

# Lost in the Haze? – Updates on Cannabis and Travel to the US

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In August, we published a [blog](#) regarding cannabis and travel to the US. Since that publication, adult use of cannabis became legal in Canada and US Customs and Border Protection (“**CBP**”) has released additional clarification for some travellers to the US.

Although medicinal and/or adult use of cannabis has been legalized in many jurisdictions for a number of years, a marked growing disparity exists in the treatment of cannabis users and cannabis-related business owners and investors by authorities in Canada and the US. This disparity became even more pronounced when adult use of cannabis became legal across Canada on October 17, 2018.

Below are some additional things you should know regarding cannabis and travel to the US:

## 1. Adult users of cannabis traveling within Canada

While medicinal cannabis use has been legalized in Canada since July 2001, adult use of cannabis did not become legal in Canada until October 17, 2018. Furthermore, regulations and policies regarding how, when, where, and by whom adult cannabis use is permitted is different across Canadian provinces and even cities.

According to Transport Canada, adult and medicinal users of cannabis can now travel between Canadian airports with up to 30 grams of cannabis in either their carry-on or checked luggage. It is important to note that the traveler’s final destination is controlling on whether travel with Cannabis is permitted.

Travelers should be aware of the provincial and local regulations and policies pertaining to medicinal and adult use of cannabis, including how cannabis can be sold, where stores may be located, how store must be operated, lowering possession limits, increasing the minimum age, restricting where cannabis may be used in public, and setting added requirements on personal cultivation.

## 2. Adult users of cannabis traveling within California

In the US, a sharp distinction exists between the treatment by the federal government and various state governments of cannabis use. Under US Federal law, cannabis use and/or possession is illegal for any purpose and is considered a Schedule 1 substance under the *US Controlled Substances Act of 1970*.

State laws in the US vary greatly regarding medicinal and recreational cannabis use and possession, with 31 states permitting medicinal use and 22 states that have either legalized recreational cannabis use or have decriminalized recreational use. Commercial distribution of cannabis is permitted by the state governments in all states where cannabis has been legalized.

As of January 1, 2018, cannabis use became legal in California for “individuals 21 years of age or older to possess up to 28.5 grams of marijuana and 8 grams of concentrated marijuana for personal consumption.” Recently, Los Angeles International Airport (“LAX”) announced that they will honour the same regulations in the airport, allowing travelers over the age of 21 to enter the airport and pass through security with the permitted amounts of marijuana.

Recently, many have also argued that when travelling between two US states where adult-use cannabis is legalized in both states, individuals should be allowed to carry appropriate amounts of cannabis. However, travelling between or within states with cannabis is highly risky as cannabis is still illegal in the US on a federal level and planes themselves are subject to US federal law.

### **3. Adult users of cannabis traveling to the United States**

With cannabis legalization on the rise, those seeking admission to the US must be aware that the issue is far from settled between Canada and the US and is a hot topic for CBP at the border.

Certain Canadians were given some peace of mind by CBP’s announcement on October 11, 2018 whereby CBP stated that “*A Canadian citizen working in or facilitating the proliferation of the legal marijuana industry in Canada, coming to the US for reasons unrelated to the marijuana industry will generally be admissible to the US.*” This announcement does not, however, give Canadian citizens the ability to enter the US for business reasons related to the cannabis industry.

Furthermore, CBP’s recent announcement does not provide any relief to those who have invested in the US cannabis industry, those with prior criminal charges related to cannabis, or those who have been previously held inadmissible to the US by CBP based on a cannabis related offense.

### **4. Canadian pardons are not recognized by the United States**

On October 17, 2018, Canada’s Public Safety Minister confirmed that the government will soon be introducing legislation which would allow for expedited pardons for individuals who have served criminal sentences for cannabis possession. According to a 2014 study, more than 500,000 Canadians have a criminal record for possession of cannabis.

However, a pardon of a cannabis offense in Canada does not mean that the criminal violation is completely wiped away. Unlike an expungement, a pardon doesn’t remove all records of the criminal violation from government systems.

Furthermore, CBP recently reiterated the long-standing US policy whereby the US does not recognize foreign pardons and could certainly still find an individual inadmissible to the US even if a pardon was granted to that individual by Canada.

In summary, it is now more imperative than ever that travelers to the US obtain qualified legal advice to ensure that all risks specific to the traveler are addressed proactively.