHINGTON, DC

Distribution of Legal Cannabis: Impact and Opportunities for Franchising

- Dave Koch, Plave Koch
- Frank Robinson, Cassels Brock & Blackwell
- Dawn Newton, Donahue Fitzgerald

Agenda

- Legislative landscape in **Canada**
- Legislative landscape in **United States**
- **Comparative discussion** between Canada and United States
- Questions

Canada

- First G20 state to legalize and regulate recreational cannabis, October 17, 2018
- A web of laws: federal, provincial and municipal
- Federal: cultivation, packaging, promotion, taxation
- Provincial: distribution, retail, franchising
- Franchising: opportunities, challenges and lessons learned



Federal

- The *Cannabis Act*
 - production, distribution, sale, and possession of cannabis across Canada
 - provinces and territories legislate distribution and retail sale of cannabis
- Legalization with focus on health and safety
 - Possession limits, age requirements, personal production, use locations
 - Packing, labeling, branding, promotion, inducements
- Production licenses (cultivation, processing, sale, hemp, etc.)
 - Licensed producers
- Taxation

Packaging

- Health Canada's guidelines for cannabis packaging require packages to be a single, uniform colour without images or graphics other than the logo and a health warning



Promotion

Informational Promotion means a promotion by which factual information is provided to the consumer about:

- (a) cannabis or its characteristics;
- (b) a cannabis accessory or its characteristics;
- (c) a service related to cannabis; or
- (d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis.

Cannabis Act

Brand-preference promotion means promotion of cannabis by means of its brand characteristics, promotion of a cannabis accessory by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service.

Cannabis Act



Provincial

- Provinces and territories responsible for developing, implementing, maintaining and enforcing systems for distribution and sale of cannabis
- Provincial systems range from government monopoly to private business owners:
 - *Public Regime*: Provinces distribute cannabis through publicly owned crown corporations
 - *Private Regime*: Provinces permit retail sales by privately owned and operated brick-and-mortar retailers
 - *Hybrid Model*: A combination of the public and private regime

Provincial Regulatory Landscape + Franchise Regulation



-  Privately owned stores and online sales
-  Privately owned stores with publicly managed online sales
-  Both private and publicly owned stores and publicly managed online sales (with the exception that Nunavut allows both private and public online sales)
-  Publicly owned stores and online sales
-  Franchise Regulation

Provincial Regime: Ontario

- *Licensing*: Two licences and an authorization are required from the Alcohol and Gaming Commission of Ontario (AGCO) to operate a retail store
 1. *Retail Operator Licence*: Allows the licensee to operate one or more stand-alone retail store in Ontario
 2. *Retail Store Authorization*: A separate authorization is required for every store the licensee wishes to operate
 3. *Cannabis Retail Manager Licence*: Each authorized store requires at least one Licensed Manager
- *Distribution and Supply*: License holder must purchase supply through Ontario Cannabis Retail Corporation
- *Online Sales and Delivery Services*: Online sales of recreational cannabis through Ontario Cannabis Store
- *Number of Outlets Permitted*: 75 stores per operator, subject to current regulatory moratorium
- *Ownership and Control*: Must exercise sufficient control over the cannabis retail business
- *LP Considerations*: LP and “affiliates” limited to one licensed retail store, which must be located at its licensed facility
 - Are franchisees “affiliates”?

Ontario: A Wild Ride

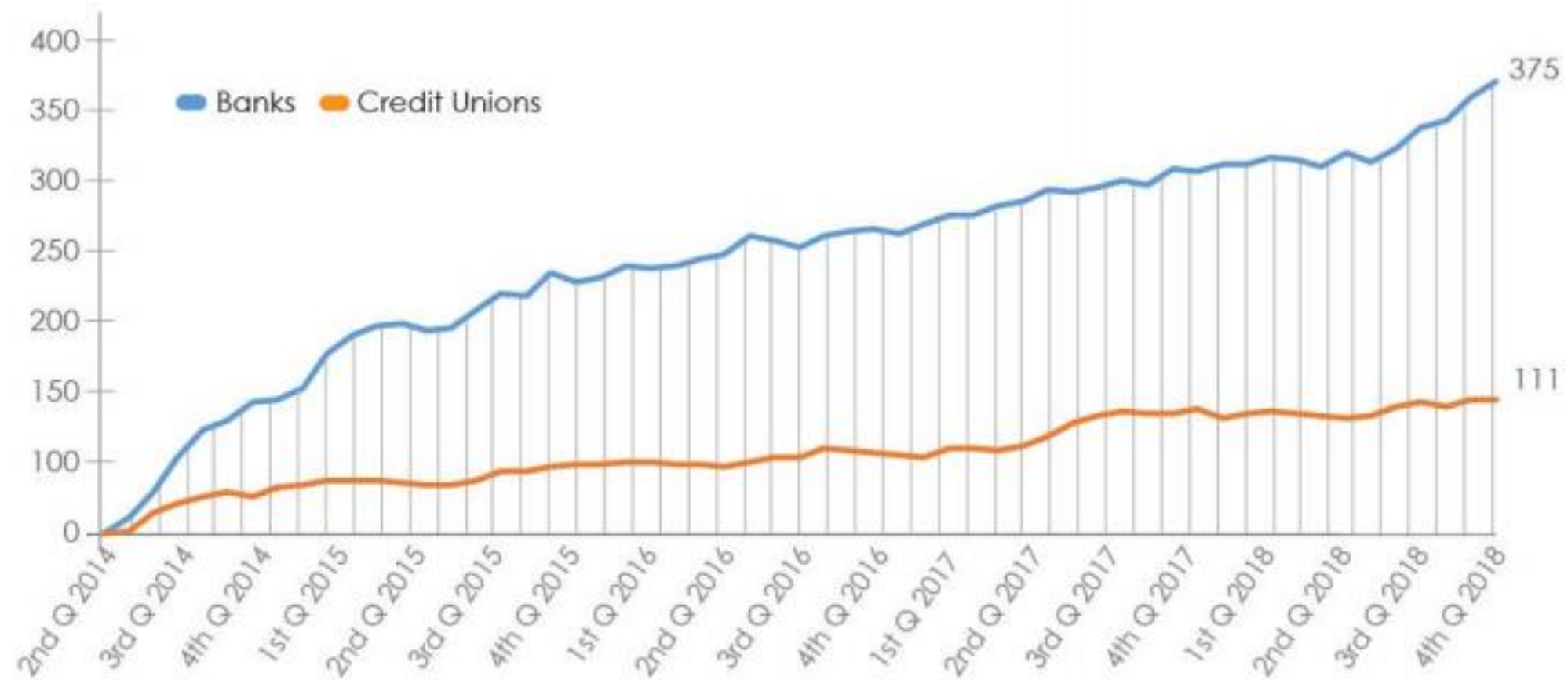
- *November 2017*- Liberal government announces public distribution model
- *June 2018*- Conservative leadership replaces public model with unlimited privatized retail regime
- *December 2018*- Due to supply shortage, 25 licenses through a lottery system; no LPs
- *January-February 2019*- Lottery winners are selected; many targeted with franchising and licensing deals by LPs
- *April 2019*- Fewer than half of the licensed retail stores were ready to open
- *Next phase*: Lottery? Gated lottery? Open market?

United States

- Controlled Substances Act – Schedule I drug
- Federal restrictions
 - Banking
 - Taxes – no “below the line” credits/deductions
 - Trademarks
 - Interstate commerce
 - Bankruptcy

United States

Depository Institutions Providing Banking
Source: FinCEN, Marijuana Banking Update, Sept. 30, 2018



United States

- Banking peril for ancillary businesses/persons
 - Owners, employees
 - Landlords
 - Professional service providers
 - Third party vendors

United States

- Vertical Integration – required, permitted, prohibited
- License Requirements
 - No silent partners
 - Full transparency
 - Disclose all parties with a revenue-sharing interest in the business

United States

- Location, location, location
 - Avoid schools, preschools, daycare facilities
 - Municipal zoning limitations
- Substantial advertising restrictions
- Mandatory testing
- Seed-to-sale tracking

Discussion Questions

- Use of the Franchising Model
 - Existing examples: Canada and US
 - Challenges:
 - Persons eligible to be franchised
 - “True party in interest”
 - Banking and payments

Discussion Questions

- Use of the Franchising Model (cont'd)
 - More challenges:
 - Employee retention
 - Trademark protection
 - Municipal regulation
 - Franchising above the retail level?

Discussion Questions

- Franchise Docs and Registration
 - Special contract terms
 - Disclosure considerations
 - Interplay between state departments
 - Audits/Financial statements

Discussion Questions

- Vertical Integration
 - Effect on franchising when it's required
 - Effect on franchising when it's prohibited
 - Effect on franchising when it's unregulated

Discussion Questions

- Marketing, Packaging & Labeling
 - Restrictions on what you can say
 - Restrictions on where you can say it
 - Restrictions on who can say it
 - Restrictions on designs and colors

Discussion Questions

- Supply Chain issues
 - Geographic restrictions
 - Government middlemen
 - Seed-to-sale tracking requirements

Thank you!

- Dave Koch, Plave Koch
- Frank Robinson, Cassels Brock & Blackwell
- Dawn Newton, Donahue Fitzgerald