

Cannabis Business Blog

Crossing the U.S. Border Is Dickey for Canadian Citizens Affiliated With Cannabis

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Recreational cannabis became legal across Canada in 2018, and 33 U.S. states have legalized it at least for medical purposes (10 for recreational). Yet, there are numerous [reports](#) of the U.S. Customs and Border Protection (CBP) detaining Canadian citizens at the border—then permanently banning them from entry—when they admit to having even tenuous connections to the legal cannabis industry. This enforcement policy stifles cross-border business relationships, and raises ominous concerns about the freedoms of speech and association for U.S. citizens as well.

I learned this firsthand when I helped plan a securities law conference in Portland last month. We had invited a number of Canadian business lawyers to speak about capital formation in the emerging legal cannabis arena. Lawyers from one Vancouver, B.C., law firm politely declined because the firm had a policy prohibiting travel to the United States to talk about anything cannabis related. It was just too risky. Another Vancouver lawyer tentatively agreed to participate only if his name didn't appear in the online brochure that the CBP could easily locate. Ultimately, the Canadian lawyers who accepted our invitation discussed the intersection of securities and cannabis law by phone from the safety of their Toronto offices.

In a [press release](#) released from last year, the CBP promised not to detain Canadian visitors if they merely admit to **working** in the legal cannabis industry up North: "A Canadian citizen working in or facilitating the proliferation of the legal marijuana industry in Canada, coming to the U.S. for reasons unrelated to the marijuana industry will generally be admissible to the U.S. however, if a traveler is found to be coming to the U.S. for reason related to the marijuana industry, they may be deemed inadmissible."

In a nutshell, all bets are off if Canadians cross the border to engage in **anything connected with cannabis**—but U.S. border enforcement policy remains murky at best. Media reports suggest Canadians are being banned from the United States for admitting to [investing in the legal cannabis industry](#), for entering the United States to [attend industry conferences](#) or for being longtime [users of marijuana](#).

A friend of mine in Vancouver recounted similar stories about business acquaintances who were stopped at the border—then banned for life from entering the United States—merely because they had some relationship to the legal cannabis industry: one admitted to making his living as an investor in the industry; another worked for a supplier of cannabis-related equipment who was headed to meet a technology consultant.

Some Canadians speculate that the CBP may be trolling websites for names of Canadian citizens associated with the cannabis industry, then using the information to generate lists of suspicious border crossers who require further questioning. When the CBP asks for a Canadian's occupation, the agency now has a tool to verify the answer or to confront the person about their affiliation with cannabis. Lying to a border agent is probably a federal crime (18 U.S.C. § 1001), but truthfully admitting to involvement with the legal cannabis industry may get you banned from this sweet land of liberty.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

Tags: Canada, Canadian citizens, cannabis businesses, cannabis industry, recreational cannabis, recreational cannabis products, U.S. Customs and Border Officers, U.S. Customs and Border Patrol