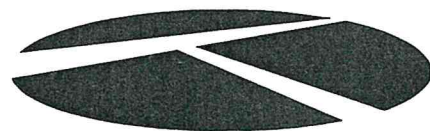
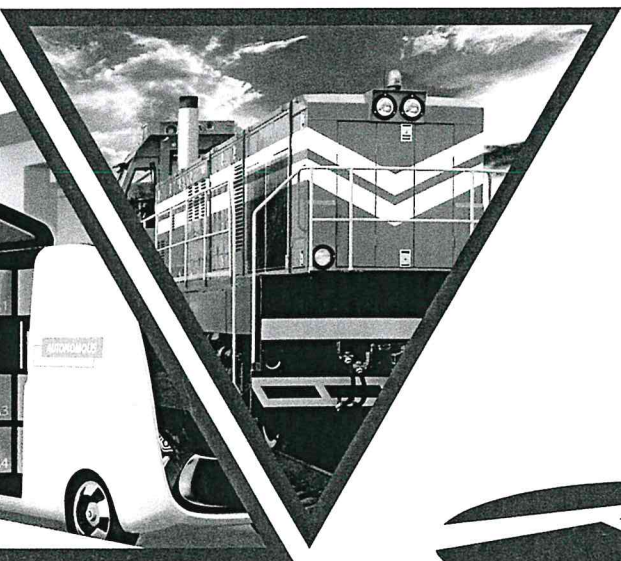
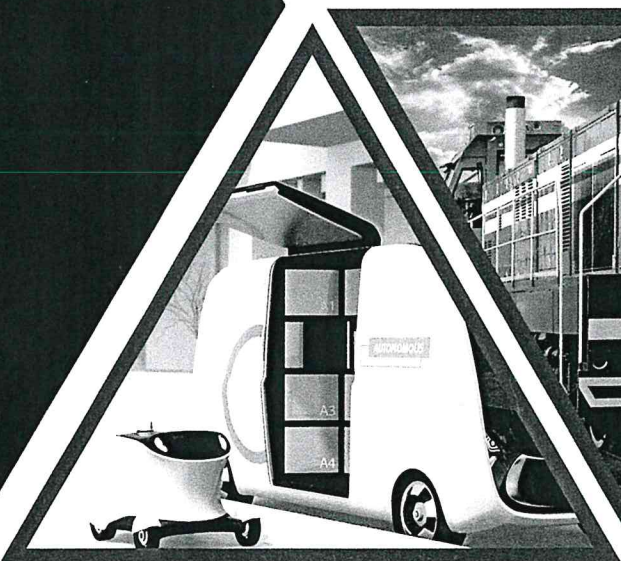
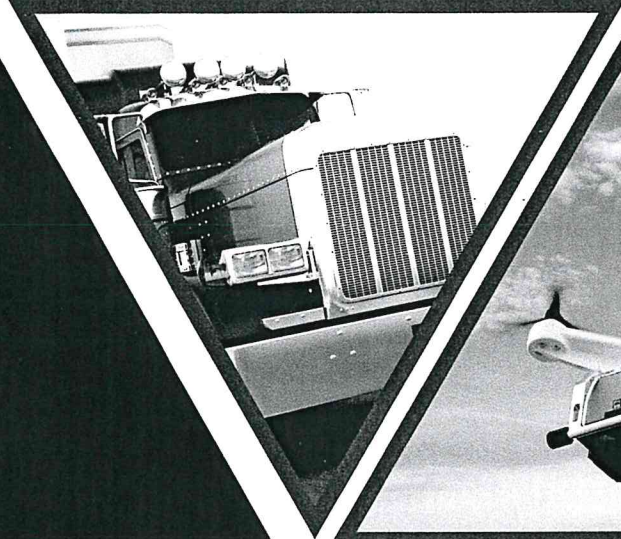
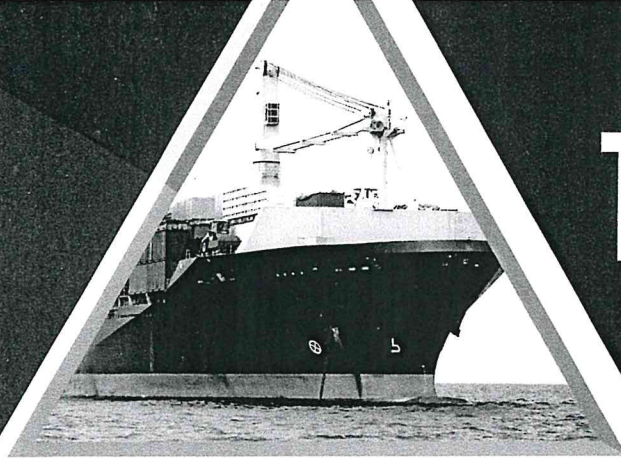


The Transportation Lawyer

A Comprehensive Journal
of Developments in
Transportation Law

April 2019
Volume 20
Number 5



**Transportation Lawyers
Association**

translaw.org

A Joint Publication of the Transportation Lawyers Association
and the Canadian Transport Lawyers Association

CTLA  ctla.ca

A Budding Industry: Commercial Transportation of Cannabis in Canada



Anna Sledziecka and
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the commercial transportation of cannabis throughout Canada.

Licensed Producers

A federal license is required for companies to cultivate, process and sell cannabis for medical and recreational purposes. These players in the cannabis industry are called "Licensed Producers" or "LPs" for short. The three largest cannabis companies in Canada are Canopy Growth Corp., Aurora Cannabis and Aphira Inc.

Canopy Growth Corp. is based out of Smith Falls, Ontario. In April of 2014, Canopy Growth became the first cannabis company in North America to be publicly traded. It is currently trading on the NYSE (CGC) and the TSX (WEED). Aurora Cannabis was founded in Mountain View County, Alberta. As of January 2019, the company has 11 facilities worldwide and is capable of producing in excess of 500,000kg of cannabis per year. Aurora Cannabis is trading on the NYSE (ACB) and the TSX (ACB). Aphira Inc. is another major cannabis company, operating out of Leamington, Ontario. In December 2017, Aphira Inc. announced that it had entered into an agreement to become a medical cannabis supplier to Shoppers Drug Mart, a large Canadian retail pharmacy chain. On January 8, 2019, Aphira Inc. announced that it had completed its first shipment of medical cannabis to Shoppers Drug Mart.⁶

Retail Licenses

The provinces are responsible for regulating the process by which recreational cannabis will be available for purchase in the private sector. In Ontario, the Alcohol and Gaming Commission of Ontario ("AGCO") is the regulator for private cannabis retail

and has the authority to license, regulate and enforce the sale of recreational cannabis in privately run stores in the province. In the Spring of 2019, the Government of Ontario will permit the opening of cannabis retail stores in Ontario. Prior to this, the only way to purchase recreational cannabis in Ontario is online through the Ontario Cannabis Store ("OCS"). The Government of Ontario provided AGCO the mandate to hold a lottery to determine who may apply for Retail Operator Licenses. The Government of Ontario will grant 25 Retail Store Authorizations, which means that there will be 25 brick and mortar retail cannabis stores in Ontario. Until the supply chain stabilizes, the Government of Ontario has advised that there will not be any additional licenses granted.⁷

Weeding Through Canada's Cannabis Regulatory Regime: Tips for the Transportation Sector

Although the *Cannabis Act* legalized the use of recreational cannabis, it simultaneously created a comprehensive scheme of prohibitions with respect to possession and distribution (including transportation and delivery) of cannabis. Companies and individuals entering the cannabis transportation space should familiarize themselves with the regulatory regime in order to ensure compliance.

On October 17, 2018, recreational cannabis became legal in Canada. The *Cannabis Act*² (the "*Cannabis Act*" or the "*Act*") is the legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. In addition to this federal legislation, the provinces and territories are responsible for determining how cannabis is distributed and sold. The provinces and territories also have the ability to set added restrictions on the federal laws pertaining to cannabis, including lowering possession limits, increasing the minimum age and restricting laws on public consumption. For example, even though the minimum age requirement to possess cannabis in Canada is 18, many provinces have legislated the minimum age to be 19, including British Columbia, Manitoba and Ontario.³

Revenue and Industry Opportunities

Predictions suggest that total cannabis sales will exceed \$7 billion in 2019.⁴ Some industry insiders have compared the market capitalization of the major cannabis producers to long-established blue chip companies. For example, Canopy Growth Corp. boasts a market capitalization of roughly \$22 billion.⁵

The legalization of cannabis has triggered the growth of a wide array of secondary industries servicing the cannabis market. This includes companies devoted to

*Isaacs & Co. (Toronto, Ontario, Canada)

Prohibitions on Possession and Distribution of Cannabis

The *Cannabis Act* imposes restrictions on various activities, which the *Act* characterizes as “criminal”. However, there are exceptions to these prohibitions, which transportation companies could rely upon to operate in the cannabis supply chain.

Sections 8 and 9 of the *Cannabis Act* prohibit the following:

- Possession and distribution of illicit cannabis;
- Possession in a public place (including a vehicle located in a public place) and distribution of more than 30 grams of cannabis; and
- Possession of cannabis by an organization or distribution of cannabis to an organization.

The *Act* also characterizes the possession of cannabis for the purpose of distribution as criminal.⁸ Distribution is defined as including administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute.

Possession and Distribution of Illicit Cannabis Remains Criminal

Although the *Cannabis Act* legalized recreational use of licit cannabis, possession of illicit cannabis remains illegal. Illicit cannabis is defined as cannabis that is or was sold, produced or distributed by a person prohibited from doing so. By contrast, licit cannabis is cannabis that is lawfully produced by an LP. Companies should ensure that any cannabis being transported is licit and compliant with all regulatory requirements. As a starting point, companies should only transport cannabis produced by LPs.

The *Cannabis Act* imports the broad *Criminal Code*⁹ definition of “possession.” In addition to actual possession, “possession” also includes knowingly having something in the custody of another person. All players in the transportation industry should take precautions to ensure that all cannabis being transported is legal.

Limits on Possession and Distribution of Cannabis

The *Cannabis Act* limits possession of dried cannabis in a public place to 30 grams. The definition of “public place” under the *Cannabis Act* includes any motor vehicle located in a public place or in any place open to public view.¹⁰ A strict reading of this provision imposes a *prima facie* restriction on the transportation of cannabis. However, there are exceptions to this rule, which allow companies to commercially transport cannabis.

Prohibition on Distribution of Cannabis to Organization

The *Cannabis Act* prohibits an organization from possessing cannabis.¹¹ The *Criminal Code* defines organization as:¹²

- A public body, body corporate, society, company, firm, partnership, trade union or municipality; or
- An association of persons that:
 - Is created for a common purpose;
 - Has an operational structure, and
 - Holds itself out to the public as an association of persons.

This section effectively prohibits all organizations other than LPs from possessing cannabis. This would include transportation companies. However, the same exceptions to this rule apply, which allow companies to commercially transport cannabis.

Punishment

The *Cannabis Act* describes the prohibitions listed in sections 8 and 9 as criminal activities and provides strict punishment for breaches.

Contravention of the *Cannabis Act*¹³ may be treated as an indictable offense (felony) with liability of:

- Imprisonment of up to fourteen years in the case of an individual who is 18 years of age or older; or
- In the case of an organization, a fine in an amount that is in the discretion of the court.

Alternatively, a Court may treat the contravention as a summary conviction (misdemeanor) and impose liability of:

- In the case of an individual who is 18 years of age or older, to a fine of up to \$14,000 or imprisonment for a term of up to 14 months, or to both; or
- In the case of an organization, to a fine of up to \$100,000.

Exceptions Allowing Transportation of Cannabis

The *Act* provides exceptions to the prohibitions discussed above, namely:

- Parties acting as agents or contractors on behalf of LPs; and
- Where the activity is authorized by provincial legislation.

Agents or Contractors of LPs

The *Cannabis Act* allows persons acting as agents or contractors of persons authorized to sell, distribute or produce cannabis to carry out activities that are otherwise prohibited under the *Act*.¹⁴ This exception would include transportation companies acting as agents and contractors for LPs. However, transportation companies must do so in a manner that is consistent with the conditions that apply to the LPs authorization. It is prudent for individuals and companies to ensure their operations are compliant with the regulatory conditions imposed on the LPs they have contracted with. Companies should either request proof of regulatory compliance or require a warranty of same.

Cannabis Tracking System

The *Cannabis Act*¹⁵ provides for the establishment and maintenance of a cannabis tracking system (CTS). The purpose of the CTS is to monitor the flow of cannabis at a national level to meet regulatory requirements under the *Cannabis Act*.

The CTS addresses with the following:¹⁶

- Monthly Reporting by Federal LPs;
- Inventory Reporting; and
- Health Care Practitioner Reporting.

Care should be taken by companies in the transportation sector to ensure compliance, where necessary, with the CTS.

Blazing a New Trail: Trends in Commercial Transportation

Despite the various prohibitions in the *Cannabis Act* regarding possession and distribution, the actual commercial transportation of cannabis remains largely unregulated. Prior to the rollout of the retail stores, cannabis in Ontario could only be purchased online through the OCS and delivered to consumers primarily through Canada Post. However, the opening of retail stores will create new opportunities for the transportation sector.

Key cannabis industry players are partnering with security companies for the transportation of cannabis. For example, Canopy Growth announced that it partnered with Brink's Co. to provide secure logistics and cash management.¹⁷ Canopy Growth is also working with 3SixtySecure Corp., a security services company, for the transportation of its products.¹⁸

The potential for a hijacking or theft of a cannabis shipment is phenomenal. The cargo has a high value to weight ratio and is easily moveable, both making it a likely target for theft. It is imperative that trucking companies consider security measures when transporting cannabis to minimize potential thefts. Cannabis transportation companies emerging onto the market are implementing strategies to stay ahead of the game and are

erring on the side of caution in anticipation of regulations that may come into force. The following are examples of security measures taken by companies transporting cannabis:

- Unmarked trucks;
- Armoured trucks;
- Low key routes (where the driver is unaware of the route);
- Two personnel per truck;
- Armed drivers;
- Enhanced driver training; and
- Geo-tracking shipments.

Key industry players predict that such enhanced security measures would exceed any regulations that might be passed.

Another issue for transportation companies to consider is the importance of climate controlled features. Presumably, one of Health Canada's major concerns with the transportation of cannabis is ensuring quality control. Since October 17, 2018, there have been recalls of recreational cannabis due to the presence of mold.¹⁹ It is easy to see why climate controlled trailers are critical for the transportation of cannabis. Cannabis companies also want to ensure brand quality and protect brand reputation.

The Takeaways

Transportation companies looking to enter the burgeoning cannabis market should

take proper precautions, including:

- Development of appropriate infrastructure to support the transportation of a highly regulated and valuable product, including:
 - Procurement of appropriate vehicles;
 - Implementation of strong security measures, including driver training;
 - Implementation of appropriate climate controls necessary for cannabis storage;
- Implementation of strict compliance and monitoring systems:
 - Assurance that any cannabis being transported is licit and subject to a valid license;
 - Implementation of policies requiring proof of legality of the product being transported, or contractual warranties of same;
 - Assurance of compliance with Cannabis Tracking System.
- Procurement of appropriate amount of cannabis-specific cargo insurance.

The legalization of recreational cannabis in Canada presents tremendous opportunity for various sectors, including the transportation industry. With proper planning and familiarization of the regulatory regime, brokers, carriers and insurers may stand to profit during these high times. 🍁

Endnotes

- 1 Ms. Sledziecka and Ms. Weise are associates at Isaacs & Co., a boutique law firm in downtown Toronto, specializing in all areas of transportation law.
- 2 SC 2018, c 16.
- 3 Government of Canada; www.canada.ca.
- 4 "A Society in Transition, an Industry Ready to Bloom: 2018 Cannabis Report", Deloitte LLP; <https://www2.deloitte.com/ca/en/pages/press-releases/articles/cannabis-report.html>.
- 5 <https://business.financialpost.com/investing/weekend-unlimited-wins-lottery-for-pot-stock-symbol>.
- 6 Aphira Inc. Press Releases, dated December 4, 2017 and January 8, 2018.
- 7 Alcohol and Gaming Commission of Ontario; <https://www.agco.ca/cannabis/cannabis-retail-lottery>.
- 8 S.9(2).
- 9 Criminal Code RSC 1985, c C-46, s.4(3).
- 10 8(1)(a).
- 11 8(1)(f).
- 12 Section 2.
- 13 Sections 8(5) and 9(5).
- 14 S.71.
- 15 S.81.
- 16 <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/tracking-system.html>.
- 17 Canopy Growth Press Release, November 8, 2018.
- 18 <https://business.financialpost.com/transportation/no-specific-licence-requirement-for-the-transportation-of-cannabis-ottawa-says>.
- 19 Government of Canada; https://www.canada.ca/en/sr/srb/sra.html?_charset_=UTF-8&allq=cannabis%2C+mould&extq=&anyq=&noneq=&fqupdate=&dmn=healthycanadians.gc.ca%2Frecall-alert-rappel-avis%2F&fqocct=#wb-land.