

DECISION OF THE CANNABIS LICENSING BOARD (the “Board”)

July 24, 2020

ITEM #20-01

IN THE MATTER OF AN APPLICATION BY:

Julia Finlay operating as Mary Janes Emporium

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

Sub-class 1 Cannabis Retail Licence
Cannabis Control and Regulation Act (CCRA), SY 2018, c. 4

PLACE AND DATE OF HEARING: Teleconference and Video Conference,
April 8th, 2019 at 1:00p.m.

PRESENT IN PERSON:

Board

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

Applicant(s)

**Julia Finlay, Applicant
Katie English, Applicant’s friend**

Yukon Liquor Corporation

Mark Manolis – Licensing and Compliance Officer

Objectors

**Attending ~1:30 – 2:20pm, Dawson City Cannabis
represented by;
Anna Radzimirska, Partner
Sarah Cooke, Partner**

**Attending ~2:35 – 3:05pm Tr’ondëk Hwëch’in First Nation
represented by;
Sarah Filiatreault, Manager of Wellness
Edward Whitehouse, Director of Wellness**

OVERVIEW

On, April 29, 2019, the President of the Yukon Liquor Corporation received an application (the “Application”) from Julia Finlay (the “Applicant”) for a sub-class 1 Cannabis Retail License (the “Licence”). Pursuant to the Application, the Applicant is requesting the issuance of the License for Mary Janes Emporium, at 1082 Front Street in Dawson City.

The Application was deemed complete by the President on February 4, 2020. 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 Yukon News on February 7, 14 and 21, 2020. 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 Dawson, and to the local First Nation government, Tr’ondëk Hwëch’in First Nation.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 3:00pm on March 4, 2020.

Within the objection period, the President received 9 objections (the “Objections”). Objections received were as follows: Cynthia Choban, Dawson City resident, sent in an objection by email on February 17, 2020; a person who wishes to remain anonymous sent in an objection by email on February 29, 2020; Janna Stecyk, Dawson City resident, sent in an objection by email on March 2, 2020; a person who wishes to remain anonymous sent in an objection by email on March 2, 2020; A Dawson City resident who wishes to remain anonymous, sent in an objection by email on March 3, 2020; Wendy Cairns, Dawson City resident and business owner (Bombay Peggy’s Victorian Inn and Pub), sent in an objection by email on March 3, 2020; Sarah Cooke and Anna Radzimirska, Dawson City residents and business owners (Dawson City Cannabis), sent in an objection by email on March 3, 2020; Chief Roberta Joseph of the Tr’ondëk Hwëch’in First Nation, sent a letter of objection by email on March 3, 2020; Paul McDonagh, Dawson City resident and business owner (Westminster Hotel), sent in a letter of objection on March 4, 2020.

The President delivered a copy of the Objections to the Board. Upon receiving copies of the Objections, the Board served a notice to the Applicant, the Objectors, and the President on March 12, 2020, that a hearing would be held on April 8, 2020 to consider the Objections.

A hearing submission was received from Objector Sarah Cooke and Anna Radzimirska, Dawson City Cannabis, on March 17, 2020. The submission consists of a letter expanding on their Objection concerns.

A hearing submission was received from Objector Cynthia Choban on March 20, 2020. The submission includes a letter expanding on her Objection concerns and a copy of a communication exchange between the Cynthia and the Applicant.

A hearing submission was received from the Applicant on March 21, 2020 and consists of a letter.

Pursuant to section 32, the hearing proceeded as scheduled on April 8, 2020. The hearing was scheduled so that each Objection may be heard and responded to one at a time.

Attending the hearing by teleconference was the Applicant, Julia Finlay and her friend Katie English. Lead Licensing and Compliance Officer, Mark Manolis also attended the hearing by teleconference. Objectors Sarah Cooke and Anna Radzimirska, Dawson City Cannabis, attended the hearing from approximately 1:30pm – 2:20pm by a video conference connection (non-visible). Objector representatives Sarah Filiatreault and Edward Whitehouse, of the Tr’ondëk Hwëch’in First Nation, attended the hearing from approximately 2:35pm – 3:05pm; Edward by video conference and Sarah by teleconference. Seven Objectors did not attend the hearing, so the chair read their Objections into the hearing: Cynthia Choban, Dawson City resident; Janna Stecyk, Dawson City resident; Wendy Cairns, Dawson City resident and business owner (Bombay Peggy’s Victorian Inn and Pub); Paul McDonagh, Dawson City resident and business owner (Westminster Hotel); and, Objections received by 3 anonymous people.

ISSUE

Taking into account the Application, the Objections, the further submissions made by the Applicant and the Objectors, Sarah Cooke and Anna Radzimirska, and Objector Cynthia Choban prior to the Hearing, the oral submissions made by parties attending the Hearing, the Applicants response to the Objections, 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 Objections, the further submissions made by the Applicant and the Objectors, Sarah Cooke and Anna Radzimirska, and Objector Cynthia Choban prior to the Hearing, the oral submissions made by parties attending the Hearing, the Applicants response to the Objections, 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 not be in the public interest, the Board has decided to not issue a sub-class 1 license. The location of the proposed premises is contrary to the intent of the *CCRA*'s goal of discouraging cannabis consumption by youth.

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, 14, 15; 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, the President's Relevant Considerations Analysis, the Objectors' written Objections, and further submissions made by the Objectors and Applicant in writing and orally.

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 granting of this license is not in the public interest. The Application for a license is refused.

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,**

LIQUOR LICENCES: Dawson City 52; nearest Licensee is Pan of Gold Pizza, Pasta & Subs (Food Primary - All & Off Premises) 1075 2nd Ave. (Approx. 8.2 m.)

Other Licensees within 150 m:

- Downtown Hotel (Food Primary - All; Liquor Primary; Off Premises & Special) 1026 2nd Ave. (Approx. 99.7 m.)
- Klondike Kates (Food Primary - All) 1102 3rd Ave. (Approx. 141.8 m.)

CANNABIS LICENCES: Dawson City 1; nearest Licensee is Dawson City Cannabis (Sub Class -2) 5-978 2nd Ave. (Approx. 167 m.)

- (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 Dawson City is 2,354; Yukon's total estimated population is 41,408; all numbers are as of September 30, 2019. (Yukon Bureau of Statistics).

It is estimated that from November 2017 through October 2018, there were 491,300 visitors to Yukon. 385,000 (78%) of visitors to Yukon came in the summer months of June through September. (Visitor Exit Survey 2017/18 - Yukon Bureau of Statistics)

A number of popular events occur annually in Dawson City, examples include:

- February: Yukon Quest, International Bonspiel
- March: Trek Over the Top, Thaw Di Gras
- May: The Gold Show
- June: Yukon River Quest, Midnight Sun Golf Tournament
- July: Dawson City Music Festival
- August: Discovery Days

In addition to annual events, Dawson City, occasionally hosts large national and international events that result in a population influx. Examples include:

- June 2020 - North of 60 Tattoo Extravaganza

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

The Applicant is anticipating that they will create 3 new jobs in the community during the start-up years. The Applicant also intends to contribute a portion of their sales revenue to the local school and local community programs.

(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,

A considerable number of Objections were received many of these were personal in nature and not considered to be relevant to the Board's deliberations. The key to the Board's decision is the Objections received regarding the location and its proximity to the Dawson City Youth Center. The Tr'ondëk Hwëch'in First Nation operates this youth center and is not in favor of a cannabis business at this proposed location. Some of the other Objections received also referenced the location of the proposed cannabis retail outlet next door to this youth center.

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

The Applicant projects a significant investment as noted in the Application.

(f) whether the premises

- a. are constructed so as to be sanitary and secure, and
- b. are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,

The primary concern of this Application is the location of the proposed business directly adjacent to the Tr'ondëk Hwëch'in First Nation youth center.

- (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 Applicant appears to be financially responsible and is a long time resident of the community.

- (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 Applicant is the owner of the proposed 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,

(not relevant)

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

Concerns were raised regarding the opening hours, however the Board did not consider this to be relevant to the decision.

Statutory Requirements

Generally, and based in large part on the considerations in the above portion of this decision, the Board finds the Application not to be in conformity with the requirements of the *CCRA* and the accompanying regulations.

The President received 9 objections from; Cynthia Choban, Janna Stecyk, Wendy Cairns (Bombay Peggy's Victorian Inn and Pub), Sarah Cooke and Anna Radzimirska, (Dawson City Cannabis) Chief Roberta Joseph of the Tr'ondëk Hwëch'in First Nation, Paul McDonagh (Westminster Hotel), and 3 anonymous objections.

Two Objectors attended the hearing on April 8, 2020. Their Objections can be summarized/reproduced as follows:

Issues Raised By the Objectors

The Board understands the Objection to consist of the following elements:

Many of the Objections raised were of a personal nature questioning the fitness of the Applicant to operate a cannabis retail outlet. Other Objections addressed the hours of operation and the proposed location of the business. There were questions raised by some Objectors as to why Dawson City required a second cannabis outlet. Issues regarding competition and economic viability are beyond the purview of the Board.

Analysis of the Objections

1. Dawson City Cannabis objected based on economic viability of their current business, the character of the Applicant and the location next to the youth center. The proposed hours of operation were also a concern to this Objector. The Board cannot consider issues relating to economic viability but the Board did take notice of the proximity of the proposed location to the youth center.
2. Tr'ondëk Hwëch'in First Nation - The main objection was the proposed location next door to their youth center and the lack of consultation with the First Nation prior to the Application. The First Nation did not object to cannabis retail operations in principle, but was concerned about the proposed location next to their youth center. They did acknowledge that there were plans to move the youth center eventually, but no clear schedule for this project was available.

The Tr'ondëk Hwëch'in First Nation expressed a strong concern about community wellness and in particular services for youth in the proposed location. The Board feels that this is a relevant concern for the community, and is contrary to the intent of the *CCRA* and public interest.

3. Objections 3-9 - concerns raised in objections 3-9 are primarily concerns about the character of the Applicant, the number of stores and the proposed location. The Board felt that many of these objections were overly personal in nature and somewhat scurrilous. These concerns have been taken into consideration during the analysis of the first two objections.

Public Interest

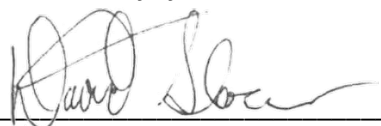
Given the concerns raised in regard to the proximity of the proposed location of this business to the Dawson City youth center, the board felt that it would not be in the public interest at this time to issue this Licence.

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, including the Objections reviewed in this decision, public interest will not be served by granting the Licence to the Applicant.

CONCLUSION

Having considered the Application the Objection, the Applicant's response to the Objections 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 not issue a sub-class 1 license. The location of the proposed premises is contrary to the intent of the *CCRA*'s goal of discouraging cannabis consumption by youth.

Signed on behalf of the Board:



David Sloan

Chair, Cannabis Licencing Board