

DECISION OF THE CANNABIS LICENSING BOARD (the "Board")

July 31, 2019

IN THE MATTER OF AN APPLICATION BY:

Dawson City Cannabis

FOR (NATURE OF APPLICATION AND JURISDICTION OF THE BOARD):

Sub-class 2 Cannabis Retail Licence for Dawson City Cannabis, at 5-978 Second Avenue in Dawson City, under the Cannabis Control and Regulation Act, SY 2018, c. 4

PLACE AND DATE OF HEARING: 982 Third Avenue, Dawson City, YT, July 18th, 2019 at 10:30a.m.

PRESENT IN PERSON:

Board

**David Sloan – Chair
Mieke Leonard – Vice-Chair
James Lindsay – Member
John Farynowski – Member
Jennifer Roach – Secretary**

Applicants

Sarah Cooke and Anna Radzimirska

Yukon Liquor Corporation

Ken Howard – Inspector, A/Director Licensing

Objector

**Edward Whitehouse, Director of Wellness, Tr'ondëk Hwëch'in
Sarah Filiatreault, Wellness Manager, Tr'ondëk Hwëch'in
Jamie Sachi Richardson, Executive Operations Manager, Tr'ondëk Hwëch'in**

Additional Attendees

**Krisztian Kalasz - A/Clinical Supervisor, Department of Health and Social Services
Angela Jobin, Mental Wellness and Substance Use Counsellor, , Department of Health and Social Services
Shauna Kormendy, Child Youth and Family Clinical Counsellor, Department of Health and Social Services**

OVERVIEW

On, March 29, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from Sarah Cooke and Anna Radzimirska (the "Applicants") for a sub-class 2 Cannabis Retail Licence (the "Licence"). Pursuant to the Application, the Applicants are requesting the issuance of the Licence for Dawson City Cannabis, at 5-978 Second Avenue in Dawson City, Yukon.

The Application was deemed complete by the President on May 17, 2019. Accordingly, the President delivered a copy of the Application to the Cannabis Licensing and Review Board (the "Board") and began public notice of the Application by placing ads in the Yukon News on May 17 and May 24, 2019. Public notice was also posted on the Yukon Liquor Corporation web page and Yukon Liquor Corporation Facebook page, and letters to the local municipality, City of Dawson, and the to the local First Nation government, Tr'ondëk Hwëch'in.

On May 21, 2019, the Applicants proposed a change in the hours of operation submitted in their original application materials. The President of the Yukon Liquor Corporation acknowledged receipt of this request in a letter to the Applicants on May 24, 2019, where he also advised that the public notice would be amended and re-started.

The President circulated public notice of the Application with revised ads in the Yukon News on May 31, June 5, 12, and 19, by posting on the Yukon Liquor Corporation web page and Yukon Liquor Corporation Facebook page for the duration of the public notice period, and by sending a second letter to the local municipality, City of Dawson, and to the to the local First Nation government, Tr'ondëk Hwëch'in.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 4:30p.m. on June 24, 2019.

Within the objection period, the President received 1 objection (the "Objection") from Chief Roberta Joseph of the Tr'ondëk Hwëch'in (the "Objector") by emailed letter on June 24, 2019.

The President delivered a copy of the objection(s) to the Board. Upon receiving a copy/copies of the objection(s), the Board served a notice to the Applicants, the Objector, and the President on June 27, 2019, that a hearing would be held on July 18, 2019, at 10:30a.m. to consider the Objection(s).

Submissions were received from the applicant on July 10 and July 11, 2019. The applicants submission is named Exhibit A, and comprises of documents on legislation, regulations, resources for first nations relating to cannabis, article on common objections to licensing, and pamphlets and local community support contacts from the department of Health and Social Services.

Submissions were received on July 15, 2019, by the Board from the Yukon Liquor Corporation, the Department of Education, and the Department of Health and Social Services detailing the synopsis of consultations that were held in Dawson City leading up to the passage of the cannabis legislation. This submission is named Exhibit B.

Pursuant to section 32, the hearing proceeded as scheduled on July 18, 2019, at 10:30a.m. (the "Hearing") The Acting Director of the Licensing and Inspections Branch of the Yukon Liquor Corporation, the Applicants, Sarah Cooke and Anna Radzimirska and the Objector, Edward Whitehouse, Sarah Filiatreault and Jamie Sachi Richardson attended. Also attending were members from the department of Health and Social Services, Krisztian Kalasz, Angela Jobin and Shauna Kormendy.

During the hearing, the Objector provided the Board with material developed by the Assembly of First Nations and the Thunderbird Partnership relating to indigenous perspectives and cannabis legalization.

ISSUE

Taking into account the Application, the relevant considerations set out in section 2 of the *CCRA*, the public interest, and the conformity of the Application to requirements set out in the *CCRA* and accompanying regulations, will the Board:

- (a) grant the licence;
- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence?

DECISION

Having considered the Application, the Objection, the Applicants' response to the Objection and taking into account the relevant considerations enumerated in section 1 of the *CCRA*, the requirements imposed by the *CCRA* and accompanying Regulations, and after determining that a grant of the licence would be in the public interest, the Board has decided to issue a sub-class 2 licence without conditions for the period from the date of the issuance of this decision until March 31, 2022.

LAW

In reaching its decision on the issue, the Board considered the following legislation:

Cannabis Control and Regulation Act, SY 2018, c.4., and in particular sections 1, 2, 16, 17, 21, 25, 26, 27, 28, 29, 30, 32, 33, 53, 55, 57, 79, 80;

Cannabis Control and Regulation General Regulation, O.I.C. 2018/184., and in particular, sections 4, 7, 11, 12, 14;

Cannabis Licensing Regulation, O.I.C. 2019/42., Section 3;

Cannabis Licensing Regulation, O.I.C. 2019/43., and in particular sections <2, 3, 4, 5, 6, 7, 8, 10, and 16.

Cannabis Licensing Regulation, O.I.C. 2019/45., Section 2.

EVIDENCE BEFORE THE BOARD:

The Board considered the written Application submitted by the Applicants, the addendum to the application received on May 21, 2019, the President's analysis report, the submission by the Applicants named Exhibit A, submission by the Yukon Liquor Corporation named Exhibit B, the Objector's written and oral submissions, and the Applicant's oral reply to the Objection.

ANALYSIS OF LAW AND EVIDENCE:

Section 33 of the *CCRA* directs the Board as follows:

Decision of board after hearing

33(1) After the hearing, the board must make one of the following decisions, taking into account the

documents received under subsection 30(1), the relevant considerations and any representations of the persons served with notice of hearing:

- (a) to grant the licence, for the licence period that it determines, that contains no conditions additional to the statutory conditions, if satisfied that
 - (i) the requirements of this Act and the regulations have been complied with,
 - (ii) to grant the licence would be in the public interest,
 - (iii) it is not necessary for the licence to contain additional conditions;
- (b) to grant the licence, for the licence period that it determines, on the conditions additional to the statutory conditions that the board determines to be appropriate, if satisfied that
 - (i) the requirements of this Act and the regulations have been complied with,
 - (ii) to grant the licence would be in the public interest, and
 - (iii) it would be beneficial for the licence to contain those additional condition
- (c) to refuse to grant the licence, if not satisfied that
 - (i) the requirements of this Act and the regulations have been complied with, or
 - (ii) it would be in the public interest to grant the licence. (Emphasis Added)

The “documents received under subsection 30(1)” include:

Consideration of Application

30(1) Without delay after the service described in subsection 29(2), the president must give the following documents to the board, and a copy of them to the applicant:

- (a) any comments on the application or the applicant that the president may have, including with respect to the licence period of the licence applied for;
- (b) any objection served on the president within the four weeks referred to in subsection 29(1);
- (c) a report of an inspection or investigation arranged for under subsection 27(7);
- (d) any other relevant information of which the president is aware (Emphasis Added).

The “**relevant considerations**” referred to in section 33(1) of the *CCRA* are defined in section 2 of the *CCRA*:

“relevant considerations”, in relation to an application for a licence, means the following:

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,
- (b) the population of the area, including
 - (i) seasonal variations in the population, and
 - (ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,
- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,
- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of,

licensed premises in the area, including the need to serve the projected travelling public in the area,

- (e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,
- (f) whether the premises
 - (i) conform to the requirements of all relevant enactments,
 - (ii) are constructed so as to be sanitary and secure, and
 - (iii) are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,
- (g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,
- (h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,
- (i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,
- (j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,
- (k) a matter prescribed to be a relevant consideration.

Taken together, these sections of the *CCRA* require the Board to grant or refuse a licence, with or without conditions, based on a review of the documents in its possession and representations of persons served with a notice of hearing, after taking into account the relevant considerations, determining that the requirements of the *CCRA* and accompanying regulations have been complied with, and deciding whether or not a grant of the licence would be in the public interest.

In accordance with the reasons that follow, and taking into account the relevant considerations prescribed by the *CCRA*, the Board is satisfied that the grant of this licence is in the public interest, and that the Applicants have met or exceeded the requirements of the *CCRA* and accompanying regulations.

Relevant Considerations

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,**

The Board takes notice of the fact that this Application for a Cannabis Retail Licence is the first in this community. As a result, there are no other Cannabis Retail Licences near the 5-978 Second Avenue, Dawson City location proposed by the Applicants as the licence site (the "Licence Site"). The Board acknowledges the existence of active liquor licences in the area.

- (b) the population of the area, including**

(i) seasonal variations in the population, and

(ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,

The Licence Site is located in the downtown core of Dawson City, Yukon. The Board accepts that the population of Dawson City is approximately 2,341. As a popular tourism destination, the Dawson City population fluctuates considerably year-round.

(c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,

The Applicants may confer an economic benefit on the surrounding area including restaurants, grocery stores, multiple hotels, a bank and other amenities, attracting more traffic to the area that will benefit other businesses in the area. The Applicants have submitted a partnership Application where one partner will be a full-time employee. The Applicants also plan to hire one employee.

The Board accepts this as evidence of anticipated economic benefit. The Board also recognizes that local security, construction, and communication businesses may benefit from initial capital investments made by the Applicants.

(d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, licensed premises in the area, including the need to serve the projected travelling public in the area,

The Board observes that the President circulated public notice of the Application in a manner consistent with the service and notice requirements set out in the *CCRA*. The *CCRA* provides a formal process for receiving the expressed views of the population within the specified time period. Only one objection was received by the President, which was forwarded to the Board for consideration.

The Board has considered the Objection, and its analysis of the Objection and the Applicants' response is addressed later in this decision.

(e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,

The Applicants indicated that a considerable capital expenditure has already been made, and a further outlay of funds will be required for renovations, equipment and security, staffing, and other costs associated with setting up the business.

(f) whether the premises

a. conform to the requirements of all relevant enactments,

b. are constructed so as to be sanitary and secure, and

c. are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,

Section 11(1) of *The Cannabis Control and Regulation Act*, O.I.C. 2018/184, provides that a cannabis store must be located so that each point on each lot line of the premises of the cannabis store is more than 150 metres from each part of a building that is, or is part of, an elementary school or secondary school.

However, Section 11(2) of the same regulation provides that:

A provision of a municipal bylaw prevails, to the extent of any inconsistency, over the requirements of subsection (1), in relation to the location of a cannabis retail store located within the municipality, within the meaning of the Municipal Act, if

- (a) the bylaw is validly adopted by the council of the municipality; and
- (b) the bylaw is in force.

Normally, a cannabis store cannot be located within 150 metres of an elementary school or a secondary school. However, as Section 11(2) of the Regulation provides, if a valid bylaw adopted by a municipality that is in force provides for a different distance requirement, it will prevail over the 150 metre requirement.

The Board understands that the Applicants' Licence Site conforms with Town of Dawson City bylaw restrictions that are currently in force and effect. The proposed Licence Site is in a commercial area and a Dawson City bylaw allows for cannabis retail stores located within the City of Dawson in areas zoned commercial. This zoning arrangement does not include any setbacks from elementary and post-secondary schools.

The Board is satisfied that the Applicants have made provision for a robust security system, including video monitoring and alarm components equal to, or greater than, the requirements set out in the *CCRA* and accompanying Regulations. The Board has reviewed the Applicants' floor plan, display plan, and other materials associated with the proposed layout of Dawson City Cannabis, and finds the plan to be in accordance with statutory requirements.

As construction of the Licence Site has not been completed, the Board could not verify whether the site was sanitary. The Applicants' provided material in their submission as well the Board had a tour of the proposed facility. Following an explanation service procedures, and based on this explanation and the Applicants' thorough Application materials and operating plan, the Board believes the Applicants will carry out the business of the sale of cannabis in a reputable way that includes operating a sanitary retail space.

(g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,

The Application, supplemented by the President's Relevant Consideration Analysis, provide sufficient material for the Board to conclude that the Applicants are financially responsible and

are otherwise of good character and fit persons to keep and operate the premises and be licence holders.

In making this determination the Board relies on the results of Anna Radzimirska's and Sarah Cooke's criminal record checks submitted in association with the Application which confirm no criminal conviction history. In addition, during the hearing on July 18th, 2019, the Board observed the Applicants expressing a willingness to work with stakeholders in their community. The Applicants, Anna Radzimirska and Sarah Cooke, have combined experience in retail service, financial services, locally and in Whitehorse, as well as experience running a business.

(h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,

The Board received two letters from Ben Shore of Northern Network Security, the property manager of the premises, dated February 26th, 2019, and April 7th, 2019. In the February 26th, 2019 letter, Mr. Shore states that Sarah Cooke is a tenant in good standing, and that her current lease of the proposed Licence Site expires on April 30th, 2020. In the April 7th, 2019 follow up letter, Mr. Shore says that it is his company's intention to renew Ms. Cooke's lease until April 30th, 2022, when her current lease expires.

From these letters, and the Applicants' further submissions, the Board understands that the Applicants have secured a lease for the Licence Site until April 30th, 2022. Although the lease expires on April 30th, 2022, a representative from the property management company Northern Network Security, has communicated an intention to renew the lease at that time.

Section 36(1)(b) of the *CCRA* provides that:

36(1) Subject to this section and section 38, a licence is valid:

...

(b) only until the earlier of the following:

(i) the end of the licence period,

(ii) the day on which the licensee ceases to be the true owner or lessee of the business carried on at those premises

(Emphasis added)

The Board is willing to consider providing the maximum lease term permitted by the Regulations, but it is important that the Applicants understand that their licence will only continue to be valid if they are able to renew their lease. We strongly encourage the Applicants to provide a copy of their lease renewal to the Liquor Corporation as soon as it is signed to secure the continuance of their licence.

(i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,

The Board acknowledges that neither Applicant has previously held a cannabis licence, and that Ms. Radzimirska has held a liquor licence in 2007 and 2008 that was not suspended, cancelled or revoked.

(j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,

Based on the Application, the Board finds that Applicants have planned for and taken a number of steps to ensure that Dawson City Cannabis is operated in accordance with the statutory conditions.

In particular, the Board observes that the Applicants have developed detailed policies and procedures, provided an operational plan and an oral submission that address a number of items including:

- preventing sales of cannabis products to minors and intoxicated individuals;
- providing a plan for mandatory service and online training (as provided by Yukon Liquor Corporation) for its staff;
- implementing a compliant point of sale inventory management system;
- installing a surveillance and security system, that will be properly advertised to visitors;
- committing to posting necessary signage at the Licensing site;
- providing a plan detailing third party transportation of cannabis which will only be transported between Yukon Liquor Corporation and the vendor, including transport procedures and record-keeping;
- providing a detailed plan for the return of defective cannabis;
- submitting a floor plan consistent with the dedicated cannabis area required by the Regulations;
- committing to displaying and selling the product in conformity with the *CCRA* and Regulations;
- committing to diversion prevention, including regular auditing, video surveillance and movement of cannabis within the license site;
- setting in place hours of operation that fall within regulatory requirements,
 - 11:00 am – 9:00 pm , seven days a week as per the Application addendum received on May 21, 2019.

Based on these observations, and the Board's review of the Application, the Board is confident that the Applicants have sufficiently arranged for operation of the business in a manner consistent with statutory requirements.

Statutory Requirements

Generally, and based in large part on the considerations in the above portion of this decision, the Board finds the Application to be in conformity with the requirements of the *CCRA* and the accompanying Regulations.

The Objection

The President received one written objection in the form of a letter from the Objector, the Chief of Tr'ondëk Hwëch'in First Nation ("TH"), on June 24, 2019.

The objection letter included the following statements:

"While we appreciate your legislated deadlines, we did not have sufficient time to reach out to our citizens to discuss potential impacts of a cannabis retail store in Dawson City. For that reason, we cannot provide unequivocal support for the application."

and

"We are concerned a cannabis store is being considered for Dawson before adequate education has been shared with our community regarding, but not limited to, the effects of cannabis use and proper dosage. Providing that education is a matter of public health – a responsibility of the Yukon Government- and we do not believe this has occurred."

During the Hearing, representatives of TH indicated that they held a community consultation with their citizens on July 17, 2019. The TH representatives plainly stated that there was "no opposition" from the TH community to the opening of Dawson City Cannabis. At one point, a TH representative said that, "we have not received any opposition, we have not received any opposition at all."

That being said, the TH representatives went on to raise a series of concerns that their community had with the opening of a cannabis store in Dawson City. These concerns included:

- 1. The lack of educational materials in circulation in Dawson with a focus on indigenous people and in particular elders, addressing the impacts of residential school and resulting perception of cannabis, and ensuring accessibility of the education materials for all population groups in the community;*
- 2. Whether there would be signage about the legal age for serving;*
- 3. Whether or not a proper security system would be installed to prevent theft;*
- 4. The lack of product related material that provides information on products and use impacts;*
- 5. The proximity of the proposed license site to the Youth Centre; and*
- 6. Whether or not it would be possible to impose a 6-month probationary period for the license.*

Issues Raised by the Objector

The President and the Board initially treated the contents of the June 24th, 2019 letter from the Objector as a formal objection, and the Board held a hearing as required under the CCRA. However, at the hearing TH representatives made it clear that they were not opposed to the Application. TH representatives also indicated that there had been an opportunity to reach out to their citizens, namely, on July 17, 2019, at a community consultation meeting. Given these submissions, the Board cannot consider TH as formally objecting to the Application.

As such, the Board's consideration of the Application does not require an analysis of the issues raised by TH at the Hearing. However, in fairness to TH, and in accordance with the Board's duty to consider the

public interest in deciding whether or not to refuse or grant a license, the Board will touch on the concerns raised by TH at the hearing.

Concern 1: The lack of educational materials

The concern raised by TH that there was an insufficiency of educational materials about the use and impact of recreational cannabis products in circulation, and particularly educational materials and outreach directed at elders in the TH community, is not an issue within the Board's jurisdiction as a licensing body.

This issue of educational materials is more properly suited to a forum between the Yukon Government, the Liquor Corporation, and TH. The Board notes that representatives from the Yukon Government's Department of Health and Social Services were present at the hearing, and arrangements were made between these representatives, the representatives from TH, the Applicants and the Yukon Liquor Corporation to engage in future discussions regarding this subject.

Concerns 2, 3, and 4: Signage, security, and product information

The Applicants responded directly to TH concerns about appropriate signage, security, and product information measures that they would be taking to ensure compliance with the *CCRA* and accompanying Regulations. The Applicants' submissions were consistent with their materials and included the assurance that they would be posting age requirement signage, installing a security system that would monitor the premises and maintain records for more than 30 days, and that their products would contain the requisite labeling information.

Concern 5: The proximity of the license site to the Youth Centre

The license site is situated in proximity to the TH youth centre. The TH representatives explained that they understood City of Dawson bylaws permitted a cannabis retail location to be near the youth center. The Applicants explained what their protocol would be for preventing minors from entering the premises, and shared details about the layout of the retail location which would assist in preventing unsupervised access to cannabis products.

As noted in the relevant consideration analysis earlier in this decision, the Board observes that the Applicants' operating procedure and site layout is compliant with the *CCRA* and Regulation requirements, and that the license site is compliant with City of Dawson bylaws.

Concern 6: Whether a 6-month probationary period is appropriate

TH representatives asked whether or not it would be possible to impose a 6-month probationary period on the license. The Applicants and the Yukon Liquor Corporation inspector explained that there were reporting duties that the Applicants would have to follow while the license site was active, and that the Yukon Liquor Corporation would be engaged with the Applicant to encourage and monitor continued compliance with the *CCRA* and Regulations.

Given the involvement of the Yukon Liquor Corporation in monitoring site compliance, and the powers of the Board to suspend or revoke a license in the event that there are compliance issues, the Board does not believe a probationary period would be an appropriate condition to impose on the Applicant in these circumstances.

Public Interest

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, including the initial objection and subsequent concerns reviewed in this decision, public interest will be served by granting the licence to the Applicant.

CONCLUSION

Given the information presented to the Board and amicable discussions between the Objectors and Applicants, as well as the verbal commitment from the Department of Health and Social Services and Yukon Liquor Corporation to collaborate with the community, led the Board reaching its final decision to grant a sub-class 2 licence without conditions to the Applicant for the period from the date of the issuance of this decision until March 31, 2022 for the premises located at #5-978 2nd Avenue, Dawson City, Yukon.

Signed on behalf of the Board:



David Sloan
Chair, Cannabis Licencing Board