SUBMISSION TO THE CITY OF WINNIPEG

MAYOR'S OFFICE

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"LICENCING REQUIREMENTS IMPOSED TO DIRECT SELLERS IN THE CITY OF WINNIPEG"

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1. EXECUTIVE SUMMARY

For the first time in the 30 year history of By-Law No. 201/72, the City of Winnipeg's Licensing Services Branch (the "Branch") has just now begun relying on it to impose an annual $135 "business licence in lieu of business tax" (the "Business Licence") to all direct selling independent contractors, representatives and agents ("ISCs") residing in Winnipeg.

In addition, the Branch has also demanded that these same ISCs obtain one-time Home Occupation Permits, at an additional cost of $111.87, and an their annual Canvasser's Licences, at an annual cost of $65.

This can amount to a total of $312 in a single year!

It is the strong opinion of the DSA that the Branch's new approach amounts to a barrier to entry for individual ISCs and the experience is showing a chilling-effect on the direct selling industry in Winnipeg. And, as a result of these combined taxes, the DSA expects that within a short period of time it could have a dramatic effect on the industry.

The DSA proposes that licensing cost be kept at a level, which will not be a barrier to direct selling. The recent changes to the City of Winnipeg Act provide the background for a rational in finding a solution to this problem. This submission provides a series of recommendations to address this matter. Should the City be in agreement with our recommendations, the DSA will be committed to work constructively with the City, by encouraging its members and the ISCs to comply with the revised requirements, as those will be considered best suited to the industry.

2. THE DIRECT SELLERS ASSOCIATION OF CANADA

The Direct Sellers Association of Canada (DSA), founded in 1954, is the national Association of Canadian direct selling companies and their ISCs. The mission of the DSA is to further enhance trust, confidence, and growth in the Canadian direct selling industry through self-regulation and ethical conduct.

The DSA and its 50 member companies are committed to the high industry standards set out in its Codes of Ethics and Business Practices. The purpose of the Codes is to emphasize the sense of responsibility all DSA members should express and exhibit towards Canadian consumers and

the general public. The Codes applies to direct sales practices used in the marketing of products and services and refers to the relationship DSA members and their ISCs should strive to have with the consumer and the community.

The direct selling companies and their ISCs market and distribute a wide variety of products and services such as cosmetics and personal care items, home appliances, house ware specialties, household cleaning products, candles, natural health food products, toys, educational products, and telecommunication services, just to mention a few.

The DSA shares its expertise and knowledge with all levels of government. Papers and comments have been submitted on draft legislation, proposed regulations or public policy pertaining to Finance, CCRA, Health Canada, International Trade, provincial consumer protection legislation and municipal by-laws, to name a few. It also promotes the principles set out in the Competition Act through its close ties with the Competition Bureau.

3. THE DIRECT SELLING INDUSTRY

By definition, a direct sale is the sale of a consumer product or service by an ISC in a face-to-face manner, away from a fixed retail or business location.

Surveys indicate that less than 10% of ISCs are involved in direct selling on a full time basis, meaning more than 30 to 40 hours a week.

The DSA also represents over 1 million ISCs, 75% of whom are women, and of which, 50% have a full or part time job in additional to their direct selling activities.

Through their involvement in the direct selling industry, many ISCs can involve themselves in a manageable economic opportunity, which can further family income with minimal disruption and minimal investment. Furthermore, the opportunity is available to all members of Canadian society, everywhere in Canada, whether living in urban or rural communities.

4. THE RECENT APPLICATION OF THE BUSINESS LICENCE

Recently, Winnipeg's Licence Services Branch has been attempting to apply, on what appears to be an indiscriminate basis, each of the (1) Business Licence ($135), the (2) Home Occupation Permit ($112), and the (3) Canvasser's Licence ($65), to any and all Winnipeg residents who become ISCs, without regard to their level of economic activity.

Furthermore, we understand the Branch made no inquiries as to the nature of the ISC's motives in joining the direct selling industry (i.e., whether "business" or "profit" related, or of a more "personal" nature), or the precise use of their home premises, if any.

From the DSA's perspective, the Branch appears to be taking the position that once an ISC has signed an independent contractor agreement, the ISC is automatically liable for all of these fees.

The DSA says that if the approach being taken by the Branch is to persist, it will have a dramatic effect on direct selling companies operating in Winnipeg, forcing them to reconsider operating in Winnipeg, on account of the serious "barrier to entry" that these new charges would represent. In effect, the present administration of the By-Laws – as interpreted by the Licence Services Branch – could result in the elimination of the direct selling industry in Winnipeg.

5. IMPACT OF THE CIVIC CHARGES ON THE DIRECT SELLING INDUSTRY

5.1. Business Licence & Occupation Permit Will Eliminate Direct Selling in Winnipeg

In our opinion, the economic result of the Branch's actions is to create a $312 barrier to entry. While New Recruits will now simply not enter the industry, the established ISC's that have been successful in the past – and whose successes and sustained earnings are dependent on recruiting new and fresh ISCs – can be expected to either leave the industry, leave the City, or wind-down their businesses. Without New Recruits, their businesses and their earnings will not be sustainable.

5.2. Impacts on the City of Winnipeg Will be Negative

While the future of direct selling in Winnipeg is being seriously challenged by the indiscriminate imposition of the Business Licence, Home Occupation Permit, and Canvasser's Licence, the DSA believes that the City of Winnipeg would also feel the effect of the loss of the direct selling industry, as follows:

5.2.1. Incremental Revenues Earned and Spent in Winnipeg will All Disappear

The DSA says that by their very nature, ISCs earn part-time revenues from their involvement in the DSA. If the direct selling industry disappears in Winnipeg, so too will these incremental revenues, currently being enjoyed by citizens of Winnipeg.

For ISCs with good to moderate sources of primary income, the loss of direct selling revenues will mean a reduction in the amount of money they have for discretionary spending. This will reduce the amount of money being spent in Winnipeg, having a further chilling effect on Winnipeg's overall economy, and a trickle-down effect on businesses that currently enjoy the benefits of that additional discretionary spending.

For ISCs with limited sources of primary income, the loss of direct selling revenues will mean a reduction in the amount of money they might have relied on for the necessities of life (food, shelter, clothing, etc.). This could increase the welfare burden for the civic agencies charged with administering social safety net programmes, straining Winnipeg's services, and adding an economic malaise in many of the City's residents.

5.2.2. Tertiary Economic Benefits Will be Eliminated

The direct selling industry traditionally operates best with a high degree of "motivation" being instilled in the ISCs. Typically, direct selling companies help generate motivation amongst ISCs through frequent business meetings, conventions, and gatherings, all usually held in hotels, convention centers, or like local establishments – often with large numbers of persons attending, and consuming local accommodations, food, and beverages.

The elimination of the direct selling industry in Winnipeg will again have a trickle-down effect, potentially causing each of these tertiary economic benefits to disappear.

5.2.3. Women Put Further At Risk

As previously mentioned, 75% of ISCs in the direct selling industry are women. Given that women in our society are already at risk at a number of levels, the DSA says that eliminating the direct selling industry in Winnipeg could increase the level of risk to which women in Winnipeg are put – financially, psychologically, and socially.

Financially, the additional earnings offered to women by the direct selling industry – and which has traditionally allowed many women to break the cycle of dependence on others – will be

eliminated.

Psychologically, the opportunity to be one's "own boss", and to create one's "own business" – and which has traditionally allowed many women to stand up as independent contributor's in Canadian society – will be lost.

Socially, the opportunity to liaise with other women in the business and social contact situations that direct selling offers will be gone. This network has also led to women working together for fundraising and other significant social contributions.

6. SPECIFIC RECOMMENTATIONS TO ADDRESS THE CURRENT SITUATION:

6.1. Preamble

As described above, it is the combined effect of three separate but somewhat related civic charges that place the ISCs in the City of Winnipeg in such a precarious position:

1. the Licence Fee in Lieu of Business Tax, which is applied pursuant to *The City of Winnipeg Act* and by virtue of By-Law 201/72 (the "Licence in Lieu of Business Tax By-Law");
2. the requirement to obtain an annual Canvasser Licence for those ISCs who make home visits, as set out under Licence By-Law 6551/95 (the "Licence By-Law"); and
3. the interpretation by the City's Planning and Development Department of Zoning By-Law 6400/94 (the "Zoning By-Law") under which the activities of all ISCs appear to be universally categorized as "home occupations" within the meaning of the Zoning By-Law, and which require "Home Occupation Permits".

The following is a separate discussion on each of these separate charges, and provides some specific recommendations to address the various concerns raised in this submission, to the benefit of i) Winnipeg's citizens who appreciate the opportunities that direct selling brings about, ii) Winnipeg's citizens who appreciate the direct selling shopping experience, iii) the direct sellers and iv) the City, who benefit from the economic activity generated by direct sellers in the Winnipeg community.

6.2. The Canvasser's License

Until recently, the Canvasser's Licence was the only licensing requirement imposed on Direct Sellers in the City of Winnipeg. The By-Law currently provides for an annual license fee of $65. The term « canvasser » is defined in the License By-Law to be: « A person who calls in person on prospective customers to solicit orders for the purchase of goods, wares or merchandise of any kind for future delivery (…). »

This definition of a « canvasser » has been in the By-Law for a number of years and refers to the traditional « door-to-door » method. We submit that the activities carried out in direct selling have significantly evolved since the By-Law was adopted and the definition mentioned above captures only a relative portion of direct sellers. In today's environment, some ISCs conduct their activities in this method. Many others do not. For example, an increasing number of ISCs now carry out their business mostly from their workplace, where they sell products to co-workers. Others will only sell products to their relatives and friends and will not solicit orders by going door-to-door.

Our understanding of the main purpose for the Canvasser's License, at the time it was established, was to regulate and control the activities of canvassers. However, the Licensing By-Law only contains two provisions placing restrictions on canvassers. First, section 4 (13) (a) provides that a canvasser's license may not be issued to any person who has been convicted of an offense under the Competition Act in the last three years. This would not appear to be a situation, which would arise frequently. Second, section 18 provides that canvassing may only be carried out between 9 :00 a.m. and 7 :00 p.m. on any day. Our understanding is also that those provisions of the By-Law are rarely applied and that the City receives very few complaints (if any) regarding the direct selling industry.

Many jurisdictions across Canada have done away with the regulation of canvassers, relying instead upon the codes and practices of industry organizations, such as the Direct Sellers Association, and upon the provincial legislations, which already regulates direct selling activities and protect the consumers. It is to be noted that the provinces of Ontario and British Columbia have even decided to eliminate any and all licensing requirements for direct sellers, as they recognize that this industry is self-regulated and abides by strong ethical principles.

If the City of Winnipeg still considered it necessary to regulate the activities of canvassers, by setting hours of canvassing, it could still do so by way of a separate by-law, such as through the existing by-law dealing with the License in Lieu of Business Tax.

IN SUMMARY, our views regarding the Canvasser's License are as follows:

(1) The current definition of « canvassers » is somewhat archaic and only captures the activities of a relative portion of direct sellers.
(2) The Canvasser's License regulates the direct selling trade in a limited manner.
(3) The Canvasser's License regulates a trade, which has proven to be the source of little issues or concerns for the City.
(4) The Canvasser's License, in combination with other civic taxes and fees, contributes to the significant bars to entry faced by the direct sellers.

Should the City feel that, despite the above, the canvassers' activities should still be regulated at the municipal level, the DSA feels that:

(5) The Canvasser's License regulates a trade, which could easily be regulated under another licensing by-law, such as through the License in Lieu of Business Tax.

6.3. The License in Lieu of Business Tax

Under the current version of the *City of Winnipeg Charter Act* and the License in Lieu of Business Tax By-Law, the City has established a $135 annual license fee in lieu of business tax for those premises that are identified by the City Assessor as being impractical to assess.

Through prior representations, the DSA has expressed its strong disagreement with the manner in which the Licensing Branch applies the above By-Law, i.e. the fact that it is being applied on an indiscrimate basis and to an inordinately large number of persons who are ISCs, without regard whatsoever to their particular situation.

The new legislation, Bill 39, which modifies the *City of Winnipeg Charter Act* effective on January 1, 2003, addresses in part the DSA's concerns and creates an opportunity to address the issues raised in this submission and re-examine the appropriate level (if any) of business tax which should be applied to direct sellers residing within the City of Winnipeg.

Under the new Act, the License Fee in Lieu of Business Tax operates under somewhat different parameters. Indeed, it provides for an important exemption to the requirement to assess all premises, under section 316 (3), which stipulates that, the business assessment and the requirement to assess does not apply to premises « the use of which is not for the preponderant

purpose of earning a profit ». Similarly, section 320 (1) (which deals with the power of Council to enact a by-law providing for a License in Lieu of Business Tax) limits the application of such a by-law to persons who carry on a business « for the preponderant purpose of earning a profit ».

The DSA is pleased with the legislative changes brought forward and supports the premise under which those provisions were adopted. Building constructively from those legislative changes, the DSA hereby provides specific recommendations on how the problems raised by the DSA in this submission can be further addressed.

6.3.1. Notion of « use of premises not for the preponderant purpose of earning a profit»

The introduction of this notion in the *City of Winnipeg Act* eliminates the need to assess portions of residential premises, such as the kitchen table of ISCs, which may be used occasionally for the activities of ISCs, but which are not used predominantly for profit-making activities. This would apply, for example, to those ISCs whose purpose it is to sell products for social reasons, as a hobby, to receive personal discount on merchandise, or where the realization of a real « profit » is not attainable given the part-time allocation of resources, versus the potential returns.

This legislative change will require a change to the current practices of the Licensing Branch, which do not currently distinguish between the motivations and expectations of ISCs. A level of discretion will have to be exercised by the Licensing Branch and appropriate policies established for the purpose of making a distinction between ISCs whose primary motivations are not profit-oriented and those who clearly operate a « business » in the conventional sense.

In past communications with the City's Licensing Branch, they have expressed some level of discomfort with applying their discretion in enforcing the by-laws, which would, in their opinion, add to the burden of the day-to-day enforcement activities. In an effort to help the City establish criteria guiding the interpretation of the new legislation, the DSA has gone through the exercise of establishing a threshold, below which it is clear that ISCs purchases of direct selling products are not made for the preponderant purpose of earning a profit. In establishing this threshold, the DSA took into consideration two main factors, namely: (1) the fact that a portion of ISCs'

purchases are for self-consumption[1] (2) the fact that ISCs have multiple expenses to incur and absorb, in order to run their business.

After having gone through the above exercise, the DSA feels it is clear that ISCs purchasing products for $5,000 or below are not in business for the preponderant purpose of earning a profit. Although there are obviously variances amongst ISCs in terms of the level of investment in their business and the allocation of their resources, the following provides a good example of a typical ISC's purchasing pattern, and his/her related business expenses.

	$5,000 (purchases at ISC's price)
minus	$2,000 (goods purchased for self-consumption)
	$3,000 (Net Sales)
x	30% (discount level)
	$900 (profit)
minus	$200 (brochures purchase)
minus	$600 (demonstration products)
	$100
minus	travel expenses (gas, use of automobile), delivery expenses (paper bags, etc.), stationery, etc.
=	**$0**

Finally, we submit that the use of the above threshold as a guiding principle would not only facilitate the application of the law from a practical point of view, but would also improve the transparency and predictability of the licensing and taxation measures, for the citizens affected by the By-Law.

6.3.2. Fee applicable to direct sellers

Section 320 (1) will also now allow differential license fees to be established on the basis of:

- classes of persons;
- classes of premises; and

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[1] In 1996, Ernst & Young, at the joint request of the Direct Sellers Association and Revenue Canada, conducted a survey of ISCs across Canada amongst 320 ISCs who were randomly selected from 27 different companies. It was determined by the companies surveyed that the vast majority (90% plus) of the purchases under $2,500 were 50% or more for self-consumption and not for resale.

- classes of businesses.

The granting of this power to Council creates the opportunity to deal directly with the establishment of more appropriate levels of License Fee in Lieu of Business Tax for those direct sellers who are carrying on their businesses for the predominant purpose of earning a profit. A separate category specific to direct sellers could be established, with a License Fee in Lieu of Business Tax that is more appropriate to the actual scale of the business.

In this regard, the $65 which was charged in the past as a canvasser license fee alone was not perceived as a major impediment to ISCs who were actively engaged in a direct selling business. Based on the typical earnings of ISCs[2], the DSA would support the establishment of a $65 license fee for the direct sellers, as a class of business. We also submit that if such fee was established, the compliance rate would improve, given that (1) it would likely not have the effect of causing ISCs to quit direct selling to avoid having to pay exorbitant fees (which is currently the case) (2) the DSA and its member companies would support a fee in the amount of $65 and would be willing to take positive steps to encourage compliance.

IN SUMMARY, our views regarding the License in Lieu of Business Tax are as follows:

(1) A majority of ICSs will fall under the exemption provided in Bill 39, which provides that earning a profit is key and fundamental to determining if the License in Lieu of Business Tax should be levied. As indicated above, anyone purchasing less than $5,000 would be exempted.

(2) The City should take advantage of the new provision under Bill 39, allowing it to establish more appropriate level of fees, per classes of business. The City should establish the fee applicable to ISCs at $65, which is the total fee that was considered applicable to direct sellers, until recently. In the alternative, the City should work with the DSA to establish a fee structure suitable to the direct selling industry.

(3) If the DSA's recommendation is accepted by the City of Winnipeg, the DSA would work with the City of Winnipeg and encourage its ICSs, through correspondence and documentation, to register and pay for the tax, where applicable.

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[2] On average, a majority of ISCs make fewer than five sales per year, and net an average of only $1,000 to $2,000 per year in revenues.

6.4. Home Occupation Permit

The home occupation provisions of the Zoning By-law are currently being interpreted by the Planning and Development Department as being of application to all homeowners who become ISCs, indiscriminately, regardless of the scale and scope of their activities. This appears to be on the questionable theory that there is a "use" of the Sales Dealers' homes that arises out of even the most limited activities by the Sales Dealers, such as completing order forms or paperwork, even if this is simply being done on the kitchen table.

In the DSA's view, this stretches the concept of "home occupation" beyond its original intention and its defined scope.

In the majority of cases, the activities of ISCs are not inconsistent with the use of their homes as "dwellings" within the meaning of the Zoning By-law. Consideration must be given as to the ordinary range of activities that occurs in a typical household. There are certainly activities that are part of ordinary home life, such as engaging in limited direct sales activities, hobbies and similar activities that are consistent with use of premises as a dwelling and do not cross the “boundaries” of becoming what would normally be considered to be a home occupation. Moreover, the City should consider that zoning by-laws are usually legally interpreted in a restrictive fashion, as derogating from the rights of the individuals to enjoy their property for otherwise lawful purposes.

The DSA recognizes that the City of Winnipeg has a legitimate interest in preserving the character of residential neighborhoods. The Zoning By-law is an important part of this effort. Nonetheless, it needs to be applied in a reasonable fashion, reflecting the reality of one that occurs in the ordinary home. The use by ISCs of their homes does not place additional demands on city services or on city neighborhoods. Their activities do not generate traffic, noise or nuisance. To the contrary, these activities permit citizens, mostly women, to take an active part in their communities.

IN SUMMARY, our views regarding the Home Occupation Permit are as follows:

1) The DSA objects to the application of the Home Occupancy permit requirements to all ISCs, regardless of the scale of and scope of their activities.

2) The DSA feels that when consideration is given to the level of direct-selling activities taking place in the ISCs home, one can only conclude that the majority of ISCs do not fall under the

scope of By-Law 6400/94.

3) However, the DSA does concur that if some ISCs use a fixed portion of their home dedicated principally for the business of direct selling, then they would be subject to obtaining the permit and, once again, the DSA would work with the City of Winnipeg to encourage such ISCs to comply.

7. MOVING FORWARD

Since its inception, the DSA has had many successes working in conjunction with various federal and provincial governmental organizations, to achieve results beneficial to all stakeholders, including the government, the industry, the ISCs and the consumers.

Clearly, government and businesses are forming more and more partnerships and alliances to promote business rather than to stunt it. This should be kept in mind, moving forward.

In that spirit, the DSA has provided concrete recommendations and is committed to work constructively with the City of Winnipeg in encouraging compliance by the ICSs to pay the charges, should the above recommendations be accepted and implemented.

If the above recommendations are not satisfactory or cannot be reasonably modified however, for the reasons stated in this submission, the DSA cannot agree to the ongoing imposition of the three charges and will advise all its member companies that it does not support the City's position and that each member and their ISCs should consider contesting these fees, wherever appropriate, whenever they are levied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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