

In the Matter of the *Securities Act*, R.S.B.C. 1996, c. 418

YourWay Cannabis Brands Inc.

APPLICANT: Jacob Cohen

TO: British Columbia Securities Commission
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Commission Secretary
Email: commsec@bcsc.bc.ca

AND TO: YourWay Cannabis Brands Inc. (**YourWay**)
Suite 2200, HSBC Building, 88 West Georgia Street
Vancouver, BC V6C 3E8
Attention: John Picone, Jordanna Cytrynbaum and Jamie Litchen
Email: jpicone@cassels.com; jcytrynbaum@cassels.com; jlitchen@cassels.com

AND TO: Executive Director
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Gordon Smith, Nazma Lee and Jennifer Whately
Email: gsmith@bcsc.bc.ca; nlee@bcsc.bc.ca; jwhately@bcsc.bc.ca

PART 1: ORDERS SOUGHT

1. The following orders pursuant to s.114 of the *Securities Act*:

- (a) An order that the Management Information Circular dated June 29, 2022 (the “**Management Circular**”) be amended or varied to ensure that shareholders of YourWay have the ability to vote on Jacob Cohen, David Eto, Alcides Alvarado, Brett Mecum, Randy Pullen (collectively “the **Nominees**”) as directors of YourWay at YourWay’s upcoming annual general and special meeting (“**AGSM**”);
- (b) An order that the Proxy Form posted June 29, 2022 (the “**Proxy Form**”) be amended or varied to ensure that shareholders of YourWay have the ability to vote on the Nominees as directors of YourWay at YourWay’s upcoming AGSM;
- (c) An order restraining the distribution of the Management Circular and Proxy Form until they have been amended or varied to ensure that shareholders of YourWay have the ability to vote on the Nominees as directors of YourWay at YourWay’s upcoming AGSM;
- (d) An order requiring YourWay to distribute to all YourWay shareholders entitled to notice of the Management Circular an amended Circular and amended Proxy Form (the “**Amended Circular and Proxy**”) by one of the following methods:

- i. By prepaid ordinary or air-mail to the shareholders at their address as it appears on the applicable securities registers of YourWay as at the record date of June 27, 2022 (the “**Record Date**”).
 - ii. By delivery in person or by delivery to the address specified in the preceding paragraph (i).
 - iii. By email or facsimile transmission to any shareholder who identifies themselves to the satisfaction of YourWay, acting through its representatives, who requests such email or facsimile transmission.
- (e) An order that YourWay file the Amended Circular and Proxy on SEDAR before 4:00pm on July 29, 2022.
- (f) An order prohibiting the shareholders of YourWay from voting at the upcoming AGSM until the Amended Circular and Proxy Form have been distributed in a timely way to shareholders of YourWay.
- (g) In the event that the Amended Circular and Proxy Form cannot be distributed in a timely way to shareholders of YourWay in a way that gives the shareholders a proper opportunity to vote on the Nominees as directors, that YourWay’s AGSM currently set for August 8, 2022 be postponed until 21 days after compliance with paragraphs 1(a) and 1(e).

FACTUAL BASIS

Overview

- 2. On June 16, 2022, the Application Mr. Cohen delivered a notice to YourWay Cannabis Brands Inc. (**YourWay**) in which he advised YourWay that he wanted to nominate five directors to be voted on by the shareholders of YourWay (the **Notice**). YourWay is a reporting issuer listed on the CSE. Mr. Cohen is the CEO and a director of YourWay.
- 3. On June 16, 2022 when Mr. Cohen delivered the Notice:
 - a. The Directors of YourWay had not passed a resolution calling a meeting of the shareholders of YourWay. As a result no meeting of the shareholders of YourWay had in fact been called;
 - b. No information circular had been finalized, printed or circulated;
 - c. No proxy form had been finalized, printed or circulated.
- 4. On June 28, 2022, counsel for YourWay advised counsel for Mr. Cohen that because the shareholders meeting of YourWay had been “adjourned” or “postponed”, the Notice was deficient.
- 5. Mr. Cohen contests that determination, on the basis that:
 - a. No meeting had been called yet so there was nothing to postpone or adjourn; and
 - b. Alternatively on the basis that that technical determination was not in the public interest.

6. On June 29, 2022, just before the holiday weekend, YourWay posted the Management Circular and Proxy Form on SEDAR. Neither the Management Circular or Proxy Form listed any of the directors nominated in the Notice. It is not known whether YourWay has mailed the Management Circular to shareholders of YourWay.
7. Mr. Cohen's is seeking, inter alia, to restrain the distribution of the Management Circular and Proxy Form until both records are amended, varied or corrected to properly reflect the full slate of directors that should be before the shareholders at the AGSM on August 8, 2022
8. This application engages various public interest concerns including:
 - a. The shareholders' right to nominate and elect directors of a corporation;
 - b. Whether YourWay should be allowed to interfere and deprive shareholders of the right to nominate and elect directors;
 - c. Whether management should be able to use technical (and incorrect) interpretations of advance notice provisions to entrench themselves.

YourWay Cannabis Brands Corp.

9. YourWay is a company incorporated under the laws of British Columbia. Yourway was previously known as Hollister Biosciences Inc.
10. YourWay is in the business of manufacturing and distributing cannabis products. YourWay is a publicly traded company and trades on the Canadian Securities Exchange ("CSE") under the symbol YOUR.

YourWay Board of Directors

11. YourWay Board of Directors currently consist of six directors, namely, the applicant Jacob Cohen, as well as Jakob Ripshtein, Eula Adams, Lily Dash, Kevin Harrington and the affiant Mr. Mecum (the **Board**).
12. The Applicant, Mr. Cohen, is a Director and the Chief Executive Officer of YourWay. Mr. Ripshtein is a Director and the Executive Chairman of YourWay. Mr. Adams is a Director and former interim Chief Financial Officer of YourWay. Ms. Dash is a Director and Chair of YourWay's Audit Committee. Mr. Harrington is a Director and Chair of YourWay's Compensation Committee. Mr. Mecum is a Director and serves as an independent member of YourWay's Audit Committee.

YourWay's Articles

13. Part 10 of YourWay's Articles governs the meeting of YourWay shareholders meetings. Section 10.3 provides that "the directors may, at any time, call a meeting of shareholders". There is no other provision in the articles for calling a meeting of shareholders. Calling a shareholders meeting requires a directors resolution.

14. As at June 16, 2022 when the Notice was delivered, no directors resolution calling a meeting of the shareholders of YourWay had been passed by the directors of YourWay.
15. Part 14 of YourWay's Articles governs the election and removal of YourWay directors.
16. Section 14.12 provides that a shareholder may nominate persons for election as directors of YourWay in accordance to the manner set out in section 14.12(b), (c), and (d). Specifically, with respect to when nomination must be delivered, section 14.12(c) provides:
 - (c) to be timely under 14.12(b)(i), a Nominating Shareholder's notice to the Corporate Secretary of the Company must be made:
 - (i) in the case of an annual meeting of shareholders, not less than 30 nor more than 65 days prior to the date of the annual meeting of shareholders; provided, however, that in the event that the annual meeting of shareholders is called for a date that is less than 40 days after the date (the "Notice Date") on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Shareholder may be made not later than the tenth (10th) day following the Notice Date; and
 - ...
 - (iii) Notwithstanding the foregoing, the board may, in its sole discretion, waive any requirement in this §14.12(c).
17. Section 14.12(f) provides that notwithstanding any non-compliance with the notice provisions, shareholders may still discuss the nominations at the shareholder meeting, and the Chair has discretion as to whether to disregard the nomination.
18. Section 14.12(i) provides as follows:
 - (i) In no event shall any adjournment or postponement of a Meeting of Shareholders or the announcement thereof commence a new time period for the giving of a Nominating Shareholder's notice as described in § 14.12(c) or the delivery of a representation and agreement as described in §14.12(e).
19. YourWay's Articles (whether in part 14 or otherwise) do not provide YourWay or its Board the ability to circumvent a shareholder's right to vote on the nominations of directors put forward by a shareholder.
20. Similarly, YourWay's Articles do not provide YourWay or its Board the right to prevent shareholders from receiving advance notice of nominees by way of the Management Circular.

The AGSM and Director Nominations

21. On April 22, 2022, management of YourWay published a Notice of Meeting and Record Date on SEDAR advising that it intended to hold its AGSM at June 30, 2022. At the time management published the meeting materials on SEDAR, the Board of YourWay had not discussed nor passed a resolution setting a date for the AGSM.

22. On May 18, 2022, management of YourWay changed the announced date of the AGSM to July 14, 2022. At the time management changed the announced date to July 14, 2022, the Board of YourWay had not discussed nor passed a resolution setting a date for the AGSM.
23. On May 20, 2022, the Board met to discuss YourWay's acquisition of Ionic Brands Corp. ("**Ionic**"). The Board did not discuss the AGSM during the May 2022 Board meeting. For example, the Board did not discuss the agenda for the AGSM, director nominations or resolutions for shareholder voting.
24. On June 7, 2022, management of YourWay changed the announced date of the AGSM to July 18, 2022. At the time management changed the announced date to July 18, 2022, the Board of YourWay had not discussed nor passed a resolution setting a date for the AGSM.
25. On June 9, 2022, Sandra Ceccacci, current Chief Financial Officer of YourWay, provided the Board with a draft form of proxy, draft form of management information circular, and draft form of board resolution which sought to:
 - a. Ratify, fix, authorize, and approve the AGSM date of July 18, 2022;
 - b. reduce the board of directors from 6 to 5; and
 - c. nominate Mr. Ripshtein, Mr. Cohen, Ms. Dash, Mr. Harrington and Mr. Mecum (the "**Management Nominees**") for election as directors.

(the "**Ratification and Nomination Resolution**")
26. As is clear from the draft form of authorization, no Board resolution had been passed authorizing or approving the setting of an AGSM. Had a Board resolution been passed authorizing or approving the setting of an AGSM, it would not have been necessary to "ratify" such a resolution.
27. Prior to Ms. Ceccacci forwarding the Ratification and Nomination Resolution, the Board had not discussed or approved any of the matters covered in the draft Ratification and Nomination Resolution.
28. Ms. Ceccacci asked that the Board to endorse the Ratification and Nomination Resolution before the end of June 10, 2022. The Board did not return signed copies of the Ratification and Nomination Resolution on June 10, 2022.
29. On June 11, 2022, Mr. Ripshtein called an emergency board meeting to occur on Sunday June 12, 2022. Mr. Ripshtein advised that the purpose of the emergency board meeting was to discuss approval of the draft AGSM documents and approval of the Ionic transaction. No emergency board meeting was held on June 12, 2022.
30. On June 13, 2022, the applicant Mr. Cohen provided notice to YourWay of his intention to put forward the Nominees for shareholders to vote on at the upcoming AGSM.
31. On June 13, 2022, YourWay announced that the AGSM will be further postponed from July 18 to August 8, 2022.

32. On June 13, 2022, management of YourWay changed the announced date of the AGSM to August 8, 2022. At the time management changed the announced date to August 8, 2022, the Board of YourWay had not discussed nor passed a resolution setting a date for the AGSM.
33. On June 16, 2022, through counsel, the applicant Jacob provided to YourWay through their corporate secretary a Nomination of Directors, nominating the Nominees (the 'Advance Notice').
34. On June 28, 2022, the Board met to discuss the slate of nominees to the Board as well as approval of the Management Circular. At the June 28, 2022 meeting:
- a. Yourway's Counsel and Mr. Ripshtein took the position that the Advance Notice which would give shareholders the opportunity to vote on the Nominees was not effective;
 - b. Yourway's Counsel and Mr. Ripshtein advised that it was not necessary for Mr. Cohen to present to the Board the background and details of each of the Nominees;
 - c. Mr. Ripshtein asked the Board to vote on either the Management Nominees (i.e. entrenching himself and others), or voting on the Nominees (which comprised of substantially new individuals, except for Mr. Cohen and Mr. Mecum);
 - d. The Board's vote was tied;
 - e. Mr. Ripshtein exercised his discretionary 'tiebreaker' vote (the casting vote) in favor of putting forward to the shareholders the Management Nominees as directors, thereby entrenching his own position; and
 - f. The Ratification and Nomination Resolution was not discussed, voted on, or approved at the June 28, 2022 board meeting.

35. After the June 28, 2022 Board Meeting, and 12 days after the Advance Notice was delivered to YourWay, counsel for YourWay and counsel for Mr. Cohen had the following email exchange:

June 28, 2022 12:13 p.m. Mr. Sherman (counsel for YourWay) to Mr. Tejpar (counsel for Mr. Cohen)

As your client is aware, the board just approved a slate of director nominees and the circular. As your client was informed during the meeting, the notice that was delivered to Cassels and in your email below was not duly and timely delivered in accordance with the articles of the company and as a result, Jake's nominees are not duly nominated for election as directors at the meeting on August 8th

June 28, 2022 8:36 p.m. Mr. Tejpar to Mr. Sherman

Thanks for your note.

Would you mind clarifying why the notice was rejected? I'm not entirely clear on this. YourWay's mailing address, as indicated on SEDAR, is 2200 – 885 West Georgia Street, Vancouver, BC V6C 3E8 (i.e. the Cassels office in Vancouver).

Happy to get on a call in the morning if you would like to discuss.

June 29, 2022, 2:09 p.m. Mr. Sherman to Mr. Tejpar

Among other defects, as you are probably aware, the notice was not delivered on time by virtue of Section 14.12(i) of the company's articles. Please let us know if you still think a call is necessary.

36. On June 29, 2022, YourWay filed the Management Circular, the Form of Proxy, and the Notice of Annual General and Special Meeting of Shareholders (the "**Notice AGSM**") on SEDAR. Only the Management Nominees were put forward for shareholders to vote on at the AGSM in the materials filed by Management on SEDAR on June 29, 2022.
37. Between June 29, 2022 and July 5, 2022, YourWay counsel and Mr. Cohen's counsel discussed the alleged deficiencies respecting the Nominees and the Ratification and Nomination Resolution. YourWay's primary objection appears to be that the June 16, 2022 nomination was not delivered in a timely manner (i.e. not within the nomination window set under Part 14 of the Articles), as well as some minor defects.

SECTION 114 RELIEF

38. Section 114 of the Act empowers an "interested person" to apply to the Commission for various enumerated types of orders where a company:
- (a) Has not complied or is not complying with the take-over, issuer bids, business combinations or related party transactions requirements (Part 13);
 - (b) Has not complied with or is not complying with proxy requirements (Part 14); or
 - (c) Is not complying with the public interest in respect of, *inter alia*, proxy solicitations.
39. The public interest jurisdiction and the jurisdiction to consider section 114 applications on the basis on Part 14 of the Act was given to the Commission as a result of the legislative changes made to the Act in 2020. To the applicants knowledge, no decisions on that expanded jurisdiction have been made to this date.
40. The use of the public interest jurisdiction in the context of this case will necessitate consideration of the *raison d'être* of proxy rules. In this respect, proxy rules are aimed at promoting shareholder democracy by facilitating shareholders' participation in the governance of widely-held corporations. The objectives of corporate proxy rules are to improve corporate governance and accountability mechanisms by promoting disclosure of information and participation of shareholders in the decision-making process.¹
41. The use of the public interest jurisdiction in the context of this case will also necessitate consideration of the role of advance notice provisions. In particular, it is the position of the application that section 114 confers a jurisdiction to critically evaluate whether the use of the advance notice provision by management of YourWay is abusive of capital markets and shareholders in that it both:²
- a. Constrains the fundamental rights of shareholders; and

¹ CLE BC, *Securities Litigation – 2005 Update: Proxy Contests and Shareholder Meetings*, at. pg. 5

² Gordon T. Houseman, "Advance Notice Provisions; Oppression and the Public Interest" (2013) 71:2 University of Toronto Faculty of Law Review, 28-75 at para.7

- b. Entrenches management. In this respect, the very narrow approach taken by YourWay management to an Advance Notice delivered two months before its AGSM and two weeks prior to the finalization of the Management Information Circular leads inexorably to the conclusion that the decision to reject Mr. Cohen's Advance Notice was so that management could entrench itself.

- 42. In Mr. Cohen's submission, utilization of advance notice provision in the way those provisions are being utilized by management of YourWay will lead to inefficient markets and a decline in investors' confidence in Canadian capital markets.³
- 43. Public confidence in the capital markets also mandates a Panel to consider the responsibilities of boards of directors in implementing corporate actions, including the duties owed by directors to the corporation, the standard of care imposed on directors, and the deference afforded to the business judgment of properly informed directors following appropriate governance processes.⁴

GIVING SHAREHOLDERS THE RIGHT TO VOTE ON MANAGEMENT

- 44. While shareholders of a corporation own the corporation, their governance rights in respect of the corporation are necessarily limited. Directors set the direction of the corporation, while management implements that direction.⁵
- 45. A shareholders primary right is the right to nominate and elect directors. Thus, the shareholders right to nominate, vote on and determine governance of a corporation is fundamental and should not be interfered with lightly.⁶
- 46. When a shareholder no longer has the ability to attempt to replace the directors, the shareholder's only option is to sell its shares.⁷
- 47. Currently, shareholders may, under Canadian business corporations legislation, nominate directors at a shareholders' meeting under a number of different methods: (1) by nominating them; (2) by way of a shareholder's requisition; (3) through a shareholder's proposal; and (4) by way of a proxy fight.⁸
- 48. Advance notice provisions give shareholders the ability to nominate directors. Advance notice provisions can foster shareholder democracy by "allowing shareholders to fully participate in the director election process in an informed and effective manner".⁹
- 49. The common justification for advance notice provisions is that they allow shareholders to be informed of other candidates for directorship. If this is the justification, then it is unclear why advance

³ Gordon T. Houseman, "Advance Notice Provisions; Oppression and the Public Interest" (2013) 71:2 University of Toronto Faculty of Law Review, 28-75 at para.7

⁴ *Hecla Mining Company*, 2016 ONSEC 32 (CanLII), <<https://canlii.ca/t/h4sw8>> at para. 88

⁵ Gordon T. Houseman, "Advance Notice Provisions; Oppression and the Public Interest" (2013) 71:2 University of Toronto Faculty of Law Review, 28-75 at para. 12, 134

⁶ *Echo Energy Canada Inc. v. Challenge Gas Holding AB*, 2008 CanLII 63183 at para. 88; *Re HudBay Minerals Inc.*, (2009), 32 OSCB 3733, 58 BLR (4th) 249, at 3762

⁷ Advance Notice Provisions: Oppression and the Public Interest, (2013) 71:2 UT Fac L Rev 28 – 75, at para 134

⁸ Canadian Corporations Law Reporter: *Commentary - Shareholders*, LexisNexis, at 7736

⁹ Advance Notice Provisions: Oppression and the Public Interest, (2013) 71:2 UT Fac L Rev 28 – 75, at para 2

notice provisions should prevent shareholders from either nominating or informing other shareholders of alternative nominations before a specific date.¹⁰

50. Provisions in articles dictating how shareholders provide notice to management are there to protect other shareholders and management from ambush in that they require sufficient substantive notice to be given in advance of any shareholders meeting. The advance notice requirements are not intended to be a sword in the hands of management to exclude nominations where ample notice has been provided. They are also not intended to allow time for management to entrench themselves.¹¹
51. In this case, YourWay seeks to use Part 14 of the Articles as a sword to exclude the Nominees from being put forward to shareholders to vote on, thereby circumventing shareholders' right to vote.
52. Mr. Cohen gave management of YourWay notice that he would be delivering an Advance Notice on June 13, 2022. At that time, no AGSM had been set. Mr. Cohen's formal Advance Notice nomination for directors was delivered to YourWay on June 16. At that time, no directors' resolution had been passed setting the AGSM.
53. Management of YourWay had ample notice of the slate of Nominees prior to any directors' resolution setting the AGSM.
54. In any event Management of YourWay is actually able to establish any alleged defects in the Advance Notice, any such defects are minor. Substantively, the Advance Notice meets the intent and purpose of an advance notice – to provide management and shareholders with advance notice of an intent to nominate directors and information about the nominees.
55. To the extent there is any alleged deficiency, YourWay's Board had discretion to waive those requirements. In addition, Mr. Ripshtein also has discretion at the meeting to determine whether the nomination should be disregarded. There is no principled reason for YourWay to not put forward nominations to shareholders.
56. YourWay appears to take the position that the deadline to provide the nomination is calculated based upon the originally scheduled date for the AGSM, i.e. June 30, 2022. The Ontario Superior Court has rejected this type of interpretation as contrary to a commercially reasonable interpretation of advance notice provisions.¹² Similarly, in a Commission context, such an interpretation would be contrary to the public interest in permitting shareholders the fundamental governance right to select directors at shareholder meetings.
57. In this instance, the Commission should exercise its discretion under s.114 in order to protect the rights of YourWay's shareholders to nominate and elect directors. Specifically, the Commission should intervene in the public interest to ward off YourWay management's attempts to circumvent the shareholder's fundamental right to nominate directors, as well as a shareholders' fundamental right

¹⁰ Advance Notice Provisions: Oppression and the Public Interest, (2013) 71:2 UT Fac L Rev 28 – 75, at para 76

¹¹ *BullRun Capital Inc v GrowMax Resources Corp*, [2019 ABQB 107](#), paras. 52-53, citing *Orange Capital, LLC v. Partners Real Estate Investment Trust*, [2014 ONSC 3793](#); Gordon T. Houseman, "Advance Notice Provisions; Oppression and the Public Interest" (2013) 71:2 University of Toronto Faculty of Law Review, 28-75

¹² *Orange Capital, LLC v. Partners Real Estate Investment Trust*, [2014 ONSC 3793](#), paras. 55-58, 15, 39

to elect directors. The shareholders' right to elect directors is fundamentally eroded when the choices available for election exclude those choices put forward by shareholders.¹³

58. The Applicant intends to rely on the following at the hearing:

- a. The Book of Documents delivered on July 8, 2022;
- b. Affidavit #1 of Jacob Cohen affirmed on July 9, 2022; and
- c. Affidavit #1 of Brett Mecum, affirmed on July 11, 2022.

Dated at the City of Vancouver, Province of British Columbia, this 11th day of July, 2022



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¹³ Gordon T. Houseman, "Advance Notice Provisions; Oppression and the Public Interest" (2013) 71:2 University of Toronto Faculty of Law Review, 28-75; *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001 SCC 37](#) (at paras. 41-45); *Patheon Inc.*, 2009 ONSEC 13 (CanLII) <https://canlii.ca/t/h4sqv> at para. 118; *Sterling Centrecorp. Inc.* (2007), 2007 ONSEC 9 (CanLII), 30 O.S.C.B. 6683 at para. 212.; *Growthworks Canadian Fund Ltd.*, 2011 ONSEC 17 (CanLII), <https://canlii.ca/t/h4ssg> at para. 36