



STAFF REPORT ACTION REQUIRED

Electronic Dance Music Concerts - Supplementary Report – Appendix F

Date:	June 17, 2014
To:	Board of Governors of Exhibition Place
From:	City Solicitor
Wards:	
Reference Number:	

SUMMARY

The purpose of this report is to provide further information to the Board, as requested, related to electronic dance music concerts.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Board receive this report for information.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of February 14, 2014, the Board considered Agenda Item 23, Electronic Dance Music Concerts ("EDMCs") and requested the City Solicitor to report back on issues of Board liability in respect of EDMCs held on the grounds of Exhibition Place.

At its meeting of April 11, 2014 considered Agenda Item 11, Electronic Dance Music Concerts – Additional Information and Agenda Item 12, a report from the City Solicitor dated April 7, 2014, Electronic Dance Music Concerts. At that meeting, the Board directed staff to no longer book EDMCs at Exhibition Place.

At its meeting of May 6, 7, and 8, 2014, Toronto City Council adopted Member Motion MM48.31, directing the Board to reverse its policy to not permit EDMCs at Exhibition Place.

At its meeting of May 23, 2014, during discussion of Agenda Item 14, Electronic Dance Music Concerts - City Council Decision, the Board, among other things, requested a report from the City Solicitor commenting on a number of matters.

ISSUE BACKGROUND

The Board has requested that the City Solicitor provide information to the Board on the follow matters:

1. The legal definition of "child";
2. Whether the *Report on the Inquest into the Death of Allen Ho* considered the age of attendees at EDMCs;
3. Whether the Board has the authority to restrict the age of attendees of EDMCs held at Exhibition Place; and
4. Potential Board liability for incidences occurring at Exhibition Place related to EDMCs.

COMMENTS

Definition of "Child"

There is no single definition of what is meant by "child".

Black's law Dictionary defines a child as:

1. A person under the age of majority;
2. At common law, a person who has not reached the age of 14;
3. A boy or girl; a young person;
4. A son or daughter;
5. A fetus.

The Supreme Court of Canada, in *R v Ogg-Moss*, defined the term "child":

Both in common parlance and as a legal concept the term "child" has two primary meanings. One refers to chronological age and is the converse of the term "adult"; the other refers to lineage and is the reciprocal of the term "parent". A child in the first sense was defined at common law as a person under the age of 14. This definition may be modified by statutory provision ... No statutory modification, however, fixes an age higher than the age of majority, which, in Ontario, pursuant to the *Age of Majority and Accountability Act* ... is 18 years.

As mentioned in the above cited case, the *Age of Majority and Accountability Act* identifies that the age of majority is 18 years old:

Age of majority

1. Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years.

The *Age of Majority and Accountability Act* further provides a definition for terms used in other legislation where those terms are not defined:

References to “minor” and similar expressions

3.(1) In the absence of a definition or of an indication of a contrary intention, section 1 applies for the construction of the expression “adult”, “full age”, “infant”, “infancy”, “minor”, “minority” and similar expressions in,

(a) any Act of the Legislature or any regulation, rule, order or by-law made under an Act of the Legislature; and

(b) any deed, will or other instrument made on or after the 1st day of September, 1971.

Age

5.(1) A person attains an age specified as a number of years at the first instant of the corresponding anniversary of his or her birth.

The *Education Act* and the *Sale of Goods Act*, for example, use the undefined term "minor" so that the definition in the *Age of Majority and Accountability Act* would apply.

In sum, who is considered a child varies depending on the context, and whether a particular statute applies in particular circumstances. For the purposes of various statutory provisions, however, no statute fixes the age of majority higher than the age of 18.

Inquest into the Death of Allen Ho

The Board requested the City Solicitor to report on whether the Inquest Jury for Inquest into the death of Allen Ho considered the age of EDMC attendees.

The Jury recommendations included the following:

(2) We the jury recommend that city-owned properties in Toronto as well as private venues be made available for raves subject to a licensing/permitting system based on the Toronto Dance Safety Committee Protocol and with adoption by all parties including the Toronto City Council. ...

(3) We the jury recommend that the licensing/permitting systems include provisions restricting admission to raves to those aged 16 and over.

(5) We the jury recommend that ticket agencies which contract to print and/or sell tickets for raves be required to indicate the following:

(c) the minimum age of 16 for admission.

In the synopsis of the Jury's report, Dr. Barry A. McLellan, Regional Coroner, Northeastern Region, made the following comments with respect to these recommendations:

Evidence was heard that the Toronto City Council passed a resolution, just prior to this inquest, preventing Rave parties from being held on City owned property (such as the Better Living Centre) for a 6 month period. ... One of the reasons given for this temporary ban was a concern about civil liability for any untoward incidents that could occur during a Rave party on city owned property.

Evidence was also heard, however, that some of these city owned properties may be the safest properties available for a large gathering of persons, including a Rave party (that can attract more than 12,000 persons).

The jury also heard evidence that Rave parties would be safer events if a licensing system were put in place whereby Rave promoters would need to meet all by-laws and certain other pre-determined conditions in order to obtain a license. ...

With respect to the age limit recommended, the Regional Coroner noted:

Evidence was heard that a number of attendees at these all night dance parties are younger than 16 years of age.

He stated that reasoning behind the recommendation that the minimum age of 16 for admission be printed on the tickets was "self-explanatory". No further reasons were given to support this recommendation.

It should be noted that the recommendations of the jury are provided for consideration by the appropriate parties, but are not legally binding. It was therefore open to the City to respond to the recommendations as it saw fit. As noted above, it appears that while the City generally supported the recommendations of the jury, it did not specifically adopt or implement an age limit in the Protocol.

Board authority to impose age restrictions for attendees at EDMCs

Pursuant to MM48.31, Council:

- Required the Board to reverse its policy to no longer book EDMCs on the ground;
- Required the Board to adopt a policy consistent Council's decision of August 1, 2, 3, 4, 2000 to permit such events, on condition that safety measures are established;
- Required the Board to direct its CEO to engage in a consultation process, including with Cit of Toronto Emergency Services and Toronto Public Health and amend the Board's protocol for EDMCs appropriately to ensure that a safe venue for EDMCs is provided at Exhibition Place;
- Required the Board to report back to City Council at its July 2014 meeting, and following completion of the Board's consultation process and the review of its protocol, on the Board's decisions in respect of hosting EDMCs at Exhibition Place.

The Board has asked, given the Council directive, whether it may include an age restriction for attendees in its protocol for EDMCs at Exhibition Place.

At its meeting on August 1, 2, 3 and 4, 2000, City Council amended Report No. 7, Clause No.1 of its Community Services Committee (the "2000 Report").

As noted above, by adoption of MM48.31, among other things, Council directed the Board to "adopt a policy consistent with City Council decision of August 1, 2, 3 and 4, 2000".

At its meeting on August 1, 2, 3 and 4, 2000, City Council amended Report No. 7, Clause No.1 of its Community Services Committee (the "2000 Report").

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000801/cms7rpt/c1001.pdf>

In particular, Council adopted the following: amended Recommendation (b)(1) and adopted the following:

- (1) City Council authorize Exhibition Place to continue to hold Raves after concerns about security, Emergency Medical Services, and paid duty policing have been worked out to the satisfaction of Exhibition Place and within the protocol approved by City Council;

The protocol referred to was adopted by City Council in 1999 and is titled "Toronto Safe Dance Committee, Protocol for the Operation of Safe Dance Events" (the "Protocol").

The Protocol defines a rave as follows:

- (13) Definition of a Rave:

A rave is a public, all-ages, commercial electronic music event held in a special event venue attended by ticket or pass holders generally extending into hours when entertainment venues are usually closed. (emphasis added)

The 2000 Decision includes the following recommendation:

(e) City Council support the recommendations of the Jury arising from the Coroner's Inquest into the death of Allen Ho.

However, the 2000 Report does not specifically adopt or implement these recommendations. Rather, it would appear that the 2000 Report reflects Council's decision and the recommendations of the Community Services Committee, having considered, among other things, the Jury recommendations.

The 2000 Report does specifically reaffirm the Protocol which, among other things, defined a rave/EDMC as "all-ages".

Given Council's directive to the Board in MM48.31, in particular to adopt a policy consistent with the Council decision in the 2000 Report, it is not open to the Board to adopt policies in respect of EDMCs which are inconsistent with that decision; imposing an age restriction, in my view would be inconsistent with the Council decision, given that the Protocol defines raves as "all-ages" events. Accordingly, in my view, the Board cannot impose any age restriction for attendees at EDMCs.

Board Liability

This issue was previously reported on in my report dated April 7, 2014, titled "Electronic Dance Music Concerts", considered by the Board at its meeting of April 11, 2014. I further reported to the Board generally on City Insurance, Indemnification and Reimbursement Policies for Board Members in my report dated May 15, 2014, considered by the Board at its meeting of May 23, 2014.

Conclusions:

There is no one single definition of "child". A "child", as the opposite of an "adult", is generally defined as a person who has not reached the age of 18 years, though at common law it was defined as a person under the age of 14 years. Specific statutes may define a child otherwise, but no older than the age of majority, being 18.

The Inquest Jury into the death of Allen Ho recommended a minimum age limit for EDMCs of 16 years. In its meeting of August 1, 2, 3 and 4, 2000, while City Council supported the recommendations of the Inquest Jury, Council confirmed its adoption of a protocol for raves that defined an EDMC as an "all-ages" event.

Given the Council directive set out in Member Motion MM48.31, it is not open to the Board to impose an age restriction on attendees at EDMCs at Exhibition Place, as such a restriction would be inconsistent with the Council adopted Protocol.

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SIGNATURE

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