

COMMITTEE OF THE WHOLE—APRIL 24, 2012

REQUEST FOR BULLHOOK BAN

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor recommends that this report be received and that no further action be taken.

Contribution to Sustainability

Not Applicable

Economic Impact

There is no economic impact as a result of this Report.

Communications Plan

A copy of this Report has been forwarded to the deputant and iMarketing Solutions Group Inc., a circus producer, prior to the Committee of the Whole Meeting.

Purpose

The purpose of this report is to respond to Council direction to provide information on the process and implications of enacting a bullhook, whip and electric prod ban in the City of Vaughan.

Background - Analysis and Options

On February 21, 2012, Council requested that Staff provide information on the process and implications of enacting a bullhook, whip and electric prod ban in the City of Vaughan.

- **Legislation and Case Law**

Paragraph 9 of section 11(3) of the *Municipal Act, 2001* provides that municipalities may pass by-laws relating to animals. Section 8 of the Act provides that the City can “regulate or prohibit” the matter, provided the by-law is enacted for a proper purpose, and provided its enactment does not infringe on federal areas of jurisdiction.

These principles were addressed by the Superior Court of Justice in *Xentel DM Inc. v. Windsor (City)*, (2004), 50 M.P.L.R. (3d) 165. In this case, the City of Windsor passed a by-law prohibiting circuses. This ban came as a result of a letter submitted to Windsor Council by Zoo Check Canada, an animal rights advocacy group. The letter primarily dealt with the welfare of circus animals, but in passing, mentioned issues of public safety.

Xentel DM. Inc., a circus producer, challenged the by-law on the basis that it was an attempt to regulate morality thereby intruding on Parliament’s criminal law power. The City of Windsor argued that the by-law was passed for the purpose of protecting the citizens of Windsor from animal attacks, a proper municipal purpose. The Court noted that the City did not undertake any independent studies on the issue of public safety and exotic animal performances, nor did it undertake any investigations or risk analysis on the causal connection, if any, between exotic animal performances and public safety. Based on the foregoing, the Court held that the purpose of the by-law was animal welfare, not public safety. Accordingly, the by-law was quashed as an infringement of the criminal law power of Parliament. It should also be noted that the Court found

that the by-law infringed upon freedom of expression as guaranteed by section 2(b) of the *Charter of Rights and Freedoms*.

Generally speaking, Parliament has exclusive jurisdiction to pass legislation with respect to issues of morality. By-laws, which have the primary purpose of regulating morality, infringe on this jurisdiction and are therefore *ultra vires*. This does not mean that by-laws cannot touch upon morality, but the morality aspect must be incidental to a proper purpose. For example, by-laws which prohibit lap-dancing are inherently morality based. However, the primary aspect of such a prohibition is rooted in health and safety, a proper municipal purpose. In determining the “pith and substance” or purpose of a by-law, a Court will generally look at the discussions of Council leading to the enactment of the by-law, the information that Council had before it, as well as the effect of the by-law.

- **Consultation with Deputant**

Legal Staff met with the deputant and a representative from Zoo Check Canada on March 8, 2012 to obtain input on the issue of a bullhook ban being sought. The deputant confirmed that the purpose of a bullhook ban was for animal welfare. Staff requested any reports or studies that considered the issue of public safety and the use of bullhooks and other similar implements. However, to date, none have been provided.

Staff were also contacted by representatives from iMarketing Solutions Group Inc. on March 26 to discuss the issue of a bullhook ban. iMarketing Solutions Group Inc. is the successor company to Xentel DM Inc. These representatives provided the affidavit of Mr. Gary Stamm, an expert statistician, which was the same affidavit that was accepted by the Court in the Xentel case. Mr. Stamm examined statistics in North America since 1990 and estimated that there were 350,000,000 to 450,000,000 audience attendances to circuses where there were live animal performances. Of these attendances, there were no fatalities, and 1 injury from elephant-related performances. These statistics suggest that the risk of public injury at a circus event is remote, even without an examination of the causal connection between the use of bullhooks and public safety. The representatives also confirmed that they have been operating in Vaughan for approximately 30 years without incident.

- **No Evidence of Public Safety Purpose**

There is no evidence which would substantiate a causal link between the use of a bullhook and public safety. There is evidence, however, that the incidence of elephant related human fatalities/injuries in North America is statistically insignificant. The deputation and associated materials is primarily concerned with animal welfare. In these circumstances, the Court would characterize a by-law banning bullhooks as an attempt to legislate in the area of animal welfare, and as such, would be quashed as an intrusion into the criminal law power of Parliament. Concerns regarding animal welfare are addressed by section 445.1 of the *Criminal Code of Canada* which makes it an offence to willfully permit or cause unnecessary pain suffering or injury to an animal. Such complaints are within the jurisdiction of the York Regional Police. No other municipality in Ontario has a ban on bullhooks or other similar implements. While Staff do not recommend enacting such a by-law, there are amendments which can be made to the Special Event By-Law 370-2004. Other municipalities have enacted such provisions which are minor and do not infringe on the criminal law power.

- **Licensing Circuses as Alternate Approach**

A circus could be included as a “special event” in Special Event By-law 370-2004. For example, the City can require that circuses submit an Emergency Plan to the City setting out contingencies for any circus event. The City can also require that any circus animals be vaccinated and that any animal be inspected pursuant to the applicable provincial body. Or, the City could require that there be sufficient enclosures surrounding any circus animal. Another example could be a

requirement that any circus promoter be properly accredited. It would be appropriate to consult with the circus industry prior to the enactment of any provisions.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council.

Regional Implications

None

Conclusion

There is no evidence to show that the use of bullhooks and other similar implements impacts public safety. In these circumstances, any by-law banning bullhooks would likely attract a challenge and would likely be quashed by a Court as an intrusion into the criminal law power of Parliament. In the alternative, Council may adopt measures such as requirements relating to enclosures, accreditation, emergency plans and vaccinations, which has been done in other municipalities. Animal cruelty and welfare is addressed by the *Criminal Code of Canada*. Accordingly, a ban on bullhooks and other similar implements is not recommended.

Attachments

None

Report prepared by:

Christopher G. Bendick
Legal Counsel

Respectfully submitted,

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services and City Solicitor