How to export cannabis (and import it, too): What Canada's regulations say

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In early 2022, U.S. Congress passed the *Marijuana Opportunity Reinvestment and Expungement Act*, known as the *MORE Act*, with the potential to explode the international adult-use cannabis market. A number of other countries, including Mexico, Germany and Portugal, are contemplating or moving forward with legalizing adult-use cannabis. These international changes have brought attention to the exportation and importation of cannabis in Canada.

This article looks at how to export cannabis, cannabis products and industrial hemp, as well as import these items, according to the current Canadian regulatory framework.

Definitions under Canadian law

In Canada, cannabis is principally regulated by the *Cannabis Act*, the *Cannabis Regulations* and the *Industrial Hemp Regulations*.

Under the *Cannabis Act,* "cannabis" is defined as "a cannabis plant" including "any part [thereof], [and] the phytocannabinoids produced by, or found in, such a plant." This includes dried or fresh cannabis flowers, cannabis resin, tetrahydrocannabinol (THC), cannabidiol (CBD), cannabinol or any substance that is identical to a phytocannabinoid produced in a plant, regardless of its source.

Because both CBD and THC are defined as "cannabis" under the *Cannabis Act* and the *Cannabis Regulations*, both are governed by the same export and import provisions. This is worth noting given that CBD products containing less than 0.3 per cent THC are federally legal in the U.S., whereas THC products are still federally illegal.

The *Cannabis Act* specifically excludes several portions of the cannabis plant from the definition of cannabis, including non-viable seeds; the mature stalk without any leaf, flower, seed or branch; the fiber derived from the mature stalk; and the root.

Under the *Industrial Hemp Regulations*, "industrial hemp" is defined as "a cannabis plant — or any part of that plant — in which the concentration of THC is 0.3 per cent w/w [weight for weight] or less in the flowering heads and leaves."

Derivatives made by processing the grain of industrial hemp, or a product made from that derivative, are exempt from the application of the *Cannabis Act* if the derivative or product contains 10 µg/g of THC or less.

What can be exported and imported?

The export and import of cannabis, or the possession of cannabis for the purpose of export, is prohibited unless it is authorized by the *Cannabis Act* and abides by the *Cannabis Regulations*.

The *Cannabis Act* and the *Cannabis Regulations* authorize exportation and importation of cannabis for medical or scientific purposes only. These limitations reflect the prohibition against general international trade in cannabis under various United Nations drug control conventions to which Canada is a party.

A licences under the *Industrial Hemp Regulations* allow the domestic sale of flowering heads, leaves and branches to holders of a licence issued under the *Cannabis Regulations*. However, under the *Industrial Hemp Regulations* only seed and grain may be exported or imported.

In short, Canada's current regulatory regime prohibits the export or import of cannabis destined for the adult-use market, regardless of the legal status of cannabis in the country that is exporting or importing the cannabis.

However, products prepared from non-viable seed, mature stalk, fibre derived from a mature stalk and the roots of a cannabis plant, and derivatives made by processing the grain of industrial hemp, are not regulated under the *Cannabis Act*, *Cannabis Regulations* or the *Industrial Hemp Regulations* and are not subject to the same export and import restrictions as cannabis.

There is no indication that the government is contemplating changes to the export and import restrictions under the *Cannabis Act* and the *Cannabis Regulations* to permit the export or import of adult-use cannabis.

How to export and import cannabis

A cannabis licence holder must obtain from Health Canada a permit for exporting, importing and shipping cannabis for medical or scientific purposes for each individual cannabis shipment. If cannabis seeds are being exported or imported, the requirements of the *Seed Act* and *Seed Regulations* will also apply in addition to the requirements under the *Cannabis Act* and the *Cannabis Regulations*.

As per Health Canada requirements, each export or import permit contains specific information to facilitate shipment tracking and authentication, including:

- The identity of the sender or receiver.
- A description of the shipment contents.
- Its mode of transport to its final destination in Canada.

The *Cannabis Act* dictates that all imported shipments of cannabis in Canada must be transported directly to the location identified on the importer's license to reduce the risk of shipments being lost, damaged or misappropriated for the illicit cannabis market.

The permit-holder must notify the Minister of Health that a shipment is complete within 15 days of the completion.

How to export and import industrial hemp seed and grain

Import permits and export permits for industrial hemp seed and grain contain similar information to the *Cannabis Regulations* as outlined in the previous section.

Derivatives of industrial hemp that are exempt from the *Cannabis Act*can be exported or imported without a licence or permit provided that the shipment is accompanied by a certificate of analysis stating that the product contains a concentration of 10 µg/g of THC or less.

If you are looking for more information on how to export and import cannabis, cannabis products or industrial hemp in compliance with Canadian law, please connect with Todd Keeler, or any of the key contacts listed below.

By

Todd Keeler, Chris Hart

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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