

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

January 3, 2020

**IN THE MATTER OF AN APPLICATION BY:**

The Herbary Inc., o/a The Herbary

**FOR:**

Sub-class 2 Cannabis Retail Licence, for The Herbary at 120B Industrial Road in Whitehorse, Yukon,  
under the *Cannabis Control and Regulation Act, SY 2018, c. 4*

**Board**

**David Sloan – Chair  
Mieke Leonard – Vice-Chair  
Shari Borgford – Member  
James Lindsay – Member  
John Farynowski – Member**

**Applicant**

**The Herbary Inc.**

**Yukon Liquor Corporation**

**Will Tewnion – Director, Regulatory Services  
Ken Howard – Licensing and Compliance Officer**

## OVERVIEW

On November 5, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from The Herbarry Inc. (the "Applicant") for a sub-class 2 Cannabis Retail Licence (the "Licence"). Pursuant to the Application, the Applicant is requesting the issuance of the Licence for The Herbarry, at 120B Industrial Road in Whitehorse (the "Licence Site").

The Application was deemed complete by the President on November 20, 2019. Accordingly, the President delivered a copy of the Application to the Cannabis Licensing Board (the "Board") and circulated public notice of the Application by placing ads in the Whitehorse Star on November 2, 2019 and December 6, 2019. Public notice was also posted on the Yukon Liquor Corporation web page and Yukon Liquor Corporation Facebook page, and letters were sent to the local municipality, City of Whitehorse, and to the local First Nation governments, Kwanlin Dün First Nation and Ta'an Kwäch'än Council.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 3:00 p.m. on December 20, 2019.

No objection was received. As such, the Board reviewed the Application pursuant to section 31 of the *Cannabis Control and Regulation Act* SY 2018, c. 4 (the "CCRA").

## 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, 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 for the premises located at 120B Industrial Road in Whitehorse, Yukon.

## 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, 30, 31, 53, 55, 57, 79, 80;

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

*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, 16;*  
and

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

#### **EVIDENCE BEFORE THE BOARD:**

The Board considered the written Application submitted by the Applicant and the President's inspection report.

#### **ANALYSIS OF LAW AND EVIDENCE:**

Section 31 of the *CCRA* directs the Board as follows:

##### **Decision of board - no objection received**

31(1) If no objection to the granting of the licence has been served under subsections 29(1) and (2), the board must make one of the following decisions, taking into account the application received under paragraph 27(6)(b) and other documents received under subsection 30(1) and the relevant considerations:

- (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, and
  - (iii) it is not necessary for the licence to contain any 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 conditions;
- (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.

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, licenced 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 Licencee,
- (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 Applicant has 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 nearest cannabis Licensee is Fire and Flower located at Chilkoot Way, which exceeds the 100m buffer requirement as per City of Whitehorse bylaws. There are 163 liquor licences in the Whitehorse area; the nearest Licensee is Earls Restaurant, located at #101 - 9016 Quartz Road (approx. 640m).

**(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 population of Whitehorse area is 32,304; Yukon's population is 41,352. Both numbers are as of June 30, 2019 (YBS). Population of the downtown core is 3,076 (YBS).

It is estimated that from November 2017 through October 2018, there were 491,300 visitors to Yukon. 385,000 (78%) of visitors came to Yukon in the summer months of June through September (YBS).

A number of popular events occur annually in the Whitehorse area, examples include:

February – Yukon Quest and Yukon Sourdough Rendezvous

March – Burning Away the Winter Blues, International Curling Bonspiel, and the Yukon Native Hockey Tournament

April - Annual Rotary Music Festival and Simapalooza

May – Yukon Trade Show

June – Yukon River Quest and various music festivals

June – July - Adäka Cultural Festival, Dustball Slo-Pitch Tournament, and Paradise Music Festival

In addition to annual events, Whitehorse, as the capital of Yukon, often hosts events that result in a population influx.

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

The Herbarry intends to create eight new jobs at its location in Whitehorse, with approximately \$240,000.00 in annual salaries and benefits. This will naturally result in an increase in consumer spending. Although the direct impact would be relatively modest, more money circulating in the marketplace leads to a healthier overall local economy and allows more businesses to thrive.

The new jobs would enable our employees to pay down existing debts and improve their financial health. When this happens, financial institutions in our area might react to the increase in employment levels with a willingness to lend more money to consumers and businesses in our area. With capital flowing more easily, our employees might be able to make larger purchases, including real estate and automobiles, which can further improve economic conditions in our area and increase work for additional companies, potentially creating a self-sustaining cycle that would benefit the broader community.

The Herbarry intends to invest significantly in the re-fit of the premises, which would benefit local construction and security firms. There would also be an increase in footfall and traffic to the premises, which would further benefit neighbouring businesses.

The Herbarry expects to play an active role in supporting the local community. The company intends to allocate 0.5% of sales to community programs.

On the corporate tax side, The Herbarry expects to pay approximately \$375,000 in tax in its first 5 years of operation.

**(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, Licenced premises in the area, including the need to serve the projected travelling public in the area,**

Public notification period was held: November 22 – December 20, 2019.

Total number of objections: 0. Summary of objections: N/A.

The following organizations were notified of the public notification period:

- City of Whitehorse
- Kwanlin Dün First Nation
- Ta'an Kwäch'än Council

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

The Board reviewed projected capital expenditure information provided and the applicant has estimated the following amounts in relation to the premises:

- Space improvements are estimated at \$40,500;
- Security and surveillance systems are estimated at \$18,000; and
- IT infrastructure and software are estimated at \$19,500.

**(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,**

The City of Whitehorse bylaw 2019-13 restricts the location of a licensed cannabis retailer to 100 m from temporary shelter services, substance abuse/youth at risk service provisions, parks with play structures, and retail service (restricted).

Estimated distances (direct distance) from proposed premises to:

- Whitehorse Elementary School: 1483 m. (approx.) from the closest corner of the applicant premises (mall) property lot line to the closest corner of the Whitehorse Elementary School building
- Individual Learning Centre: 1233 m. (approx.) from the closest corner of the applicant premises (mall) property line to the closest corner of the Individual Learning Centre building
- Aurora Virtual School: 1233 m. (approx.) from the closest corner of the applicant premises (mall) property line to the closest corner of the Aurora Virtual School building

Application identifies that the proposed premises will undergo renovations if approved; therefore, a sanitation inspection was not feasible at this time.

The Board has no reason to believe that the applicant is not otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way. The applicant has strong history in payday lending and financial business operations.

**(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 Licencee,**

The corporate applicant has thirty-six years' experience as an owner/franchisee of up to thirty Money Mart locations. The applicant currently owns and operates seven money mart locations in Canada's north, Ontario and British Columbia. The applicant is experienced in operating highly

regulated environments and experience in operating retail premises that require extensive security.

The Board has reviewed the financial information provided and is confident regarding the financial responsibility of the applicant as well as their character 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,**

The Board has reviewed the signed lease commencing January 1, 2020 between 13293 Yukon Inc. and The Herbarry Inc. for a period of a three-year term at the proposed location.

**(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 applicant has no liquor or cannabis licences held in Yukon or other jurisdictions based on application.

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

As the applicant has an extensive history in highly regulated environments and payday lending and as such, the applicant has provided detailed information regarding the security and surveillance systems, return policies, marketing, training requirements, 'no consumption' requirements, and point of sale, inventory and transportation/tracking solutions.

***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

***Public Interest***

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, public interest will be served by granting the licence to the Applicant.

**CONCLUSION**

Based on the success of the location when previously operating by the Yukon Liquor Corporation and the completeness of the application, this led to 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 120B Industrial Road in Whitehorse, Yukon.



*Signed on behalf of the Board:*



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**David Sloan**

Chair, Cannabis Licensing Board

