**Agenda - Executive Policy Committee - September 18, 2002**

## DELEGATIONS

2. Vern Ruml, owner of Ruml's Reptiles, to be heard with respect to prohibiting the use of wild and exotic animals from entertainment events within the City of Winnipeg. File EL-10 (Vol. 3)

Richard Bloom, Chairman of the Circus Committee, and Gord Pawling, Treasurer of the Circus Committee, Shrine Circus, to be heard with respect to prohibiting the use of wild and exotic animals from entertainment events within the City of Winnipeg. File EL-10 (Vol. 3)

(See attached submission from Chapman, Goddard Kagan)

Vicki Burns, Executive Director, Winnipeg Humane Society, to be heard with respect to with respect to prohibiting the use of wild and exotic animals from entertainment events within the City of Winnipeg. File EL-10 (Vol. 3)

Len Wolstenholme, Xentel DM Incorporated, to be heard with respect to with respect to prohibiting the use of wild and exotic animals from entertainment events within the City of Winnipeg. File EL-10 (Vol. 3)

(See attached submission)

(See Clause 1 of the Report of the Standing Policy Committee on Protection and Community Services dated July 8, 2002)

# Chapman Goddard Kagan Barristers & Solicitors

George E. Chapman, Q.C.
Alan R. Goddard, B.A., LL.B
Donna G. Kagan, LL.B
Kelly P. Land, B.A., LL.B

Almer N. Jacksteit, B. Comm., LL.B
F. G. Randy Woodman, B.A., LL.B
Michael J. Law, B.A., LL.B
Esmeralda K. Bautista, B.S.C., LL.B

'02 SEP -6 AM 8:07

1864 Portage Avenue
Winnipeg, Manitoba, R3J 0H2
Ph. (204) 888-7973
Fax (204) 832-3461

Geo. Thos. Chapman, Q.C. (1923 - 1985)

E-Mail address: gechap@mb.sympatico.ca

September 4th, 2002

Please refer to File No.

The City of Winnipeg
Clerk of the Executive Policy Committee
510 Main Street
Winnipeg, MB R3B 1B9

Dear Sirs:

We represent the Shriner's organization who put on an annual circus in the City of Winnipeg as part of it's fund raising activities to help crippled children.

Several members of the Shriners attended the Committee Meeting of the Protection and Community Service on July 8th and we understand the result of that Committee Meeting, at which the Shriners requested either an exemption or alternatively a delay in implementation, they indicated they would like to appear before the Executive Policy Committee meeting scheduled for August 21st to reinforce their representations and position in the matter. We understand now that meeting has been postponed indefinitely.

Because the matter has not been finally resolved and because of the extensive lead time required in organizing a circus of the magnitude brought to Winnipeg each year by the Shriners, we have been advised the Shriners have booked the circus for 2003 for the time frame from between early March to the end of May.

We would request you confirm that any by-law dealings on the issue of animals being used in the circus reflect that this commitment has been made in good faith and that if there is to be any change made in this matter, the change would be effective for the 2004 year, if it effects the operation of the circus.

Please confirm that the position of the Shrine will be reflected in the final decision in this matter. We look forward to hearing from you at your early convenience.

Yours very truly,

CHAPMAN GODDARD KAGAN
Per:

George E. Chapman, Q.C.

GEC/ps
C.C. Khartum Temple, Attn. Richard Bloom

**Presentation to Executive Policy Committee, City of Winnipeg**

**September 18, 2002**

Ladies and gentlemen, I am Director – Regulatory, Government and Public Affairs with Xentel DM Incorporated. Thank-you for this opportunity submit this presentation and for the prompt and courteous assistance we have received from City staff.

Xentel DM is a Canadian benefit events company with 23 offices across North America and a primary producer of Shrine circuses in Ontario, Quebec and Atlantic Canada. The Winnipeg Optimists Circus is one of over 700 events we produce annually across North America, all to help charities and non-profit organizations build their public profiles and raise much needed funds. We have been helping not-for-profit and charitable organizations for over 22 years.

As Producer, it is our responsibility to deal with the logistics of bringing the circus to town, arranging the venue and necessary permits, compliance with animal protection legislation, public safety, care of performers, and related issues.

Winnipeg City Council is being asked to prohibit, ban circuses with animal performers. You have been asked to decide that circus animal performers that we bring to Winnipeg are, by definition, abused or maltreated. It has also have been suggested to you that animal performers represent a serious risk to public safety. Neither allegation is true of the Winnipeg Optimists Circus.

Ladies and gentlemen, we live in a time when the impact of poaching and loss of natural habitat is jeopardizing the future of some of the most awe-inspiring animal species on earth. One very effective way to combat this trend is to bring people

closer to these remarkable creatures thereby helping us all to develop more respect and concern for their futures.

Circuses like Winnipeg Optimists Circus are the only venues where Canadians have the opportunity to experience these marvellous animals close up, working in partnership with human performers; they give us and our children an opportunity to observe and respect the intelligence, skills and characters of elephants, lions and tigers in a way TV, zoos, videos and books never will. With that respect comes increased willingness to act to preserve these species.

Now, in determining how to respond to the key issues before you, you must consider a number of questions:

1. What evidence is there that circus animals that come to Winnipeg are abused or maltreated?
2. What of the rights of several thousand Winnipeg residents who wish to attend circuses with animal performers?
3. What laws and organizations already exist to protect these animals?
4. Does this Council have the authority to provide any greater protection for circus animals than other levels of government?
5. Does this Council have the authority to ban circuses on philosophical grounds?
6. Is there really a public safety issue to be addressed?

**1. What evidence is there that circus animals that come to Winnipeg are abused or maltreated?**

None. Year after year veterinary inspections of Winnipeg Optimist Circus have found no such evidence. The reason is simple. Our animal performers, all born in a circus or zoo environment, enjoy the best of dietary and medical care and quality of life, commonly enjoying life-spans at the upper end for their species. These animals

represent a considerable investment of time, money and emotional capital on the part of their owners and trainers. They have every reason to protect their emotional and financial investment.

## 2. What of the many residents of Winnipeg who wish to attend circuses?

On average about 11,000 Winnipeg residents attend the Optimists Circus each year. By buying tickets and advertising they are voting with their dollars, telling us all that they value the Optimists Circus and want to support it.

But there is also a rights issue here. The Canadian Charter of Rights and Freedoms likely protects the right of Canadians to attend a circus with animal performers if they so chose. And, the Charter certainly protects the right of our company, the Optimists or any other organization to produce such circuses in a manner consistent with applicable prevailing federal and provincial laws and municipal by-laws.

## 3. What laws and organizations already exist to protect these animals?

FEDERAL - *The Health of Animals Act,* which, among other things, governs the entry or movement of all forms of livestock in Canada. *The Criminal Code of Canada (Section 446-1)* says it is an offence to "wilfully cause or permit to be caused, being the owner, unnecessary pain, suffering or injury to an animal or by wilful neglect, cause damage or injury to animals while they are being driven or conveyed." Amendments to increase animal protection and penalties under the Criminal Code of Canada for animal abuse and maltreatment were introduced in Parliament as Bill C-15, and we are in favour of the proposed amendments.

PROVINCIAL – Unlike some provinces, Manitoba does not have specific individual legislation regarding animal control or standards for care of animals. For example, some provinces have Society for the Preventions of Cruelty to Animals (SPCA) acts. In 2000 Nova Scotia passed some of the best researched and most comprehensive legislation with its Standards for Exhibiting Circus Animals in Nova Scotia. Our circus supports and complies with these stringent standards – even outside Nova Scotia. Like the Canadian Federation of Humane Societies, we believe it is incumbent upon provincial governments to adopt standards similar to Nova Scotia's. They have the authority to do this, municipalities and cities on their own do not.

So, there exists considerable protection for the welfare of circus and other animals under both federal and some provincial law. The necessary legal tools and power reside with those levels of government.

**4. Does this Council have the authority to provide any greater protection for circus animals than other levels of government?**

No. *The City of Winnipeg Act, Section 18, subsection 535 and 536* provides authority to the City of Winnipeg to, among other things, "prevent the keeping or harbouring (of animals) in the whole or any part of the city". It is clear from the context that this authority is intended solely for the purposes of protection of residents of Winnipeg from risks that animals may pose to their safety. In considering the use of this authority it may be helpful to consider the decision of the Ontario Court of Appeal in the case *Stadium Corp. of Ontario v. Toronto (City) (1993), 12 O.R. (3d) 646 (Ont. C.A.*). Among other findings of the Court were these:

- The power to protect animals from abuse is not within municipal jurisdiction;

- A municipality may regulate circuses only in the interests of protecting the public from some demonstrable danger. Such regulation may not take the form of a de-facto ban;
- Municipalities do not have the authority to control all animals in all circumstances within their borders;

**5. Is there a public safety issue to be addressed?**

There is not. We know of no instances where any member of the Winnipeg public has been injured, or even threatened with injury, from any animals associated with this circus. Contrast this to the statistics of assaults on people by dogs. A recent article in Reader's Digest reports that over 476,000 Canadians were bitten by dogs last year. That statistic reminds us of the reality that circus animals pose virtually no threat whatsoever when compared to common domestic animals such as dogs.

Moreover, circus venues are inspected by local permit authorities, fire departments and police departments, and comply with all applicable public safety laws and regulations.

Some suggest that circus-goers are at risk of contracting tuberculosis from elephants. According to Health Canada, the Mayo Clinic, and the U.S. Centers for Disease Control, people are only at risk of contracting TB from someone who has an active form of the disease with whom they are in close personal contact for several hours a day over a period of months. There is not one known case of a circus in North America contracting TB from an elephant in over 100 years of medical and circus history.

So there is no legitimate related public safety issue that is not already well managed. And there is certainly no basis to ban circuses with animal performers on grounds of public safety.

## 6. Does the City of Winnipeg have the authority to ban circuses on philosophical grounds?

We believe it does not. In Canadian law animal protection is clearly a matter of provincial and federal jurisdiction. Moreover, whatever one's individual or collective beliefs about circus animal performers, any attempt to ban or prohibit circuses with animal performers in the City of Winnipeg on philosphical grounds would contravene the Canadian Charter of Rights and Freedoms.

Ladies and gentlemen, we thank you for hearing and considering our comments. We urge you to focus on the reality of what Council is being asked to do, and to carefully consider what authority the City of Winnipeg has – and does not have - in this area. We are confident that if you do you will not prohibit circuses with animal performers.

P.L. Wolstenholme
Director - Regulatory, Government and Public Affairs
XENTEL DM INCORPORATED
Ph: (403) 531-6157