



Did You Know

August 2018

Cannabis Legalization in Canada – Border Crossing Issues with U.S. Commentary from the Canadian Senate

The following are extracts taken from the [June 6, 2018 Senate debates](#) on the legalization of cannabis, dealing specifically with issues in crossing the Canada – U.S. border. An array of other issues were also discussed, but have been excluded from this document.

Hon. Mobina S.B. Jaffer:

I will not repeat many of the issues that have been raised since they have each been discussed here at great length. I would like to add my voice to the discussion of how Bill C-45 will affect Canada's border with the United States.

With that said, instead talking about it in terms of trade and our diplomatic relations, I would like to take a different approach. I would like to address the fact that Canada seriously needs a massive education campaign on what is and is not legal as Canadians cross our border with the U.S.

It is no understatement to say that many Canadians do not know about what will be legal in the U.S. after Bill C-45 is passed. In fact, I get questions about this subject from British Columbians practically every day.

Some wonder if they can consume cannabis in states where it is legal, like in Washington State. Others wonder if they can bring cannabis over the border to enjoy it with their friends in the states where it's legal to have cannabis.

Every time I hear these questions, I get more concerned. Many Canadians just do not know about our most basic laws involving possessing and consuming cannabis in the U.S.

This is unacceptable. Above all else, we must communicate the following clearly: Cannabis may be legal here in Canada when this bill is passed. It may be legal in some U.S. states like Washington State. However, as long as it remains illegal at the federal level in the United States, consuming and possessing marijuana across the border would have serious consequences.

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In most cases, violating these laws will immediately have you barred from the United States for life. If you want to return to the United States after you have been barred, it's a very long process. You have to apply for a waiver, which is very expensive and time consuming.

Honourable senators, I know you will agree with me that we must not let this happen to Canadians. For many British Columbians, being barred from the U.S. would be devastating. Crossing over the border is almost a way of life for many British Columbians.

Just to give you an idea of how many British Columbians cross the border, the Peace Arch border crossing in Surrey, B.C., is the third busiest in all of Canada, with over 4,800 cars crossing it every day to travel between Seattle and Vancouver.

These people rely on being able to cross into the U.S. for almost everything. It is their means of visiting friends and family, or finding places to go shopping and eat. For British Columbians, it is even essential for their careers. We proudly represent Canada across the United States' manufacturing, health care, education and science sectors, and at universities. If some British Columbians are banned from the United States, they will have to completely change their lifestyles.

Our government must be proactive to ensure that Canadians know the law on cross-border crossings. Despite the serious need for an education campaign, our government is not taking the proper steps to ensure that Canadians are properly informed. At the Defence Committee, when I asked the officials from the Canada Border Services Agency about what our government intends to do to educate Canadians about what they will face at the border, they only told me about a signage campaign for airports, which will be implemented by the spring of 2019. Honourable senators, I say to you that is too late. Worse yet, we heard almost nothing as far as campaigns outside of airports are concerned. In other words, thousands of British Columbians who cross our land border every day will get absolutely no information.

This is simply not good enough. If Canadians have questions about these laws, then it is the government's duty to ensure that they have answers. Unfortunately, all that Canadians have now are contradictory answers. For example, according to the government, if you are honest about your past cannabis use with border officials, after Bill C-45 is passed, the worst anyone will deal with is being turned away from the border. It's not just that you are turned away from the border; you are barred for life from entering the U.S.

However, according to witnesses who appeared before the Standing Senate Committee on National Security and Defence, there is a high chance that Canadians will be barred for life from the U.S. if they answer honestly.

This lack of clarity worries me a lot. I'm worried that Canadians can easily find themselves barred from the U.S. because we are failing to educate them about a set of drug laws that are complex. To put the complexity of these laws into perspective, I will list a few things that could have Canadians barred from entered the U.S. for life. If you admit to having consumed cannabis in the past, you could be barred from the United States for life. If you decide to work with a legal Canadian cannabis business, you could be barred from the U.S. and detained for association with drug trafficking. If you publicly state on television or social media that you have used cannabis, you could be barred for life. If you go through pre-clearance, you can be compelled to answer about previous cannabis usage and be banned for life based on your answer. In fact, you can even be barred from just being related to someone who committed a drug offence, since you will be considered a beneficiary of drug trafficking.

None of this is immediately obvious for Canadians right now. The Defence Committee only learned about this after hearing from experts with a wealth of knowledge on this issue.

With this in mind, I would like for you all to imagine how difficult it would be for most Canadians. In all likelihood, they will never know about any of these laws, and that is simply unacceptable. If Canadians

are going to be subjected to such risks, then they must be educated about it before crossing our southern border.

I would like to share one particularly worrisome incident to show how serious this could be for Canadians. In 1998, Ross Rebagliati made Canada proud when he won an Olympic gold medal for snowboarding. However, after returning home, he learned that he was barred for life from entering the United States. When asked why he had been banned, Ross learned it was because he had admitted on the “Jay Leno Show” to having smoked cannabis. To this day, Ross has to apply for a waiver regularly. At the moment, he has a waiver to enter the United States for a period of three years, but on a regular basis, he has to apply for permission to enter the United States. Just talking about it once had him barred from entering the country for the rest of his life. This is what Canadians risk when they cross the border after Bill C-45 is passed into law.

Thankfully, this problem can be addressed without amending Bill C-45, so I will not be tabling an amendment. Instead, I'm urging the government to undertake a sweeping education campaign to ensure all Canadians are informed about what they will face when they cross the border. We need this campaign now. Every day we fail to educate Canadians is a day they could potentially experience trouble with American law enforcement and be barred for life from crossing the border.

Canadians need to know that cannabis is illegal at the federal level in the United States, regardless of its legality here or in individual states. They need to know about the various complex laws that could have them barred from the U.S. for life. They also need to know their rights. They need to know they have options, like being able to walk away at a point of entry instead of answering questions. They may have been prevented from entering the U.S. for that one time, but it is far better than being banned for life.

Honourable senators, while I support the provisions of Bill C-45, I urge you to join me in calling for the

government to take a far more proactive stance now to ensure Canadians are informed about what they may face as they pass over our southern border.

Cases like Ross's are not isolated. When this came to the committee, we heard from several lawyers whose clients also experienced similar circumstances. Unless the government takes action now, more Canadians will be banned from the United States and be forced to change their lifestyles. It is not just a matter of changing lifestyles; it is a matter of not being able to see your relatives. As we all know, we have relations across Canada and the U.S.

I therefore urge our government to carry out an extensive educational campaign to inform Canadians that even if cannabis may be legal, for example, in British Columbia and Washington State, it is not legal at the U.S. federal level. We must inform Canadians now. Thank you.

Hon. Claude Carignan:

Let's now discuss our relationship with our friend, the United States. Our Foreign Affairs Committee examined whether the legalization of cannabis would impact Canadians' eligibility for the NEXUS program and the FAST card.

Currently, there is no way to ascertain the impact of Bill C-45 on these programs. But serious planning in the bill would have prevented this kind of situation.

During our trip to Washington, we met with senior officials and representatives of the U.S. government who had not been briefed on the impact of Bill C-45 on the free movement of people and goods at the border. Yet, the government keeps attempting to minimize these impacts and refute the evidence.

The testimony we heard from Canada's security agencies regarding their preparation for the coming into force of this legislation is not very reassuring. What the Standing Senate Committee on National Security and Defence heard from federal public servants about the progress that is being made consisted mostly of vague comments about future communications plans, informal meetings with

American authorities, studies and fuzzy scenarios. There was very little substance, and the agencies had no plan to present.

Here is what Kevin Thompson, Director General of the North American Strategy Bureau at Global Affairs Canada, had to say, and I quote:

What I can say at this point is that we're working closely . . . with various actors within the U.S. administration to identify some of the risk areas and some of the scenarios that may arise when and if this legislation is implemented. So we have a robust dialogue among a variety of departments and organizations within the U.S. government. This is certainly one of the issues that has been raised, and . . . at this point the administration has not indicated that they are going to fundamentally change their approach to dealing with these issues at the border.

Unfortunately, that quote from Mr. Thompson typifies the meaningless answers that the National

Security Committee was dealing with. According to Minister Goodale's testimony, it will be "business as usual" at the American border. However, he did admit that prevention and education efforts are needed. That much is obvious. The government did not undertake serious negotiations with our neighbours to the south in a timely manner in order to prevent regrettable errors.

We're now guessing at how American customs and border protection officers will react. There could be dramatic consequences, such as searches, refusal of entry, or banishment from the United States, not to mention the longer waits at the border. The government has acted as if it were self-evident that the United States would be happy to accept the changes associated with the legalization of cannabis. If we've learned anything in recent months, it's that there is no guarantee that the Americans will accept Canadian positions. Having neglected the dialogue with the Americans, the government could make life difficult for Canadian travellers and shippers.



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