

Immigration

Some Canadian lawyers expect U.S. government to get with times, legalize marijuana nationwide

By Christopher Guly

(November 26, 2018, 9:28 AM EST) -- On Dec. 6, anyone will be able to smoke recreational pot legally in Detroit after Michigan voters approved a measure to legalize recreational marijuana as part of the midterm elections earlier this month. However, transporting cannabis from Windsor, Ont., across the Canada-United States border remains off the table until marijuana is legalized at the federal level in the U.S.

But that might soon happen, according to immigration lawyer Guidy Mamann.

"It's all a matter of resources, and the United States has tremendous immigration issues," said Mamann, founding partner of Mamann, Sandaluk & Kingwell in Toronto.



Guidy Mamann, Mamann, Sandaluk & Kingwell

"Immigration officers can read 50 or 100-page submissions about whether someone has used or possessed marijuana in the past, or try to stop a caravan of 7,000 or 8,000 people trying to enter the United States or keep members of ISIS out of the country. It's about priorities, and marijuana has got to be low on the list."

Mamann, who is certified a specialist in immigration law from the Law Society of Ontario, believes that it's only a matter of time before the U.S. follows Canada — as it has on other socially progressive issues, such as same-sex marriage — and legalizes recreational marijuana nationwide.

The results of a recent Gallup poll reveal that 66 per cent of Americans — including 53 per cent of Republican supporters — support the legalization of marijuana. Former U.S. House of Representatives Speaker John Boehner, a board member of New York-based cannabis company, Acreage Holdings, along with former prime minister Brian Mulroney, called for Washington to legalize cannabis in a *Wall Street Journal* op-ed earlier this month.

To make that happen, President Donald Trump could sign an executive order stopping enforcement of the law across the country or Congress can pass a law legalizing marijuana, which would more likely be the case, particularly with a Democrat-controlled House, rather than the White House taking

the initiative. It was Trump's now-former attorney general, Jeff Sessions, who earlier this year, rescinded the Cole Memorandum issued five years ago during Barack Obama's presidency, in which the Justice Department would not enforce federal marijuana prohibition in states that have legalized it in some form.

With Michigan on board, 10 U.S. states and the District of Columbia have legalized recreational cannabis, and 30 states, along with Washington, D.C., allow for the use of medical marijuana.

Ottawa criminal defence lawyer Solomon Friedman fears that last month's coming into force of Canada's *Cannabis Act* will lead to U.S. Customs and Border Protection "cracking down" on anyone attempting to cross the border who is suspected to have an association with cannabis.

However, Friedman, managing partner of Edelson & Friedman LLP in Ottawa, said that none of his clients involved in the legal and underground cannabis markets has been denied entry to the U.S. on the grounds of business association or use, or have been asked questions regarding that.



Matt Maurer, Torkin Manes

Matt Maurer is familiar with the latter.

The partner at and vice-chair of Torkin Manes's cannabis law group in Toronto travelled to Las Vegas earlier this month for the Marijuana Business Conference & Expo (MJBizCon), billed as the world's largest cannabis business event with 27,600 attendees.

He said that about 15 people heading to Vegas from Toronto told U.S. Customs agents that they were going to the conference and were sent for secondary screening, which resulted in them missing the flight.

It got worse for a Canadian investor who was flying from Vancouver to Vegas to attend the expo and tour a cannabis facility. As the *Financial Post* reported, the man now faces a lifetime ban from entering the U.S. after reportedly revealing to the border guard that he invests in a Canadian cannabis business that has an operation in Nevada and was told that is a "violation of the *Immigration and Nationality Act* related to controlled substance trafficking."

Maurer said that he heard from others en route to the conference, who were questioned by border agents and were told that while it is "frowned upon" to do cannabis-related business in the U.S., it was less clear as to whether that includes attending a conference on the marijuana business, and they were therefore allowed to eventually proceed with their flight to Vegas.

The prohibition against entering the U.S. with a past marijuana conviction is quite clear, however.

"I've had clients charged with simple possession turned away at the border," said Ottawa criminal defence lawyer Michael Spratt. "But I've also had one with a record for manslaughter who's made it through no problem."

His advice to clients has been to not answer any cannabis-related question at the border. "The only legal thing you can do is to keep your mouth shut, turn around and come back to Canada and hope you won't be asked that question the next time," said Spratt, a partner at Abergel Goldstein &

Partners LLP, who noted that U.S. Customs likely keeps track of those who decline to reply to such queries.

Other border-related issues could emerge, at the state level.

Mamann said that even if the federal government legalizes recreational marijuana, some states could choose to remain as holdouts.

"If for instance you light up a joint in Florida, which has made consumption and possession illegal as a state crime, you're going to be arrested and charged," he explained.

But based on conversations he has had with American attorneys about the cannabis industry's potential to create jobs and generate revenue, Maurer sees recreational marijuana legalized at the federal level a reality in the U.S. within the next few years.

"American companies want to get their products here and are partnering with Canadian companies to make their products for them in Canada," he said. For instance, cannabis edibles and drinkables are legal in some U.S. states, and makers of weed-infused gummy bears and beer — to name but a few available offerings — hope to have those products manufactured in Canada once they become legal to consume within 12 months of the Oct. 17 enacting of the *Cannabis Act*.

Until cannabis is legal at the federal level in the U.S., it cannot cross the border into Canada or vice versa. And then, it's likely that the United States-Mexico-Canada Agreement (USMCA) would have to be revisited to facilitate trilateral trade of marijuana.

"The question is that once marijuana becomes legal federally in the U.S., will Americans race to capture market share, or will the lead by Canadian companies that are so far ahead make it difficult for American companies to catch up," said Maurer, who is also a trial and appellate lawyer in Torkin Manes' litigation group.

He also expects U.S. border interrogations on marijuana use to decline over time.

"If Canadians are deemed inadmissible or are flagged until such time they answer questions, it will put a significant dent in Canadian tourism to the United States and I'm not sure Americans are interested in doing that," said Maurer.

Last month, U.S. Customs and Border Protection said in a statement that Canadians "working in or facilitating the proliferation of the legal marijuana industry in Canada, [who] com[e] to the U.S. for reasons unrelated to the marijuana industry will generally be admissible to the U.S. However, if a traveller is found to be coming to the U.S. for [a] reason related to the marijuana industry, they may be deemed inadmissible."

Someone facing a lifetime entry ban to the U.S. and still wishes to travel there must apply for a temporary waiver that allows that person to cross the border for up to five years.

Over the past 30 years, Mamann has represented an estimated 200 clients who have faced such a ban, mostly related to marijuana use or possession.

Still, he believes the U.S. has little choice but to legalize marijuana at the federal level.

Said Mamann: "One of its major allies and its next-door neighbor has done so, so it will only make the U.S. look silly and way behind the times."