

**ACCOUNTABILITY and SOCIAL
RESPONSIBILITY in ONTARIO'S LEGAL
GAMBLING REGIME**

**Final Report to Ontario Problem Gambling
Research Centre (OPGRC)**

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by

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**Disclaimer: The views expressed in this report are those of the authors, not
necessarily those of OPGRC.**

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These cooperative informants afforded us an insider's perspective on how gambling policy is formulated, implemented and presided over.

Executive Summary

This report explores commercial gambling in Ontario in relation to standards of accountability, social responsibility and acting in the public interest. The report considers enabling legislation; documents the organizational structures and policies used to administer legal gambling in Ontario; and reviews the academic literature on gambling administration in Ontario and other jurisdictions. In addition, senior officials involved in the operation and regulation of gambling, as well as those responsible for minimizing the incidence and prevalence of problem gambling were interviewed about Ontario policy and practices. Several research questions guided the study:

1. How does the provision of gambling by the Government of Ontario differ from the provision of other public goods and services and what are the implications of these differences with regard to government accountability, social responsibility and acting in the public interest?
2. What is meant by “social responsibility” and “accountability” in the context of government-run gambling?
3. And, how does Ontario compare with other jurisdictions in terms of meeting robust responsible gambling standards and what is an achievable standard of excellence for the governance of gambling?

A primary purpose of this study was to frame the key accountability and social responsibility issues that need to be addressed by governments that provide gambling. Three domains were considered in framing these issues, namely; (1) caveats related to the offering of commercial gambling, (2) the precept of social responsibility, and (3) the principles of accountability in a parliamentary democracy.

This study should have value for government gambling regulators and policy makers, gambling operators and suppliers, legislative assembly members, gambling studies scholars and concerned citizens

Caveats of Commercial Gambling

In comparison with most goods and services provided by the Government of Ontario, we identified the following caveats associated with the provision of commercial gambling.

1. Gambling is not an essential product or service.
2. Gambling is a morally contested enterprise.
3. Gambling is hazardous for some participants.
4. Consumer protection legislation as it pertains to gamblers is unclear.

5. Profit seeking may override other goals.

Gambling is not an Essential Product or Service

Gambling, unlike core provincial government offerings such as health care, education and environmental protection, is not an essential service. Having said this, it is true that governments provide some leisure/lifestyle services in the areas of recreation and culture, e.g., campgrounds, museums and so forth. Gambling is unlike these leisure pastimes which are designed to enhance citizens' quality of life and operate on a cost recovery basis. In contrast, gambling is a significant provincial revenue generator and has the potential to create social and personal harm; consequently, the need to convincingly demonstrate how and why gambling is in the public interest.

Gambling is a Morally Contested Industry

Magendanz (2003) described gambling as a “morally contested industry;” that is, an industry that polarizes public debate and tends to attract the question, “Is this activity moral?” Gambling, prostitution and pornography are the activities most likely to draw this designation. In order to minimize public concern, morally contested industries need regulatory structures and governance processes that promote integrity, advance public trust and cultivate public confidence (Magendanz, 2003).

Gambling is Hazardous for Some Participants

A small percentage (2% to 5% of adults, depending on the Canadian jurisdiction) of gambling consumers can be harmed and cause serious problems for those close to them. This potential for causing personal and social damage has accountability implications: First, it is important for a government to articulate its priorities, particularly with regard to balancing revenue generation and social responsibility; second, government should commit to minimizing the associated harm; and third, the efficacy of harm minimization programs should be regularly evaluated.

Consumer Protection Legislation for Gamblers is Unclear

Two prominent elements of Canadian consumer protection law are duty of care and informed consent. Duty of care refers to the obligation of providers (i.e., government, in the case of gambling) to adhere to a reasonable standard of safety in offering an activity that can foreseeably harm people with whom it has a relationship. Informed consent suggests that consumers are fully cognizant of the risks inherent in the activity and not subject to misrepresentation about that activity and how it operates.

To date, no legal standard has been set in Canada for either informed consent or duty of care with regard to the provision of gambling. The lack of case law in this

area means the responsibilities of the gambler, the gambling provider, the machine manufacturer, the regulator and others are still unclear.

Profit seeking May Override Other Goals

When government acts in an entrepreneurial fashion in providing legal gambling, a conflict arises with its mandate of protecting the public interest. This inherent conflict can produce the following effects:

- Profit maximization and the generation of non-tax revenue for government may become the overriding purpose of gambling operations.
- Governments may accept harsh trade-offs as inevitable and acceptable costs of doing business (i.e., generating revenues, despite preventable damage in terms of family break-ups, bankruptcy and harm to citizen health and social well-being).
- Government policy may be vulnerable to undue influence by gambling industry partners and interests, thereby outweighing groups that represent the broader public interest.

In general, unrestrained, high intensity government-sponsored gambling may pose “a threat to the vibrancy and integrity of democratic structures and processes” (Adams (2008, 15).

A Framework for Ontario - Accountable and Socially Responsible Gambling in the Public Interest

A review of world-wide practices in government operated gambling indicates that the most robust blueprint for operating gambling in the public interest was developed by the Australian Productivity Commission (1998). The Australian initiative provides standards for the provision of socially responsible gambling in the public interest and forms the basis for some of the measures proposed for Ontario. These precepts, combined with the caveats of commercial gambling are part of the framework created to assess government commitment to providing accountable and socially responsible gambling. This proposed framework is applied to Ontario’s gambling regime and recommendations aimed at refining accountability and social responsibility standards are presented.

Principles

The following principles undergird the Accountable and Socially Responsible Gambling in the Public Interest Framework.

Principle #1 Periodic Fact-finding Missions: Comprehensive jurisdictional reviews are needed to assess the extent of the gambling enterprise and determine the social and economic costs and benefits of the activity; how gambling is

rationalized, implemented and regulated; whether gambling consumers are adequately protected; and whether the social harms caused by gambling are being properly addressed. Such a review should be undertaken by the federal government and by each province that provides gambling.

Principle #2 Explicit Mission Statement and Objectives: The ultimate goal of a gambling regime that seeks to operate gambling in the public interest should be to maximize net community benefits. To achieve this aim, government should affirm that social responsibility and harm minimization are higher priority objectives than revenue generation and that the precautionary principle underpins all gambling public policy.

Principle #3 Promoting a Culture of Responsibility: A culture of responsibility should include the core elements of consumer protection (informed consent and duty of care), as well as therapeutic (prevention, early intervention and treatment) measures to address the reality that gambling is hazardous to some participants.

Principle #4 Transparency: Because gambling is viewed as a morally contested enterprise and because of the potential for profit seeking to overpower other goals, there is a greater need for transparency in gambling public policy than is the case with some other government programs. In a gambling context the main forms of government communication are agency annual reports. Other measures to advance the transparency of provincial gambling operations should include integrating all gambling-related information into an accessible sectoral report and declaring financial contributions made by gambling interests.

Principle #5 Evidence-based Research to Inform Gambling Policy: It is axiomatic to state that public policy should be informed by up-to-date, high quality empirical research. However, the sheer speed of worldwide gambling expansion combined with a reluctance to interrupt the revenue flow or lose revenue to other jurisdictions, means that this is not always the case with gambling. Attention to research developments improves governments' ability to promote the public interest. Independent research should be the foundation of both government and industry policy in an accountable and socially responsible gambling regime (Adams, 2008).

Principle #6 Community Consultation: Public processes should be used in formulating gambling policy; and when invited, the openness and independence of the process should be beyond question. As part of gambling licensing deliberations, the affected community should be involved in determining the public desire for the proposed enterprise as well as the suitability and location of the proposed venue; and social and economic impact assessments should be ongoing to ensure that the benefits of the venture outweighs the costs.

Principle #7 Independent Oversight: In view of the complications related to offering commercial gambling, an independent commission with powers akin to those of an Ombudsman or Provincial Auditor seems a suitable way to administer

a gambling regulatory regime that is free of conflicting objectives and interests; open, consultative and informed by empirical research; and conducted in the public interest (Australian Productivity Commission, 1999; Campbell, et al, 2005).

Questions to Facilitate Accountability

Parliamentary democracies have a well defined accountability process, whereby an elected Cabinet and responsible ministers render an account of their collective and individual stewardship of the public interest. Members of the Legislative Assembly are expected to ask the relevant and incisive questions necessary to hold a government to account.

To assist those interested in holding the government to account for its provision of gambling we developed the sample questions shown in Table 2 (see last page of Executive Summary).

While it may seem unconventional to construct a framework on the basis of probing questions, we believe that complete and candid answers to these questions would inform the public and make a provincial government more accountable to its citizens. Typically, a rendering of account occurs in policy statements, press releases, statutes, regulatory policies, documents for public consultation, program evaluations (measures of program effectiveness), internal and external audits and investigations, public consultations, and financial and performance reports. These documents are prepared by the departments and agencies that operate and regulate gambling and those responsible for the minimization and mitigation of the harm associated with gambling.

The questions in Table 2 would ideally be addressed on a sector-wide basis, rather than from an agency or departmental perspective, thus providing an integrated and informative report that expands on the documents currently offered.

The Operation and Regulation of Gambling in Ontario

Gambling policy making in Ontario can best be described as adaptive; that is, formulated decision by decision, on an incremental basis. A chronology of recent Ontario gambling policy development is presented in Table 1 (see next page).

Legislative Framework

The Alcohol and Gaming Commission of Ontario (AGCO) was created with the passage of the *Alcohol and Gaming Regulation and Public Protection Act, 1996 (AGRPPA)*. The AGCO is mandated to ensure that legal games of chance are conducted with honesty, integrity and in the public interest, by persons who will not damage the reputation or adversely affect the credibility of the gambling

industry (Castel, 2008). This mandate includes crime prevention as well as consumer and social protection.

“Crime prevention involves surveillance to confirm that criminal elements are not operating, providing supplies or working in a gambling venue, and that assets such as cash are protected through tight internal controls” (Castel, 2008, 3-2).

“Consumer protection involves a guarantee that rules of play for games of chance are fair; gaming equipment is not susceptible to cheating; and electronic gaming equipment meets acceptable standards of randomness and safety. Gamblers must know the minimum and maximum wagers for games of chance and have access to the rules of play, which are to be administered consistently across gambling premises” (Castel, 2008, 3-2).

“Social protection refers to statutes preventing persons under 19 years of age from accessing gambling premises and regulations safeguarding individuals who are problem gamblers. There are laws to prevent people from gambling while intoxicated and from gambling above their financial means through the use of casino credit” (Castel, 2008, 3-2).

The relationship between AGCO and OLG changed in October 2007. Prior to that date, OLG was both operator and regulator of its lotteries. As a result of the Ombudsman report (2007) recommendations, OLG now operates lotteries, casinos, charity casinos and slot facilities, while the AGCO regulates lotteries in addition to charitable gaming, charity casinos, major casinos and slot facilities (Castel, 2008). A recent key development is the preparation of a Draft Problem Gambling Strategy for Ontario. Public release of this document is scheduled for 2010/2011.

Table 1
Chronology of Recent Gambling Policy in Ontario

| Year | Event |
|-------------|---|
| 1985 | Amendments to <i>Criminal Code of Canada</i> |
| 1992 | <i>Gaming Services Act</i> |
| 1993 | Ontario Casino Corporation established. |
| | Hybrid public-private model for conduct and management of casinos |
| | First Aboriginal casino approved. |
| 1995 | No VLTs in neighborhood bars, etc. |
| | (Interim) Casino Windsor opens, quickly generates the highest revenue per square foot of any casino in the world |
| 1996 | <i>Alcohol and Gaming Regulation and Public Protection Act (AGGRPA)</i> Establishes Alcohol and Gaming Commission of Ontario |
| | Province developed regulatory model. |
| | Proliferation of unregulated charity gambling |
| | Government announces intention to introduce slots at existing race tracks, reconsiders VLTs in bars, etc. |
| | Ministry of Health develops strategy for the prevention, treatment and research of problem gambling |
| 1997 | Consultations on expansion of hybrid casino public-private model |
| 1998 | Ontario announcement <ul style="list-style-type: none"> - no new casinos without successful referendum in host community - no VLTs - Four charity casinos approved rather than the originally proposed 44 |
| | Letter of intent signed with Ontario Horse Racing Industry Association for slots at racetracks |
| | <i>Criminal Code of Canada</i> amendment to permit dice in casinos |
| 2000 | <i>Ontario Lottery and Gaming Corporation Act</i> which merged Ontario Lottery Corporation with Ontario Casino Corporation |
| 2000 | Ontario announces: <ul style="list-style-type: none"> - 3-year moratorium on new facilities, with consideration for a fifth charity casino in Eastern Ontario - no table games at racetracks - no new slots at tracks beyond the 16 which have zoning in place - no VLTs (reiterated) |
| 2005 | New Ontario Gaming Strategy focused on Sustainable Responsible Industry |
| | Sadinsky Review of Problem Gambling and Responsible Gaming Strategies |
| 2007 | Ontario Ombudsman releases “A Game of Trust” |
| | New oversight regime for OLG O.Reg 281/07 Lotteries, AGCO responsible for oversight of OLG lotteries |
| 2009 | Ontario develops draft Problem Gambling Strategy (targeted public release in 2010/2011) |

“Best Practices” in Ontario

Interviewees (operators, regulators and policy makers for gambling in Ontario) identified gambling policy, operations and regulations that they thought would be considered by other jurisdictions as a “best practice.” These perceived exemplary areas of Ontario gambling administration include:

- Regulation and operation are separated. While under the same government, each reports to a different ministry, thus providing a greater degree of independence than is found in some provinces.
- The Government responded quickly to the Ombudsman’s report as OLG met and exceeded the recommendations.
- As a result of the Ombudsman’s report, the AGCO now regulates activities related to the sale of lottery products.
- Ontario Cabinet Ministers generally are interested and involved in gambling policy decisions.
- Ontario has implemented Responsible Gaming Resource Centres, on a pilot basis, at several Ontario gambling facilities; and gambling operators have committed to implement a Responsible Gaming Code of Conduct, which includes the training of front line staff.
- Key players in policy development, regulation and legal gambling operations work in a collegial and inclusive manner to promote the integration of policy development and implementation.
- The amount of money (\$36 million annually) dedicated to problem gambling treatment, prevention and research is the highest of any jurisdiction in the world.
- Ontario has consistently said “no” to Video Lottery Terminals (VLTs) in neighborhood liquor outlets.
- Ontario acts as a good citizen in providing more than 20,000 gambling-related jobs to local communities, gambling proceeds to support worthwhile charities, and funding for important government programs such as health care.

Respondents were asked if there were any pressing concerns in existing gambling statutes, regulations or policy that they wished to see changed. No major issues were identified; thus our impression is that there is general satisfaction among senior gambling administrators with current gambling policies and regulations.

The overall message conveyed is that the Province of Ontario, including the regulator, operator and gambling policy makers, seeks to be a world leader in providing accountable and socially responsible gambling. Respondents also said they would welcome a frank discussion of the gambling-related issues faced by the Province.

Accountable and Socially Responsible Gambling in the Public Interest: An Analysis of Ontario's Legal Gambling Regime

Credible, objective and relevant information is the key to a healthy accountability process. In this regard, the questions in Table 2 are intended to elicit the information needed to hold a governmental gambling regime to account.

In Ontario and most Canadian provinces, not all of this information is readily available to the public. If the pertinent information called for was in the public domain Ontario would be an international leader in offering gambling in the public interest.

Frank answers to the following key questions would allow citizens and Members of the Legislative Assembly to better determine the extent to which the gambling regime is accountable, socially responsible and operating in the public interest.

Why Does Government Provide Gambling?

The rationale for government providing services such as public education, infrastructure or environmental protection is generally more self-evident than is the case with gambling. These are clearly areas where there is a need for public, as opposed to private control. Few citizens question whether a provincial government should build and maintain a system of public education or promulgate and enforce laws designed to protect the environment. Gambling, on the other hand, is a form of entertainment that the private sector can easily provide. In addition to being a non-essential good or service, gambling is viewed as a morally contested activity and places a predictable percentage of the population at risk.

Should Government Promote Gambling?

The mandate of social responsibility requires ongoing dialogue on the appropriate promotion of gambling in Ontario. Should a government promote gambling to increase its social acceptance as entertainment? Government's role in actively promoting a shift in social/moral norms is usually related to unhealthy or harmful behavior such as smoking or drinking and driving. In Ontario, government and its agents spent more than \$265 million in 2005-06 (Note 12 to audited financial statements, March 31 2006) to promote gambling consumption. Government also provides \$36 million to the Ministry of Health and Long-Term Care and the Ministry of Health Promotion for problem gambling prevention, treatment and research initiatives. A clearly articulated master plan with well defined and measurable outcomes, could promote a culture of moderation.

The Government of Ontario has yet to provide a comprehensive policy on commercial gambling. In the absence of such a master plan, citizens are left to

infer an implicit set of policy statements based on their perceptions of the Government's actions in the area of commercial gambling.

Key Terms Undefined

Precision in language is critical to establishing public confidence in the processes of government. Vague terms lead to confusion and weakened accountability. The meaning of terms such as "social responsibility" and "the public interest" are undefined in enabling legislation and public policy statements; nevertheless, they persist and are widely used by the Ontario government in reference to its provision of gambling products and services. Government accountability would be heightened if these terms were precisely defined rather than open to interpretation.

The Government of Ontario, as an integral part of its policy on commercial gambling should provide:

- A definition of social responsibility, as it applies to legal gambling. Such a definition should incorporate the roles of gamblers and the role of the industry in preventing or mediating individual problems with addiction, as well as the statistically predictable cases of addiction associated with different levels of commercial gambling.
- A statement of priorities and how they are applied to complicated issues such as revenue generation, community revitalization and social responsibility.
- Guidelines on how the "public interest" is interpreted and applied by decision makers in the development and implementation of gambling policy.
- A statement of fundamental principles used to formulate gambling policy.
- An explicit statement of whether the Province adheres to the precautionary principle in achieving harm minimization objectives.

An ideal place for these clarifications would be the Government's emerging draft Strategy for Problem Gambling.

Gambling Industry Contracts

In jurisdictions that offer gambling there are often concerns relating to contractual arrangements with the gambling industry and the possibility of undue influence by gambling corporations on government policy.

Ontario's hybrid casino model is based on partnerships between the Province of Ontario and private sector corporations; the Province is responsible for the conduct and management of casino gambling as per the criminal Code, but contracted casino corporations run Ontario's four major casinos. The details of these partnership contracts, including any incentives to increase revenue, are not publicly available. Consequently, concerned citizens do not have enough

information to assess the gambling industry's influence on government; and whether, and to what extent, the public interest is jeopardized as a result of this affiliation.

The Government of Ontario should disclose details of its contractual arrangements with private sector gambling industry partners. As a minimum this should include:

- A discussion of the process used to award contracts for the construction of new major capital projects designed to augment existing commercial gambling operations, as well as the terms and conditions of significant contracts and commitments.
- The terms and conditions, as well as monies paid to and received from private sector gambling industry partners for the ongoing operation of existing commercial gambling premises operated under the “hybrid” model.
- Details on the existing accumulated investment in commercial gambling infrastructure (including the amounts from general revenues), as well as details on who owns this infrastructure, relative to the Government of Ontario and its industry partners.
- Disclosure of gross gambling revenues received and how these revenues are spent, including details on payments to private sector commercial gambling partners.

Consumer Protection Shortcomings

Concerns raised about gambling-related consumer protection inadequacies include: poor odds and payout rates on certain gambling formats, deceptive electronic gambling machines, lottery ticket sellers appropriating customer's winning tickets, and casinos mailing promotional materials to patrons who have signed voluntary self-exclusion contracts.

The Government should consider whether gambling consumers under the *Gaming Control Act*, have less protection than that afforded consumers in other areas. If so, this situation presents a serious ambiguity in consumer protection. Citizens and Members of the Legislative Assembly may wish to explore whether the *Ontario Consumer Protection Act* should apply to gambling consumers.

Gambling Policy and Evidence-Based Research

Interviewees indicated that scientific research was not overly influential in informing Ontario gambling policy or operations. One reason for this is a concern about the relevance of the studies and/or methodologies used. Respondents indicated there was no systematic government research plan for gambling, other than that provided by the Ontario Problem Gambling Research Centre (OPGRC). Perhaps there is a need for such a research plan and an emphasis on policy

makers, regulators and operators being conversant with academic research trends and findings. Respondents' basic position on this issue was "if there is something out there that we should know about, surely CAMH or the Ontario Problem Gambling Research Centre would tell us." In our view, government should not arbitrarily dismiss or ignore existing research; rather it should proactively seek empirical evidence to inform policy decisions.

The Government of Ontario should develop, implement and make public the results of a systematic and periodic evaluation of the intended and unintended effects of commercial gambling. As a minimum, the Province should: (1) Evaluate and report to citizens on the effectiveness of harm minimization strategies intended to protect the vulnerable; (2) conduct and report to citizens the results of a province-wide cost/benefit analysis of commercial gambling; and (3), measure and report to the public annually on the percentage of commercial gambling revenues that come from problem gamblers.

Profit Seeking May Override Other Goals

Given that gambling generates almost \$2B annually for the Province of Ontario, there is a risk that government can become dependent on this significant amount of revenue and lose sight of public interest goals. Indeed, the Ombudsman's Report of 2007 maintained that this did happen with OLG. Because of the possibility that financial considerations can trump social responsibility and public interest concerns, government should articulate its priority if there is a conflict between the two.

Regulatory Independence and Oversight Challenges

Unlike some provinces, Ontario's legal gambling is regulated by a stand-alone Crown agency. This is consistent with good practice which suggests the regulator be separate and independent from the operator, but tempered by the fact both are owned by the government.

It is unclear whether the AGCO's mandate includes an oversight function, particularly with regard to social responsibility. We were advised that the AGCO is constrained by a lack of jurisprudence in the area of social responsibility, and OLG cited the lack of an explicit policy base to hold the government to account for operating gambling in a socially responsible fashion. The term responsible gambling is not clearly defined. There does not appear to be a master plan with measurable outcomes for promoting a regime of moderation. In our view these important issues need to be addressed.

The atypical characteristics of gambling, in comparison to other government services and products, suggest the need for a higher level of oversight, one that goes beyond that expected of a regulator. Ontario should consider an independent oversight agency for commercial gambling whose mandate would be to monitor and report on the extent to which commercial gambling is "in the public interest

and in accordance with the principles of honesty and integrity, and social responsibility” (Section 3, AGRPPA). In this context, the principle of social responsibility should be emphasized. Based on our research, there is not a clearly designated government agency to champion this important principle.

Difficult for Citizens to Assess the Efficacy of Ontario’s Gambling Regime

Citizens can form a reasonably accurate assessment of government policy with regard to services such as education, health care or highway maintenance. However, it is difficult to ascertain the social and economic costs and benefits of gambling and whether the activity is being conducted in the public interest. Accountability for gambling operations would be advanced if the government produced an annual sectoral report that addresses the questions set out in Table 2.

In Summary

This report documents the caveats associated with gambling, describes the current gambling regime in Ontario and offers a framework with guiding principles and examples of fundamental questions that need answering in order to meet robust standards of accountability and social responsibility in the provision of gambling. Respondents told us that the Province of Ontario seeks to be a leader in providing gambling in a socially responsible manner and in the public interest. Given this objective, we hope this report will stimulate discussion among Members of the Legislative Assembly and Ontario citizens and lead to the province being an innovator in this important area of governance.

Table 2
A Framework for Accountable and Socially Responsible Gambling in the Public Interest

| Principles of Social Responsibility | Critical Caveats of Commercial Gambling | | | | |
|--|--|--|---|--|---|
| | Not Essential | Morally Contested | Hazardous to Some | Consumer Protection? | Risk of Revenue Dependency |
| 1. Fact-Finding Mission | Why is it necessary or desirable for government to provide gambling? | What do the majority of citizens want? What are citizen's attitudes toward gambling as offered in Ontario? | What gambling formats should be allowed? In what numbers? And, in what locations? Are the vulnerable adequately protected? | How should consumer protection apply to gambling? | Are Crown agencies the proper vehicles to achieve the public interest? Is the search for profit eclipsing other values such as social responsibility? |
| 2. Explicit Mission & Objectives | What are the government's objectives in providing gambling? | What is a proper balance between revenue generation and social responsibility? | Why is it that a level of harm built into policy is assumed to be acceptable? | What are the Province's objectives in the area of consumer protection for gamblers? | What social outcomes do the operator and regulator of legal gambling intend to achieve; what outcomes are achieved? |
| 3. Effective Culture of Responsibility | How intrusive should self-exclusion measures be? Should there be a review of gambling regulations such as the granting of credit at casinos, maximum bet limits, hours of operation, etc.? | Is there a threshold of harm, beyond which gambling should be severely restricted? | Are harm minimization measures effective? What else can be done to reduce the incidence and prevalence of problem gambling? | Does the Province have a duty of care for gambling consumers? To what extent are informed consent and the precautionary principle applied to gambling policy and practice? | Does the operator of gambling have a duty of care to track the gambling patterns of frequent gamblers and aggressively intervene before severe harm occurs? |
| 4. Transparency | Has the Province made a credible case for gambling, as opposed to other means of raising revenue, creating economic development or funding charities? Is it clear to citizens how much the Government has invested in gambling infrastructure; where the money comes from; and, where it goes? | Is there full, fair and open discussion of the pros and cons of gambling? | Should there be disclosure of the amount of revenues from problem gamblers and the efficacy of harm minimization and mitigation strategies? | Do Ontario gamblers know whether or not they are protected by provincial consumer protection laws? | Is there frank and comprehensive disclosure (on a sectoral basis) of the effects of commercial gambling in the annual reports of the operator and regulator of commercial gambling? Is it clear to citizens whether a desire for profit is balanced by adherence to the principles of honesty, integrity and social responsibility? |
| 5. Evidence-Based Research | Should citizens be provided with a cost/benefit analysis of gambling? | What is the entertainment value for non-risk gamblers; the personal and social cost of problem gambling? | How does the government know whether efforts to protect problem gamblers are effective? | Does the government know whether its gambling policies are consistent with the public interest? | Are agencies effective in discharging a duty of care, implementing a regime of informed consent and adhering to the precautionary principle in major decisions affecting the scale and nature of commercial gambling? |
| 6. Community Consultation | Has the Government created a dialogue with citizens on why gambling is provided and what the expected outcomes are? | Has the Province consulted citizens before expanding the scale and nature of gambling? | Has there been a frank and comprehensive dialogue on the social costs and benefits of gambling? | Has there been a public discussion on the extent to which gamblers should be protected by consumer protection legislation? | Have the involved Crown agencies (operator and regulator) conducted public consultations on the nature, scale and type of gambling to be provided and on potential major expansions of gambling? |
| 7. Independent Oversight | Is there a need for an independent oversight agency charged with reporting on whether Ontario's gambling regime is promoting the public interest and adhering to the principles of honesty, integrity and social responsibility? | Is there a need for an independent body that can inform the debate? | Is there a need for independent oversight and reporting on the extent to which the vulnerable are protected? | Is there need for independent oversight of the extent to which the province has exercised a duty of care and adhered to the precautionary principle and the principle of informed consent? | Is there need for independent oversight and regular reporting on the extent to which Crown agencies (operator and regulator) are providing accountable and socially responsible gambling in the public interest? |

Chapter 1

Introduction

Context for the Research

Improprieties with respect to lottery prizes were brought to public attention in 2006 and suggested a need to more broadly review government gambling policy, operation and regulation. This controversial issue resurfaced in the media in the winter of 2009. In this vein, one jurisdiction (Ontario) is examined; relevant enabling legislation, organizational structures and policies used to administer legal gambling are probed to determine whether, and to what extent, the government is sufficiently protecting the public interest.

This study follows in the wake of two provincial Ombudsman's reports which investigated Ontario Lottery and Gaming (OLG) (Marin, 2007) and the British Columbia Lottery Commission (BCLC) (BC Ombudsman Special Report No. 31, 2007). In each instance retailer fraud was uncovered; that is, lottery ticket sellers were found to be winning jackpots at a statistically improbable rate. Both reports also challenged the integrity and accountability of their respective lottery agencies and called for sweeping changes to restore public trust.

In both Ontario and British Columbia, extensive improvements were made as a result of these reports. However, these reports raised a challenging question: Can a provincial government effectively perform the dichotomous roles of maximizing gambling revenue and protecting citizen's welfare, and, if so, how?

Hence, this study of Ontario's gambling policies and practices; specifically, how they conform to expressed social responsibility and accountability standards. A primary aim of the study is to compare what currently exists, with state of the art practices and use this information to develop a template for accountable and socially responsible gambling in the public interest.

Research Scope and Target Audience

Several research questions guided the study:

1. How does the provision of gambling by the Government of Ontario differ from the provision of other public goods and services and what are the implications of these differences with regard to government accountability, social responsibility and acting in the public interest?
2. What is meant by "social responsibility" and "accountability" in the context of government-run gambling?

3. And, how does Ontario compare with other jurisdictions in terms of meeting robust responsible gambling standards and what is an achievable standard of excellence for the governance of gambling?

Government agencies included in this study are Ontario Lottery and Gaming (OLG), its regulating body, the Alcohol and Gaming Commission of Ontario (AGCO), policy makers at the Ministry of Government and Consumer Services (formerly responsible for the AGCO; now called Ministry of Government Services) and the Ministry of Public Infrastructure Renewal (effective July 2009 OLG reports to the Minister of Finance, this occurred after our research was completed) and the Ministries of Health Promotion and Health and Long Term Care, whose mandates include problem gambling prevention and treatment programs, as well as responsible gambling initiatives and research into problem gambling.

This study does not deal with charitable gambling or horse racing. The target audience includes government gambling regulators and policy makers, commercial gambling operators and suppliers, legislative assembly members, gambling studies scholars and concerned citizens.

The research objective was to develop a framework of accountability and social responsibility issues to be addressed by governments that provide gambling. The framework is based on three domains: (1) the caveats related to offering commercial gambling; (2) the precept of social responsibility, as applied to gambling; and (3), the principles of accountability in a parliamentary democracy.

Explanation of Key Terms

The following terms are central to our discussion of gambling oversight in Ontario. These terms are included in Ontario gambling regime mission statements and objectives without definition; the presumption being that everyone understands what they mean in a gambling control context. In some cases these terms are abstractions or visionary notions whose meanings are often subjective and imbued with the philosophy of those who use them. For the purpose of clarity we discuss each term, indicate its relevance to good governance, and define its meaning as used in this report.

Government Accountability

In the broadest sense, “accountability” means being answerable. In theory, elected officials “are answerable first and foremost to the public and secondly to their party organization” (Greene & Shugarman, 1997, 208). As described by Boyer (2003, 29), “accountability is the process through which those who govern are held responsible for their decisions by the governed.” Accountability has a more specific meaning in a Westminster model parliamentary democracy, such as the system in the Province of Ontario. Accordingly the definition of accountability used in this text is: “a process wherein those to whom authority has been

conferred or delegated and/or responsibilities assigned, must justify, explain or defend their actions (or those of their subordinates) to a higher authority. The higher authority is then obliged to hold to account all those on whom it has bestowed authority and responsibilities” (Aucoin & Jarvis, 2005, 91).

Parliamentary democracies build accountability into government via instruments such as free and regular elections, legislative question periods, annual reports, freedom of information and whistle-blower protection laws and official inquiries. Moreover, government “watchdog” offices such as the Auditor General, the Ethics Commissioner and the Ombudsman endeavor to make governments responsible to the electorate.

There is an elemental link between good public policy and accountability. Good public policy is infused with integrity—in the policy makers, the process and the motives and actions of governments: “Good policy should solve the problem. It should create more public good; the public interest should be furthered” (Pal, 1997, 291). On the contrary, bad policy is distinguished by catering to special interest groups, bowing to purely financial considerations, and being willing to sacrifice the public interest for short term gain. The ultimate goal of all public policy is to create the conditions for a good life for all citizens. The extent to which this occurs is the benchmark for weighing its merits.

Accountable policy defines what a government is and is not responsible for and includes enabling legislation, as well as a clear basis for holding the responsible minister to account. In regard to gambling provision this means ensuring that the activity is administered in accord with principles of honesty, integrity and social responsibility and is advancing the public interest.

Social Responsibility

In a general sense, to be socially responsible means acting with care and compassion, and being aware of the effect of one’s actions on others, particularly the vulnerable. Socially responsible public officials are those who act impartially and protect and promote the public interest in ways that the public is fully informed of and approves (Greene and Shugarman, 1997). Ultimately, social responsibility initiatives are measured by whether they improve or degrade the quality of life in society (Kaliski, 2001).

When social responsibility is applied to government gambling operations, the focus is typically on problem gambling (what it is, how to measure it, the prevalence rate, treatment and prevention programs and responsible gambling initiatives designed to mitigate gambling addiction) and, to a lesser extent, funding empirical research that could inform public policy. When social responsibility is operationalized in this circumscribed way, fundamental questions may become taken for granted such as: Should we have state sponsored gambling? And, if so, how much, and which formats? Should the government strive to maximize profits from the activity? And, how might the industry best be

regulated in the public interest? Because we could find no government definition of social responsibility with regard to gambling, in this report, we refer to this broader perception of social responsibility.

Public Interest

“The public interest” is fundamental to policy debates, politics, democracy and the nature of government itself and refers to “common well-being” or “general welfare.” While serving the public interest is a cardinal tenet of governance, it is recognized that the public interest is not always easy to gauge and subject to various interpretations and meanings. The public interest is often contrasted with private or individual interests, under the assumption that what is good for society may not necessarily be good for a particular individual and vice versa.

In terms of gambling provision, the public interest has been interpreted by the Australian Productivity Commission (1999) to mean a “net community benefit.” This report adopts this definition of the term.

Public Trust

Public trust is closely linked with accountability. There are two dimensions to the concept of public trust; (1) the general meaning of the word trust—a confident expectation in the reliability, honesty, veracity and justice of a person or thing and (2) the resulting obligation for something committed to one’s care. The first dimension refers to counting on someone or some entity to behave honorably; the second also implies honorable behavior but includes stewardship; that is, guardianship of public assets and resources. In essence, democratic governments must earn public trust by acting ethically and responsibly.

Governments engender public trust by being openly accountable for their policies, actions and mistakes. Transparency and access to information are vital tools with which to hold a government to account and measure its performance, and it follows that accountability and strong performance enhance public trust.

Gambling

Gambling is a heterogeneous and multidimensional activity. Lottery, bingo, casinos and horse racing are all forms of gambling, but their impact on individuals and society are quite different. Gambling is defined as risking money, property or something of value on an event of uncertain outcome (Devereux, 1979). Inferred in the act of gambling is: (1) an element of chance, (2) there is a winner and loser—money, property or other items of value change hands, (3) at least two parties must be involved—a person cannot gamble against him/herself, and (4) the decision to gamble is made consciously, deliberately and voluntarily.

Some risky activities share similarities with gambling, mainly the element of chance and an uncertain outcome. However, gambling is distinguishable from other risk activities in that the games are organized specifically to induce

wagering; produce winners and losers; and involve large amounts of rapidly circulating currency. The gambling that is the focus of this report is the legal gambling conducted and managed by the Province of Ontario.

Gaming

Throughout the English speaking world, the gambling industry uses the word “gaming,” to describe its product. Substituting “gaming” for “gambling” recognized and reinforced the now legal and more socially acceptable status of the activity (Smith & Wynne, 2002). Luntz (2007) claims that the simple removal of the “b” and “l” to replace gambling with gaming was a major public relations coup that helped polish the image of the gambling industry. Gaming is also the term used to describe video game play. For the purpose of this report the term “gambling” is used.

As an aside, the interchangeable usage of gambling and gaming combined with the tendency to lump all gambling formats under one term has prompted discussion on the need for a taxonomy of games. Christiansen (2007) called for greater precision in differentiating between terms such as “gambling” “gaming” and “betting” and suggested a schema that separates commercial gambling from friendly games, games of mixed chance and skill (e.g. poker) from games of pure chance (e.g. roulette, baccarat) and games of subjective probability (e.g. sports and pari-mutuel betting). Christiansen also proposed that gambling activities be delineated according to the demographic profiles of regular players and by the differential behavior patterns that each gambling format calls forth. Such a classification would clearly distinguish gambling formats from one another and make it easier to disengage the relatively safe activities from the more hazardous.

Justification for the Study

Whether gambling is detrimental, neutral or beneficial to individuals and society in general, depends upon social, cultural, situational and individual factors; as well as, how the activity is operated and regulated. While gambling in Canada “is marketed as a form of entertainment for its consumers, state-run gambling for the purpose of revenue generation has consequences for citizens and communities” (Cosgrave & Klassen, 2009, 3). The full force of these consequences is often obscure because citizens seldom have the appropriate information to hold provincial governments accountable. This research deals with the relationship between the Ontario government and its citizens and indicates the need for a framework of accountable and socially responsible gambling in the public interest. Such a framework would be applicable to Ontario and other provincial governments providing gambling.

Recent research indicates that the risk of legal liability could be a driving force in causing governments and the gambling industry to take a more proactive role in making gambling safer for consumers and instituting more rigorous social responsibility measures (Hancock, Schellinck & Schrans, 2008; Miers, 2008;

Livingstone & Woolley, 2007). What needs to happen according to Hancock et al is that gambling providers' duty of care responsibilities be clarified in law, an onus placed on gambling venue staff to identify problem gamblers on-site for the purpose of intervention, if necessary, and the mandatory use of loyalty player tracking systems to monitor and analyze problem gambling behavior.

Focusing on electronic gaming machines, Livingstone and Woolley (2007) posit that "a 'comfortable orthodoxy' supports the maintenance of current EGM arrangements in Australia, masking a level of harm production that would not be acceptable in other consumer markets" (362). These comfortable orthodoxies propounded by the government and the gambling industry are referred to as the 'business as usual' approach and include the following presumptions:

--Only a small proportion of gamblers suffer harmful consequences from EGM gambling.

--Current EGM arrangements are safe: gamblers are the problem.

--Current EGM arrangements should not be altered as this will reduce the enjoyment of those not troubled.

--The worlds of EGM gamblers are well understood, and their voices are heard in the framing of policy and regulation.

The authors deconstruct the business as usual agenda and suggest that "a consumer-safety focused sustainable future for EGM manufacturers is possible, but acceptably safe consumption of EGM gambling will be realized only when governments act to reduce the production of harm" (Livingstone & Woolley, 2007, 373).

Gambling public policy researchers have also called for an increased emphasis on moral and ethical concerns in gambling policy development as evidenced in the following comments: (1) The ethics of gambling has been neglected by academics and analytical inquiry on the topic must be grounded on a compelling and well-reasoned philosophical basis (Black & Ramsay, 2003); (2) a mature ethical reasoning approach is needed to bridge the divide between the ethics of sacrifice position espoused by anti-gambling factions and the ethics of tolerance stance promoted by gambling adherents (McGowan, 1997); (3) ethics and morality need to be at the centre of debates about gambling public policy—where they belong (Borrell, 2002); (4) "soundly conceived gambling law and effective regulation" goes along with "strong, honest, competent, and disinterested government" (Abt, Smith & Christiansen, 1985, xii); and (5) state-sponsored gambling is only in the public interest if it is beneficial to everyone, if not immediately, at least in the long run...and to be valid, this interest must be shared by both the government and individual citizens (Wiseman, 2000).

Overarching gambling-related ethical/moral questions addressed in this study include: Who benefits and who is harmed when government offers and promotes

gambling? How can gambling be harnessed so that social and personal harms are minimized? What principles should guide regulatory efforts? How can the public be better informed so as to hold a gambling regime accountable and ensure that the activity is being conducted in the public interest?

To address these questions the academic literature is reviewed, government mission statements, objectives and day-to-day gambling operations analyzed, emerging best practices for gambling oversight in world-wide jurisdictions explored, and interviews with key government informants conducted. The end product of this research is a template for conducting gambling in the public interest.

Structure of the Report

This report consists of seven chapters and addresses the three research questions described in the beginning of this chapter. Chapter 2 discusses the 1969 and 1985 *Criminal Code* amendments that paved the way for Canadian gambling expansion and elaborates on the subsequent growth of gambling in Ontario. In Chapter 3 caveats related to the offering of commercial gambling are identified and gambling public policy issues that impede efforts to provide gambling in the public interest are discussed. Chapter 4 reviews responsible gambling programs in general; Ontario's in particular, and highlights actions taken in several jurisdictions that have recently rethought their gambling delivery systems.

Chapters 5 through 7 address the question of how Ontario compares with emerging practices for accountability and social responsibility. Chapter 5 concentrates on Ontario's legislative framework for the operation and regulation of gambling; including the enabling legislation, how this legislation is interpreted, and the role of Crown agencies such as Ontario Lottery and Gaming Corporation (OLG) and the Alcohol and Gaming Commission of Ontario (AGCO) in this structure. Chapter 5 also discusses the mandate for the Province's problem gambling strategy. The results of interviews with senior AGCO and OLG administrators, government of Ontario gambling policy advisors and Health Ministries officials are presented in Chapter 6. Chapter 7 concludes with discussion around a prospective framework for accountable and socially responsible gambling in the public interest.

Chapter 2

Growth of Commercial Gambling in Ontario

This chapter describes how Canadian gambling laws have changed and outlines the shift in government attitude toward gambling from being regarded as a vice to a viable entertainment option. Also in this chapter, we trace the expansion of legal gambling in Ontario over the past two-and-a-half decades, identifying and connecting the antecedents that propelled it into a multi-billion dollar a year industry.

The Canadian approach to gambling in the first half of the 20th century was characterized as “unofficial tolerance and official condemnation” (Morton, 2003). Periodic amendments to the gambling sections of the *Criminal Code* were generally made in the absence of public debate (Campbell & Smith, 1998) and resulted in the *Criminal Code*'s gambling provisions being described as “a patchwork of fossilized law” (Glickman, 1979).

Canadian Expansion (1970-to Present)

Until 1969 in Canada, most forms of gambling were illegal, and those that were allowed (e.g. horse racing and games of chance at summer fairs), were quite restricted. What is a commonplace pastime today was a contentious and morally questionable activity only a generation ago (Morton, 2003). In 1969 an omnibus bill was passed in Parliament that amended several sections of the *Criminal Code*; including the removal of criminal sanctions for abortion, homosexual practices between consenting adults and lottery schemes. The legalization of lottery schemes allowed federal and provincial governments to conduct lotteries and permitted charity sponsored gambling under provincial license (Campbell, et al, 2005). These revisions ultimately led to the establishment of lotteries in every province and territory and a separate federal government lottery whose proceeds helped underwrite the 1976 Montreal Summer Olympics. By the end of the 1970s, intense competition for lottery dollars spurred provincial lottery corporations to join forces in an attempt to remove the federal government from the business.

A further landmark *Criminal Code* amendment in 1985 formalized an agreement between the federal and provincial governments, stipulating that for abandoning its lottery operations, the federal government would receive \$100 million over three years from the provinces to help fund the 1988 Calgary Winter Olympics and an annual disbursement of \$24 million (adjusted annually for inflation) from the provinces based on a proportion of lottery sales. The 1985 amendment also allowed provinces to operate lottery schemes through a computer, video device or slot machine. Despite the controversial shift from federal to provincial government authority over gambling matters and the legalization of a previously

outlawed gambling format (electronic gambling machines), there was no public consultation on the issue. Indeed, the lotteries bill was expedited through parliament (Osborne, 1989; Goldlist & Clements, 2008). The 1985 amendment created provincial monopolies over gambling and led to widespread profusion of the activity (Brodeur & Ouellet, 2004). Patrick (2000) maintained that the 1985 amendment allowed the provinces to collectively purchase their gambling monopolies for a \$100 million payment to the federal government.

An additional *Criminal Code of Canada* amendment in 1998 allowed dice games in casinos. This change was the result of lobbying by Casino Windsor interests who felt more gambling options were needed to attract players from nearby Michigan and Ohio.

Taken altogether these *Criminal Code of Canada* revisions resulted in the emergence of a \$13 billion a year national legal gambling industry (Azmier, 2005). The 1969, 1985 and 1998 *Criminal Code of Canada* amendments illustrated five pronounced gambling-related trends: (1) a transition from criminal prohibition to legalization, (2) greater provincial government authority and less federal government influence over gambling operations, (3) an ongoing expansion of gambling formats and products, (4) legal gambling growth being driven by vested interests, not the public at large and (5) fast-paced, continuous, electronic gambling formats beginning to dominate the Canadian legal gambling scene (Campbell & Smith, 1998).

The *Criminal Code of Canada* is the legal authority under which provinces regulate and/or operate certain approved gambling formats; however, because provinces can choose whether or not to offer these activities, the Canadian gambling landscape is characterized by inconsistencies across jurisdictions (Azmier & Smith, 1998). There is considerable variation across the country in terms of the legal gambling formats available, the operation and management of gambling services, the degree of private sector involvement, the distribution of gambling proceeds and the regulation of gambling operations.

Global Trends

To grasp the seismic changes that occurred in Canada with respect to the provision of gambling, it is instructive to know that a similar process was occurring in other Western nations. Gradual governmental acceptance of gambling was an emerging international phenomenon in the 1970s, as indicated by many jurisdictions shifting from an *alibi-model* to a *risk-model* for gambling public policy (Kingma, 2004). The earlier *alibi-model* was characterized by limited and tightly regulated gambling under the following conditions: (1) legalization was intended to blunt illegal markets, (2) private profiteering was discouraged and (3) gambling proceeds were directed toward social programs such as welfare, leisure enhancements and other identified “worthy causes” (Kingma, 2004, 49). The *risk-model* began supplanting the *alibi-model* as special

interest groups aggressively lobbied for increased gambling opportunities, thus creating a situation whereby “politics gave in to market demands without convincing and conclusive (legal) justification” (Kingma, 2004, 55).

Hallmarks of the risk-model include (1) gambling being viewed as a legitimate form of entertainment, (2) the notion that gambling revenues are needed to augment government treasuries and (3) a belief that government control over gambling markets is an effective way to minimize the risks of gambling addiction and gambling-related crime. Associated with this policy shift were “gambling proceeds being directed away from decentralized social welfare initiatives toward government coffers, and the introduction of new gambling formats designed not as intrinsically pleasing, recreational amusements but for profit maximization” (Smith & Campbell, 2007, 95).

Reith (2007a, 36) also links the softening of attitudes toward gambling to a broader change in Western economies, “most notably, the movement toward political and fiscal policies of neo-liberalism.” This governance style, known also as “the minimal state,” is distinguished by reduced state intervention in social and economic life, less state responsibility for supplying public services and the ascendancy of capitalist ideals that structure behavior in the interests of profit. Under the fiscal logic of neo-liberal regimes, state sponsored gambling became a tool to fund public services and restrain tax increases.

Along with the appearance of neo-liberal oriented provincial governments, cultural factors that contributed to gambling expansion in Canada, were the waning of protestant values (Cosgrave, 2006) and a laissez-faire attitude toward so-called minor vices (Morton, 2003). This combination of social and economic forces, plus the persistence of special interest groups (provincial governments who succeeded in pressuring the federal government to give them the authority to manage and conduct gambling; the gambling industry who hyped the economic benefits of gambling expansion; and charitable groups who prevailed upon provincial governments for supplementary funding), laid a foundation for the gambling infrastructure that exists in Ontario and much of Canada today. In short, a pragmatic government mind-set toward gambling took root based on the premise that gambling is a freedom of choice issue and that, since gambling can not easily be suppressed, at least some public good should come from it.

Ontario Expansion

In the following section we discuss the growth and current status of certain legal gambling formats in Ontario.

Currently there are 11 casinos in Ontario, 10 of which OLG conducts and manages: these include four privately-operated resort casinos (Casino Windsor, Casino Niagara, Niagara Fallsview and Rama [where revenue is divided between the government and First Nations]); five smaller casinos owned and operated by

OLG (Sault Ste. Marie, Thunder Bay, Brantford, Point Edward and Ganonoque); and one First Nations casinos. In Port Perry, Great Blue Heron Charity Casino is owned by the Mississaugas of Scugog Island First Nation and operated by the Great Blue Heron Gaming Company; OLG is responsible for the management of the slot facility only. In Kenora the Wauzhushk Onigum First Nation owns and operates Golden Eagle Charity Casino and Entertainment Centre, but OLG does not conduct and manage this establishment which is limited to charitable bingo and break open tickets only.

Large-scale casinos (known as Resort Casinos)

In comparison to most other provinces, Ontario was slower to embrace casinos and electronic gambling machines (EGMs). In 1992 the NDP government declared its intention to establish a casino as an economic development and tourism tool, particularly in a border location. Thus began a process of consultation, review of possible management models, creation of an organizational structure to regulate and operate casinos, and discussion about gambling initiatives with First Nations (Alfieri, 1994).

Ontario opted to delegate casino construction and operations to a private-sector gambling corporation. The rationale being that this commercial entity would have the expertise to run a casino properly; government would still be accountable; and no taxpayer dollars would be spent to construct the casino. This hybrid model of casino management was, and still is, contentious because the *Criminal Code of Canada* places an onus on provinces to “conduct and manage” gambling. The issue is whether the Ontario government is adequately overseeing casino gambling when it is so far removed from day-to-day operations.

Windsor

Windsor was chosen as the site for Ontario’s first casino because of its size and proximity to heavily populated American states and its dire need of an economic boost. Opened in 1995, Casino Windsor (now Caesars Windsor) was spectacularly successful in terms of revenue generation in its early years, largely because upward of 80% of its patrons were Americans drawn by a favorable monetary exchange rate and the absence of casino gambling in nearby states. In recent years Casino Windsor’s revenues have stagnated because of competition from three Detroit casinos, the growing strength of the Canadian dollar and labor unrest, which has seen casino workers withhold their services a number of times.

Niagara Falls

The first casino in Niagara Falls (Casino Niagara, 1996) was also highly profitable early on; so much so, that a second casino was added (Fallsvue Casino Resort in 2002). The original Niagara Falls casino prospered for the same reasons as did Casino Windsor, and likewise, has seen revenues plateau since casinos opened in western New York.

Rama

In 1992 Premier Bob Rae initiated discussions with Ontario First Nations about an on-reserve casino and “took the controversial step of forgoing the province’s share of the revenue, agreeing instead to direct all casino revenues to the First Nations” (Belanger, 2006, 88). By early 1994, 14 Ontario First Nations had submitted casino proposals; the winning entry was the Mnjikaning First Nation reserve, located near Orillia, 135 km north of Toronto. The revenue sharing agreement provided for 65% of net revenues to be split among the province’s 133 First Nations and the remaining 35% to remain with Rama First Nation with specific requirements on appropriate usage of the monies (Belanger, 2006). The Casino Rama project faced numerous legal, political and internal struggles before opening in 1996. These included a threatened law suit by Bally’s who had agreed to manage the casino and was then ousted in favor of Carnival Hotels and Casinos; the decision of the Mike Harris Conservative government to change the original revenue sharing agreement and impose a 20% Win Tax on Casino Rama’s gross revenues; and disputes amongst pro-and-anti-gambling band members. Patronized mainly by players from the Toronto area, Casino Rama has flourished, and so far been immune to the fiscal vagaries experienced by Ontario border casinos. Controversy continues to shadow Casino Rama operations however, as a recent audit revealed \$3 million paid to a non-existent band; \$1.4 million in undisclosed expenses and extravagant \$300,000 per year travel expenses for Rama’s five member management board; and more than \$7 million in legal fees spent to resolve disputes over Rama funds (Bailey, 2008).

Charity (now OLG Casinos)

In addition to the first three large scale casinos operating in Ontario in the 1990s, there were upwards of 50 roving “Monte Carlos” throughout the province (1 to 3 day mini-casinos set up in banquet halls and run by private operators with a portion of the profits going to a licensed charity). Because of the difficulty in regulating Monte Carlos, the province sought to replace them with up to 44 small permanent charity casinos. Referenda were held in the 44 chosen communities, asking citizens whether they wanted a casino. Despite government consultations and intense negotiations with the communities involved, only 5 voted for a casino, while 39 declined. Ultimately, the province decided to build larger than originally intended casinos in four of the assenting communities: Brantford, Point Edward, Sault Ste. Marie and Thunder Bay. In 2000, a fifth was announced for Eastern Ontario and straddles the communities of Leeds, Thousand Islands, and Gananoque.

Video Lottery Terminals (VLTs) and Slot Machines

The term “VLT” is used not only to denote an electronic gambling machine (EGM) with a video display, but also the location of the machine; i.e., VLTs refer to machines located outside of traditional gambling destinations; for example, in

neighborhood bars, restaurants, hotel lounges, etc. In contrast, “slot machines” or “slots” are the terms used to denote EGMs in gambling destinations.

Ontario was poised to offer VLT gambling in 1997. However, VLTs had already become a focus of public concern and backlash in other Canadian jurisdictions. In addition to this public relations dilemma, two specific events appear to have influenced Ontario to reject VLTs: (1) A Toronto law firm (Morris, Rose & Ledgett, 1996) was retained by the Ontario Lottery and Gaming Corporation to produce a report entitled *Ontario Gaming Legislation Review*. The report was triggered by a private sector scheme that sought to implement VLT gambling in Ontario. In assessing the VLT proposal, the authors found it necessary to also scrutinize the Casino Windsor model on which the VLT plan was based. The resulting legal opinion recommended that the VLT gambling initiative not be implemented in the province. As an aside, the legal opinion also questioned the legitimacy of Ontario’s “conduct and manage” model for Casino Windsor with regard to the *Criminal Code of Canada*. (2) In the summer of 1996, the Ontario Minister responsible for gambling (Norm Stirling) traveled to Alberta to investigate that province’s VLT program and was told by his Alberta government counterpart (Steve West), that “VLTs should never have been put into Alberta’s bars” (Alberta Hansard, Aug. 21, 1996). In 1998 the Ontario government announced its decision to forego VLT gambling.

In 2000 and again in 2003 the Ontario government declared there would be no new casinos except for the previously approved charity casinos, and reiterated its opposition to placing video lottery terminals (VLTs) in bars and lounges.

Other Gambling Formats

In the meantime, both the bingo and horse racing industries were suffering financially as a result of their inability to compete with casino gambling. These gambling interests lobbied the provincial government for new gambling formats on their premises; the bingo owners wanted electronic bingo with mega jackpots and the horse racing industry called for slot machines at race tracks. In the case of bingo, four successful trial projects were conducted, which cleared the way for further trials and possible province-wide dispersion of electronic bingo.

Having rejected VLT gambling, but still seeking to profit from electronic gambling machines (EGMs), the Ontario government opted to permit slot machines at racetracks. In 1999, Windsor Raceway became the first of 17 Ontario racetracks to host an OLG slot operation, with an additional slot operation planned for Quinte Exhibition Raceway in Belleville.

Ontario Today

In the fiscal year (April 1, 2006 to March 31, 2007) the Ontario government generated \$1.83 billion in profits from 10,961 gambling outlets (Canadian

Gambling Digest, 2006-2007). Table 3 provides a breakdown of existing Ontario gambling venues.

**Table 3
Ontario Gambling Venues**

| | |
|---|---------------|
| Bingo Facilities | 93 |
| Casinos | |
| First Nation | 2 |
| Non-First Nation | 8 |
| EGM Venues | |
| Casinos with slots | 10 |
| Racetracks with slots | 17 |
| Horse Racing Venues | |
| Major racetracks | 18 |
| Minor racetracks | 7 |
| Teletheatres | 76 |
| Player Banked Poker Areas | 9 |
| Ticket Lottery Outlets | 10,757 |
| Source: Canadian Gambling Digest 2006-2007: | |
| Total Gambling Venues | 10,961 |

Ontario leads the nation in the number of gaming tables (538) and number of electronic gambling machines (22,381), 12,341 of which are in casinos and 10,040 at racetracks. (On a per capita basis, Ontario had 237 EGMs per 100,000 people over the age of 18, which is the second lowest distribution in Canada).

Table 4 provides a breakdown of Ontario government-operated net gambling revenues in three major categories (Ontario Lottery and Gaming Annual Report, 2005-2006).

**Table 4
Ontario Net Gambling Revenues in Fiscal 2005-06**

| Gambling Format | Net Revenues (millions) | % of Total Revenues | Previous Year Comparison |
|-----------------------------------|--------------------------------|----------------------------|---------------------------------|
| Charity Casino & Race Track Slots | \$927 | 52% | Up \$4 million |
| Lotteries & Bingo | \$737 | 42% | Down \$51 million |
| Resort Casinos | \$109 | 6% | Down \$15 million |

Other noteworthy Ontario gambling figures include the following:

- Ontario's per capita gambling expenditure (18 years of age +) is \$468, placing it fifth among all provinces and slightly below the national average of \$524 (Statistics Canada, 2008).
- Ontario derives 5.3% of its total revenues from legal gambling sources, which is slightly above the provincial average of (4.8%) (Statistics Canada, 2008).
- Ontario's net gambling revenue declined by 4.7% in 2006-2007 (Canadian Gambling Digest, 2006-2007).
- Net gambling revenue earned by Ontario charitable groups in 2006-2007 was \$213 million, a drop of 6.2% from the previous year (Canadian Gambling Digest, 2006-2007).
- The Ontario government distributed \$108 million to charitable groups, which accounted for 1% of its total gambling revenue (Canadian Gambling Digest, 2006-2007).
- Ontario provides \$36.6 million for problem gambling initiatives (\$9M for prevention, \$23.6M for treatment and \$4M for research); far more than any other Canadian province (Canadian Gambling Digest, 2006-2007).
- Ontario is the third ranked province, behind Nova Scotia and Saskatchewan, in terms of the amount of government gambling revenue allocated to problem gambling per capita (18 years of age +) at \$3.88 which puts it above the provincial average (\$3.47) (Canadian Gambling Digest, 2006-2007).
- Only four of the ten provinces recycle gambling monies back to municipal governments (Ontario, British Columbia, Manitoba and Prince Edward Island); Ontario and BC tied for the lead in this category as each returned \$76 million to municipal governments (Canadian Gambling Digest, 2006-2007).
- Ontario's problem gambling prevalence rate (the combination of moderate risk and problem gamblers) was 3.4% in 2005, which ranked it fourth in the nation behind Saskatchewan, Alberta, and BC and tied with Manitoba and Newfoundland (Canadian Gambling Digest, 2006-2007).

Gambling Policy in Ontario

In tracing the development of gambling policy in Ontario, we hoped to locate a master gambling policy statement, but were advised that no such document exists. Senior administrators we interviewed agreed that such a consolidation of gambling policy would help all concerned, especially if it delineated the social contract between the government and its citizens with regard to gambling, justified the governments' involvement in gambling and declared how the province intended to minimize the adverse social and economic impacts created by gambling.

Instead, gambling policy making in Ontario can best be described as adaptive; that is, formulated decision by decision, on an incremental basis. A chronology of recent Ontario gambling policy development is presented in Table 5.

Table 5
Chronology of Gambling Policy in Ontario

| Year | Event |
|-------------|---|
| 1985 | Federal Government: Amendments to <i>Criminal Code of Canada</i> |
| 1992 | Ontario Government; <i>Gaming Services Act</i> |
| 1993 | Ontario Casino Corporation established. |
| | Hybrid public-private model developed for conduct and management of casinos in Ontario |
| | First Nations casino announced for Ontario |
| 1995 | No Video Lottery Terminals (VLTs) in neighborhood bars in Ontario |
| | (Interim) Casino Windsor opens, quickly generates the highest revenue per square foot of any casino in the world |
| 1996 | <i>Alcohol and Gaming Regulation and Public Protection Act (AGGRPA)</i> Establishes Alcohol and Gaming Commission of Ontario (AGCO) |
| | Province developed gambling regulatory model for Ontario. |
| | Proliferation of unregulated charity gambling in Ontario causes concern for policy makers |
| | Ontario Government announces intention to introduce slots at existing race tracks, reconsiders VLTs in bars |
| | Ministry of Health develops Strategy for the Prevention, Treatment and Research of Problem Gambling |
| 1997 | Consultations and referenda across Ontario on the expansion of hybrid casino public-private model, proposed 44 charity casinos (39 communities opposed) |
| 1998 | Ontario Government announces: <ul style="list-style-type: none"> - No new casinos without a successful referendum in the host community. - No VLTs in neighborhood bars (reiterated). - Four charity casinos allowed rather than the proposed 44 |
| | Letter of intent signed with Ontario Horse Racing Industry Association for slots at racetracks initiative. |
| | Federal Government: <i>Criminal Code of Canada</i> amendment to permit dice |
| 2000 | Ontario Government: <i>Ontario Lottery and Gaming Corporation Act</i> which merged the Ontario Lottery Corporation with the Ontario Casino Corporation |
| 2000 | Ontario Government announces: <ul style="list-style-type: none"> - 3-year moratorium on new facilities, with consideration for a fifth charity casino in Eastern Ontario. - No table games at racetracks - No new slots at tracks beyond the 16 which have zoning in place. - No VLTs in neighborhood bars (reiterated). |
| 2005 | New Ontario Gaming Strategy focused on Sustainable Responsible Industry |
| | Sadinsky Review of Problem Gambling and Responsible Gaming Strategies |
| 2007 | Ontario Ombudsman releases "A Game of Trust" |
| | New oversight regime for OLG O.Reg 281/07 Lotteries, AGCO responsible for regulation of OLG lotteries |
| 2009 | Ontario develops draft Problem Gambling Strategy (Targeted public release in 2010/2011) |

Current Ontario gambling policy emanated from the Ministry of Public Infrastructure and Renewal (now Ministry of Finance), and can be found in the following sources:

- All gambling statutes and regulations pursuant to gambling-related legislation (Chapter 5 features a discussion of the relevant statutes and regulations).

- All press releases stating government intent.
- Structural decisions creating separate and independent Crown agencies for the operation and regulation of legal gambling, including decisions stipulating which ministers are accountable for the regulatory or operating function.
- Crown Agency annual reports, long-term (service) plans of the regulator and the operator of gambling, as well as Memoranda of Understanding between Crown Agencies and the responsible ministers.
- Mandates, mission statements, objectives and operating principles of the operator and regulator of legal gambling.

Imprecision in the *Criminal Code*

As noted earlier, gambling is illegal under the *Criminal Code of Canada*, unless it falls under a narrow band of exceptions (Castel, 2008). The *Criminal Code* creates three principal exemptions to the general prohibition against gambling, two of which are relevant to this study: First, a provincial government, alone or in conjunction with other provinces, may “conduct and manage” a “lottery scheme” in accordance with provincial legislation. Second, a provincial government may license, or designate another authority to host charitable gaming events provided they are conducted and managed by a charitable or religious organization and the proceeds from these events are used for charitable or religious purposes. Only a provincial government may conduct and manage games of chance played through a slot machine, computer or video device (Castel, 2008).

When the *Criminal Code* was amended in 1985, the federal government chose not to elaborate on the meaning of “conduct and manage,” hence leaving a key phrase open to interpretation. For example, it is difficult to determine the level of government involvement necessary to satisfy the requirement that: games operated through a computer, video device or slot machines be “conducted and managed” by a government (Castel, 2008); and non-electronic gaming devices offered at a casino be “conducted and managed” by the province or a licensed entity. Likewise, the meaning of “lottery scheme” has been interpreted by provinces to include such widely differing formats as horse racing, charitable gambling, lotteries, casinos, charity casinos and slot facilities (Castel, 2008)

When casino gambling was introduced to Ontario in 1993, a hybrid public-private structure of ownership and operation was approved by government (Castel, 2008). Under this model, the casino business, as distinct from the casino facility, is 100% percent government owned, but daily casino operations are handled by a private sector gambling company. The province’s interpretation of “conduct and manage” is to approve the casino operator’s business plan, annual budget, operating policies, capital expenditures beyond specified amounts, and contracts entered into by the operator beyond threshold amounts or for longer than one year; review periodic reports and financial statements of the casino complex; and

maintain control of casino bank accounts (this list is not exhaustive but meant to be illustrative) (Castel, 2008).

According to Castel, the *Criminal Code* of Canada is silent on the subject of First Nations gambling, so when the Government of Ontario approved a First Nations Casino in 1993, Casino Rama had a similar organizational structure to Casino Windsor (now known as Caesars Windsor); that is, with the OLG playing a role akin to a Board of Directors (Castel, 2008). The main difference between Casino Rama and the casinos in Windsor and Niagara Falls is that the private sector operator of Casino Rama has a dual reporting relationship; answering both to OLG and the Chippewa of Mnjikaning (now Chippewas of Rama First Nation) (Castel, 2008). In 1999, Ontario introduced a public sector model for administering slot machines at racetracks and four charity casinos. Under the public sector model, the government operates the gambling venues and staff members are provincial employees. Castel notes that the public sector model is “purer” than the hybrid model in terms of it being “undisputed” relative to compliance with the Criminal Code (Castel, 2008, 2-20).

A shortcoming of Ontario gambling policy according to Sadinsky, McDonnell & Stewart (2008), is the absence of a comprehensive gaming strategy. The authors claim that because the gambling policy decision making process is “siloeed” (involving a number of disparate ministries); there is no long term plan for the viability of the gambling sector as a whole. To remedy this situation, Sadinsky and his colleagues advocated the formation of a Gaming Secretariat (a policy making, coordinating and advisory body that would develop and administer an overall provincial gaming strategy that protects the interests of each gaming format).

A concern with the rapid proliferation of gambling in any jurisdiction is whether there are adequate processes to monitor and, if need be, rectify, any adverse social and economic consequences associated with the activity. For example, Adams (2008) calls gambling an extractive industry, comparable to mining, logging, fishing and drilling for fossil fuels and noted several parallels between gambling and these other enterprises, for example: (1) commercialization—the idea of maximizing financial returns for stakeholders; (2) refinements in methods of extraction—Adams reckons that the EGM did for gambling what the chainsaw did for forestry; that is, allowed the exploitation of resources to proceed at a swifter and more cost effective pace; and (3) citizen naiveté—the hasty expansion of gambling as with other extractive industries tends to catch citizens unaware--before they understand what’s going on, the industry has gained a foothold in the provincial economy. Trusting citizens assume that governments would not unleash a host of gambling formats without fully exploring the potential downsides of their actions. By the time adverse impacts of gambling are fully known, the activity has become so ingrained that it is difficult to make significant changes.

In the following chapter we highlight issues pertaining to the provision of gambling in Ontario that can affect the accountability of the enterprise and whether the activity is administered in the public interest.

Chapter 3

Gambling in the Public Interest

While found in many cultures, gambling has been outlawed in most societies for the majority of human history. Early on, many religions took the position that gambling itself was not necessarily a sin but became a vice through circumstances (Schwartz, 2006); that is, “when pursued too eagerly or excessively, it inevitably led to troubles” such as loss of productivity, violence, scandal and fraud (Schwartz, 2006, 34). In the same vein, Rose’s (1991) “third wave” theory posits that the popularity of gambling is cyclical, in that it predictably goes from prohibition to acceptance and back again. He explained how “twice before in American history players could make legal bets in almost every state, but these waves of legal gambling came crashing down in scandal and ruin” (71). By Rose’s reckoning, America is now in the midst of the third wave of legal gambling, with a collapse of the industry looming in the next 30 to 40 years. While Rose’s forecasted nose-dive is not imminent, the long-term survival of legal gambling is seemingly always at risk. Despite the persistence of gambling through the ages, there is scant evidence to suggest that any society (ancient or modern) had or has it right; that is, an exemplary way of managing gambling. Obviously, some jurisdictions do it better than others, but after several millennia of trying, it’s still a work in progress.

The challenge confronting Canadian governments in conducting and managing gambling is how to offer the activity so that it’s fair to players and tightly regulated; proceeds are directed to important social betterments; gambling-related crime and corruption is constrained; and harm is minimized for individuals and the community at large. Governments must also reconcile gambling’s stigmatized reputation; that is, explain why it is that even though most forms of gambling have been illegal until recently, it is now a worthwhile leisure pursuit and quite proper for them to promote and operate it. While government involvement in gambling gives the activity legitimacy, there are caveats associated with commercial gambling that make it a confounding activity to operate and regulate in the public interest. By caveats we are referring to verities concerning the nature of gambling (e.g., historical links with crime, addiction and social problems) that hinder jurisdictions from harnessing the activity and putting it to good use. Discussed below are examples of these complications that can pose governance problems.

Caveats of Commercial Gambling

Gambling is not an Essential Product or Service

Gambling, unlike core programs provided by governments such as health care, education, and environmental protection, is not an essential service. Indeed, Aranson and Miller (1979-80) question the social and economic utility of gambling on the grounds that it entails the transfer of money between individuals, but creates no new money and, when government run, “gambling represents a form of regressive taxation” (836). Concern has also been expressed that government-promoted gambling implies that citizens should rely on luck to achieve financial success, which is “inconsistent with encouraging characteristics such as effort, industry and perseverance” (Lippke, 1997, 61). It is true that governments provide some leisure/lifestyle services in the areas of recreation and culture, e.g., campgrounds and museums. Gambling is unlike these leisure pastimes, however, in that, they are designed to enhance citizens’ quality of life and operate on a cost recovery basis. In contrast, gambling is a significant provincial revenue generator that also engenders serious personal and social costs. Given the non-essential and hazardous nature of gambling, should there be a greater than normal onus on government to justify why offering the activity is in the public interest?

Gambling is a Morally Contested Industry

Magendanz (2003) described gambling as a “morally contested industry”-- morally contested industries being those that polarize public debate and attract the question, “Is this activity moral?” Gambling, prostitution, pornography and recreational drug use are examples of activities that tend to draw this designation. In order to minimize public concern, morally contested industries need regulatory structures and governance processes that promote integrity, advance public trust and cultivate public confidence (Magendanz, 2003). The question is; whether, and to what extent a government should offer and promote a morally contested industry.

Gambling is Harmful to Some Participants

A small percentage (2% to 5% of adults, depending on the Canadian jurisdiction) of gambling consumers can be harmed and create misery for those close to them. This potential for gambling-related personal and social damage has accountability implications. First, in terms of the government justifying its involvement in the activity and articulating its priorities in regard to revenue generation and social responsibility; second, in minimizing associated harm; and third, in providing citizens with the information necessary to hold the government accountable for its gambling operations.

Consumer Protection Standards for Gamblers are Unclear

Two prominent elements of Canadian consumer protection law are *duty of care* and *informed consent*. Duty of care is the obligation of providers (i.e.,

government, in the case of gambling) to adhere to a reasonable standard of safety in offering an activity that could foreseeably harm participants. Informed consent refers to consumers being fully cognizant of the risks inherent in a buying decision and not subject to misrepresentation about that purchase.

In recent years, informed consent has become a key component of responsible gambling strategies. Research indicates that electronic gaming machine (EGM) players do not understand how the machines work or what the odds of winning are on repeated plays (Falkiner & Horbay, 2006; Doughney, 2002). There is debate about whether certain machine features such as *stop buttons* and *near misses*, and practices such as allowing players to reserve a *hot* machine contribute to or reinforce players' misunderstanding of how the machines work. Egert (2004) contends that EGM players are generally not provided with information about how the machines work or with the probabilities of winning each size of prize. He labels this a deceptive marketing practice, noting that without this information, players may unknowingly take excessive risks. Egert speaks to the right of consumers to have accurate pricing information for comparison shopping between casinos and machines within casinos.

To date, no Canadian legal standard has been set for either informed consent or duty of care with regard to the provision of gambling. The lack of case law in this area means the responsibilities of the gambler, the gambling provider, the machine manufacturer, the regulator and others are still unclear.

A government providing gambling should consider making an explicit statement regarding its compliance with standards of duty of care and informed consent, and frame this commentary within a reverse-onus doctrine, known as the precautionary principle. According to Myers and Raffensperger (2001) when an activity raises threats of harm to human health or to the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. In applying the precautionary principle to its gambling policy and operations, government should ensure that: harm minimization alternatives are fully explored; the burden of proof for the safety of the product rests with the proponents of the activity; and the public's right to informed consent is honored (Borrell, 2003).

Profit-Seeking Tends to Override Other Goals

Many Canadian jurisdictions formed Crown corporations to run their gambling enterprises. Research has shown that the application of corporate practices to market, operate and regulate legal gambling can lead to policies and practices that may run counter to the public interest (Smith & Campbell, 2007). Corporations and governments are distinct entities, each with different goals and functions; to wit, corporations have a legally defined mandate to pursue their own self-interest. The primary focus of corporations is their continued viability, profitability and rate of return to shareholders as measured by the "bottom line" (Bakan, 2004). In contrast, a true indicator of achievement for government is not whether it turns a

profit, but whether social welfare is enhanced, justice strengthened and overall quality of life nurtured. An important test of a good government is how it provides for the most vulnerable of its citizens.

When government acts as an entrepreneur in providing legal gambling, a potential conflict is created with its mandate of protecting the public interest, for example: (1) Profit maximization and the generation of non-tax revenue for government may become the overriding purpose of gambling operations; in fact, Cosgrave and Klassen (2009) assert that legal gambling in Canada “has become constituted on the basis of revenue production, which suits the interests of the state, but not necessarily the needs of the gamblers, or the larger community” (11). (2) Governments may be willing to accept harsh trade-offs as an inevitable and acceptable cost of doing business (i.e., generating revenues, despite preventable damage in terms of family break-ups, bankruptcy, harm to health and social well-being and so on). And (3), government policy may become vulnerable to undue influence by gambling industry partners and interests, thereby outweighing groups which represent the broader public interest.

The above noted caveats of gambling make it difficult to provide the activity so that it results in a net benefit to the community. Indeed, widespread high intensity government-sponsored gambling is said to pose “a threat to the vibrancy and integrity of democratic structures and processes” (Adams (2008, 15). Canadian gambling regimes have dealt with these caveats by soft-peddling the downside of the activity and accentuating the advantages (e.g., calling it “gaming” instead of “gambling,” promoting fiscal benefits such as jobs, civic revitalization and government revenue, while understating potential personal and community harms). Once established in the gambling marketplace, governments sought “to protect their investment and maximize their profits” (Adams, 2008, 32). In so doing, infrastructures of control (policies and practices) were created that encouraged gambling expansion and revenue enhancement, often at the risk of slighting the public interest. Listed below are examples of government policies/practices that illustrate this infrastructure of control.

Gambling Policies/Practices that Compromise the Public Interest

Conflict of Interest

Canadian provincial governments are perceived to be in a position of conflict with regard to their gambling operations: not only do they have a monopoly on the activity within their borders, they provide and promote gambling opportunities, legislate the gambling landscape, regulate and enforce legal gambling, and prosecute competing forms of illegal gambling; while on the other hand, are the major beneficiaries of gambling proceeds (Campbell et al, 2005; Adams 2008). Harmonizing the diverging goals of maximizing profits and protecting citizens’ welfare may well be a mission impossible. To avoid this conflict of interest

government could privatize gambling services, or govern gambling through an independent tribunal. Privatized gambling would make provincial governments strictly regulators and not operators. The pros and cons of privatizing Canadian gambling have been explicated by Goldlist and Clements (2008), who note that this would require a major change in the Criminal Code gambling provisions and would not likely be supported by the provinces. The prospect of an independent tribunal to oversee gambling is explored in greater detail in the final chapter.

The Myth of Gambling Neutrality

The Ontario government, like some other provincial governments has described itself as “gaming neutral” and required that its funded agencies be neutral as well. The notion of government as an impartial and disengaged bystander with regard to gambling has been criticized in the academic literature as distorting the true nature of its role. This has implications for government accountability when gambling controversies arise; for instance, in 1998 when various Alberta communities held referenda on whether to allow video lottery terminals (VLTs), the government forbade problem gambling counselors from participating in the debates, directing them to be “gaming neutral.” By invoking this gag order, potentially valuable information about the problems associated with VLTs was withheld from the public, thus compromising the openness of the dialogue (Smith & Wynne, 2004).

Non-use of the Precautionary Principle

According to Myers and Raffensperger (2001), due diligence should precede the introduction of policies or activities that could irreversibly damage citizens or the community, even if there is no definitive proof that the harm will result. The precautionary principle is especially relevant for gambling policy, given that it is much easier to expand gambling than reduce it. Gambling, unlike most other commodities or services provided and promoted by provincial governments, “carries serious risks of personal and social harm” (Orford, 2005, 1223). In likening electronic gambling machines (EGMs) to the tobacco industry, Dougney (2007) maintained that both products are control impairing and that regular use of EGMs as intended by the manufacturers, works to extinguish the user’s control. The precautionary principle is an overarching principle of the Government of Canada; yet, the federal government has not insisted that it be followed in the provision of gambling.

Strange Bedfellows

Provincial governments collaborate with private sector gambling corporations. This is not to say that gambling corporations and provincial interests are always compatible, “but it does give the gambling interests extraordinary bargaining power” (Room, 2005, 1226). This close relationship has over the years contributed to increasingly relaxed gambling regulations. For example: gambling

venues open seven days a week and for longer hours; alcohol consumption on the gaming floor; increased maximum bet limits; ATMs in gambling premises; telephone and internet wagering; and EGMs equipped with bill acceptors. In general, these changes were brought about by gambling industry lobbying and designed to increase profit; public consultation was seldom part of the process. (Azmir, 2000; Campbell & Smith, 2003; Smith & Campbell, 2007).

In Great Britain the gambling industry must make yearly financial contributions to The Responsibility in Gambling Trust (RIGT), which funds problem gambling treatment and research (Miers, 2008). The point being, that Great Britain gambling corporations are obligated to participate in government's social responsibility agenda. No such demand has been made on the private sector Canadian gambling industry.

Fairness and Integrity of Games

Fairness depends on an absence of cheating and deception and a reasonable (not excessive) "house edge." All legal gambling formats are weighted against players "beating the house." Goldlist & Clement (2008, 11) contend "that government-run gaming monopolies maintain artificially high prices in the form of lower pay-out ratios." Campbell (2009) notes how Canadian jurisdictions finally developed programs to deal with the consequences of problem gambling, but have yet "to address the fundamental fairness of proffered games such as the odds or rates of return paid by EGMs, which are overwhelmingly advantageous to the gaming operator" (85). By way of example, the profit margin on Canadian sports lottery games is inordinately high (around 40% of the sports wagering dollars are retained by lottery corporations), in comparison with Nevada's legal sports books with profit margins of 5% (Smith, 2009).

The *Criminal Code of Canada* allows only parlay style sports wagering; betting on single sports events or athletic contests is legal in Nevada but not in Canada. North American sports leagues have traditionally opposed such betting formats—one reason why Las Vegas is not home to a major league team (<http://www.thestar.com/News/Canada/article/453946> July 3, 2008). Recent news reports indicate that the Government of Ontario, with strong pressure from Niagara Falls casino executives, has lobbied the federal government to amend the *Criminal Code* to legalize single event sports betting. Ostensibly, the availability of this gambling format would bolster casino attendance and increase revenues. In theory, this proposed change would be welcomed by avid sports bettors, the difficulty will be for provincial governments to provide a format that offers fair odds and consumer friendly services (Smith, 1990).

Disconnect Between Official Rhetoric and Practice

Borrell (2008a) maintains that government statements and declarations of values, aims and missions with regard to gambling operations cannot be assumed to "translate into implementation of policy in a straightforward manner" (266).

Moreover, she notes that “without the necessary political will, any good policy may be in danger of being circumvented in a variety of ways within the day-to-day operations of governments, bureaucracies and statutory bodies” (269). In the same vein, Dempsey (2005) questions the veracity and utility of government mission/value statements in general, because (1) they are devoid of content, we hear of commitment to values, but not what they really mean in practice; (2) they are shopping lists of all things good, there is no recognition of conflicts between them; (3) they are used to gain an edge in business; and (4) they focus on the caring side of the enterprise while avoiding the darker side of the activity (in the case of gambling; addiction, corruption, dishonesty and consumer exploitation).

Official documents can mislead the public by omitting relevant information; for example, in her analysis of annual gaming reports, Borrell (2008b) notes that gambling activity is described using commercial discourse and profit is the prime indicator of success. The gambling regime is portrayed as a productive business enterprise that satisfies consumer demands and is thus responsible for the financial benefits accrued. Not mentioned is “unpleasant information about the evidently harmful “games” that are being peddled and the consequent revenue harvesting from the poor, the compulsive, the lonely and the desperate” (Borrell, 2008b, 213). Nor is there commentary about product design, placement, promotion or safety that may foster improvident gambling.

Livingstone and Woolley (2007) critique the discourse of ‘business as usual,’ that is, the way that governments seek to justify or rationalize their provision of EGMs. For instance, EGMs are presented as simply a market response to consumer demand; that no one is forced to play; those who do play bear responsibility for their behavior; those harmed by their EGM play should know better; and the fact there are some EGM casualties is unfortunate but unavoidable. The authors contend that “constant repetition of such assertions, including the presentation of value judgments as ‘facts,’ is fundamental to domination of the conceptual field of EGM gambling” (363-364).

As an organizational tool, Table 6 combines the caveats of gambling with gambling policies/practices that are thought to compromise the public interest and offers accountability and social responsibility implications for providing gambling in the public interest.

Table 6
Caveats of Gambling and Problematic Gambling Policy/Practice

| Caveat/Problematic | 1. Not Essential | 2. Morally Contested | 3. Hazardous for Some | 4. Ill-defined Consumer Protection | 5. Profit Override |
|---|---|----------------------|-----------------------|------------------------------------|--------------------|
| Conflict of Interest | Given a gambling regime's conflict of interest between maximizing revenue and protecting citizen welfare there is a need for independent oversight of the activity (Productivity Commission, 1999; Campbell et al 2005; Adams, 2008). | | | | |
| Myth of Gambling Neutrality | Greater transparency is needed for citizens to judge whether gambling is being conducted in the public interest. (Borrell, 2008; Eggert, 2004; Doughney, 2007). | | | | |
| Non-Use of Precautionary Principle | Given the personal and social harms associated with widespread gambling, the precautionary principle should undergird gambling policy and operations (Smith & Campbell, 2007; Borrell, 2008; Adams, 2008) | | | | |
| Strange Bedfellows | Does the gambling industry unduly influence government gambling policy? (Campbell, et al, 2005; Denton & Morris, 2001; Kindt, 2003). | | | | |
| Fairness of Games | What is an appropriate profit margin for government gambling formats? And, how should consumer protection legislation apply to gamblers? (Eggert, 2004; Falkiner & Horbay, 2006; Doughney, 2007). | | | | |
| Disconnect Between Rhetoric and Reality | Government declarations concerning the provision of gambling in the public interest are vague, often not aligned with routine practice and generally misleading (Adams, 2008; Borrell, 2008; Livingstone & Woolley, 2007). | | | | |

In this chapter caveats of government run gambling were noted, along with examples of the infrastructure of control which can compromise a gambling regime's accountability and social responsibility. The academic literature has recognized governments' conflict of interest in regard to gambling matters on a number of levels, and related to that, their demand for gambling neutrality from staff and agencies; failure to use the precautionary principle; lack of public input into gambling policy; and the unfavorable odds and payouts of certain legal gambling formats. In the following chapter responsible gambling programs are discussed.

Chapter 4

Responsible Gambling Concerns

Brief History

While all Canadian provinces now subsidize problem gambling prevention and treatment programs, no Canadian jurisdiction had the foresight to implement these programs before getting heavily into legal gambling. Responsible gambling practices that did exist two decades ago, were more happenstance than the result of prudent planning; consisting of industry self-regulation and voluntary codes of practice. Reith (2008, 149) says that “responsibility is based on the possession of power and implies accountability—to another *for* something.” Furthermore, Reith (2008) submits that governments’ have not always assumed their fair share of responsibility for the adverse outcomes associated with widespread gambling. In particular, she cites “inconsistencies such as a decreased presence of the state in regulating public life and a proliferation of commercial gambling opportunities; increasing expectations for individual gambler self-control without due consideration for gambling provision impacts related to the supply, availability, accessibility and addictive potential of certain gambling formats; and the reluctance of governments to acknowledge that gambler self-control, no matter how well intentioned, can be undermined by “powerful external agents (such as “addictive” features of certain types of games) or through individual vulnerabilities (mental, physiological or environmental)” (152).

Over the past 15 years, responsible gambling has been used as a rallying concept to align governments, the gambling industry, problem gambling treatment and prevention specialists, gambling studies researchers, consumers and the public at large in pursuit of strategies to alleviate gambling-related harms. Since the advent of responsible gambling programs, there has been a change in the belief that the gambler alone is responsible for the consequences of his/her actions; now it is common to also assign a duty of care for problem gambling to the state and gambling providers (Reith, 2007b). A strong indicator of a jurisdiction’s commitment to offering gambling in the public interest is the quality and depth of its harm prevention policies and initiatives.

Responsible gambling is defined as:

“That which occurs in a regulated environment where the potential for harm associated with gambling is minimized and people make informed decisions about their participation in gambling. Responsible gambling occurs as a result of the collective actions and shared ownership by individuals, communities, the gambling industry and government to achieve outcomes that are socially responsible and responsive to community concerns” (*Queensland Responsible Gambling Policy* (2002, 3).

The Canadian responsible gambling movement began in Ontario in 1983 under the Canadian Foundation on Compulsive Gambling (Ontario). A name change to the Responsible Gambling Council (RGC) (Ontario) in 2001, more accurately reflected its increased emphasis on harm minimization efforts. The Ontario Substance Abuse Bureau asked the RGC to lead a province-wide problem gambling awareness campaign. In so doing, the RGC (Ontario) and an ad hoc advisory group formally merged to create the Ontario Partners for Responsible Gambling to oversee the initiative. Comprising the advisory group were Ontario government agencies such as the Ministry of Health and Long-Term Care, the Ontario Lottery and Gaming Corporation, the Ontario Horse Racing Industry Association and the Centre for Addiction and Mental Health; thus consummating a strategic alliance under the banner of responsible gambling (Campbell & Smith, 2003).

Following the formation of the Ontario Partners for Responsible Gambling, in 2001, the Ontario Responsible Gambling Council (RGC) sponsored a national forum with an invited group of Canadian gambling providers, regulators and stakeholders representing gambling research centres and non-profit organizations. One meeting outcome was the creation of an inter-provincial steering committee whose task was to develop a national initiative to provide services to members and affiliates in support of responsible gambling research, education and policy advisement. This fledgling organization became known as the Canadian Partnership for Responsible Gambling (CPRG) and, in keeping with its long range goals, created a website that offers information databases, a media monitoring service and regular reports on Canadians' gambling patterns and behaviors. Now all provinces have a responsible gambling agenda, and some have "social responsibility" divisions as part of their gambling operations section.

In developing a sound responsible gambling strategy it is important to outline what is meant by being responsible in a gambling context and how it applies to the three main groups involved (governments who sanction, regulate and generate revenues from the activity; the gambling industry who provides the gambling facilities, equipment and operating expertise; and the gamblers who pay to play the games). Until recently, gambling proponents insisted that gambling was an innocuous pastime that citizens could engage in with few, if any, ill effects. It was up to the individual player to gamble in a controlled fashion—any gambling problems that surfaced were seen to be the result of individual character defects and had nothing to do with the availability of opportunities to gamble or the types of gambling formats offered (Room, 2005). As the adverse social and economic effects of state-sanctioned gambling came to be better known and understood, governments and the gambling industry were challenged for failing to adequately protect vulnerable players. The response to this imputation was to (1) promote gambling as a freedom of choice issue (no one is forced to gamble); (2) enumerate the benefits of state-sanctioned gambling such as job creation, economic development, government debt reduction and monies for worthy causes; and (3) encourage the responsible gambling movement.

A responsible gambling program is a critical link in the chain of logic that governments make in asserting that gambling and the public interest are compatible. Common approaches used by Canadian jurisdictions to ameliorate societal and personal gambling-related harms include: (1) voluntary self-exclusion programs from certain gambling venues; (2) harm reduction features on EGMs such as pop-up warnings, clocks, problem gambling hot-line referrals and player expenditure data; (3) restrictions on betting limits, minimum age of players, alcohol and/or tobacco consumption, hours of operation, cheque cashing and granting of credit; (4) bans on certain gambling formats, e.g., Ontario and British Columbia prohibit video lottery (VLT) gambling; (4) constraints on perceived hazardous gambling formats, e.g., capping the number of EGMs in a jurisdiction or gaming venue; (5) responsible gambling awareness training for gambling industry employees; (6) problem gambling education and awareness campaigns, as in gambling venue player information brochures and posters with information on odds, payback percentages and how the games work, and problem gambling modules for use in school curricula; (7) gambling venue information/counseling kiosks that provide facts about the gambling products, tips for gambling prudently, signs of problem gambling and available treatment, and in some cases, crisis intervention; and (8) limits on the amount and type of gambling advertising and promotional activities (Williams, West & Simpson, 2007).

The purpose of these undertakings is to curb improvident gambling by helping players exert restraint over themselves and the gambling situation. However, in assessing the efficacy of these prevention mechanisms, Williams et al (2007) note there is little or no conclusive empirical evidence that any of them work; the most commonly employed of these nostrums are often among the least effective; and, while all of these measures can help to some degree, none, by itself, has shown strong potential to prevent harm.

The Reno Model

The Reno Model is a strategic framework for organizing efforts to reduce gambling-related harms (Blaszczynski, Ladouceur & Shaffer, 2004). The aim of the Reno Model is to provide a “blueprint for action, to advance and coordinate strategies to limit gambling-related problems” (302). Key stakeholders in the responsible gambling framework are designated (i.e., consumers, gambling industry operators, health service and other welfare providers, interested community groups as well as governments and their related agencies) and the argument made, that harm reduction efforts resulting from citizen’s protests have been unsuccessful because they were not science based. Two major roadblocks (conceptual clarity and imprecise measurement) to furthering responsible gambling initiatives are discussed, including the view that consensus is lacking on the wide range of terms that describe gambling-related harm and the measuring instruments used to determine problem gambling prevalence rates do not effectively discriminate between levels of impaired control.

Stated assumptions of the Reno Model include:

- Gambling provides a level of recreational, social and economic benefits to individuals and the community.
- A portion of participants, family members and others can suffer significant harm as a result of excessive gambling.
- Scientific research can and should guide gambling harm reduction strategies.
- Safe levels of gambling participation are possible.
- The total societal benefits of gambling must exceed the social costs.
- Abstinence is a viable and important, but not necessarily essential, goal for individuals with gambling-related harm.
- For some gamblers who have developed gambling-related harm, controlled participation and a return to safe levels of play may be an achievable goal (Blaszczynski et al, 2004, 309).

A Critique of Responsible Gambling Programs

While good intentions underlie the responsible gambling initiatives tried so far, the movement has encountered the following hurdles:

- The disparate stakeholder groups often have conflicting goals and disagree about the costs and benefits of legal gambling.
- Governments and the gambling industry have been reluctant to apply stringent responsible gambling standards, ostensibly, because doing so, would lead to lost revenues.
- Uneven power relationships amongst and between stakeholders have led to compromised independence and integrity; for instance, academics not addressing controversial gambling issues for fear of research funding being withdrawn or problem gambling treatment agencies adopting a 'gambling neutral' stance to pacify government gambling regimes (Adams,2008).
- Skeptics claim that responsible gambling strategies are public relations tools for governments and the gambling industry that may in the future be used to counter product liability suits (Kindt, 1998).
- There has been no movement to re-evaluate the existing gambling infrastructure to determine whether these offerings, regulations and operating practices are appropriate and whether high standards of accountability and social responsibility are being met.

- And, many North American responsible gambling initiatives have proven to be ‘dogs with no teeth;’ for example, voluntary self-exclusion programs that are easy to evade and the ready availability of hazardous gambling formats such as EGMs (el-Guebaly, Currie, Hodgins, Smith & Williams, 2005).

The Reno Model addressed some of these concerns; and, while an improvement over previous responsible gambling paradigms, it has so far gained little traction with academics or policy makers. Schellinck and Schrans (2004) challenged the Reno model for being too narrow in scope, overly reliant on psychological and medical perspectives, negligent with regard to consumer protection safeguards and deferential to governments and the gambling industry. Schellinck and Schrans also criticized the Reno model for its silence on important criteria such as the impact of marketing campaigns; gambling format and venue designs that compromise the safety of the product and increase the incidence and prevalence of problem gambling; the obvious conflict between the promotional activities of gambling providers and responsible gambling precepts; and the complexity and deceptiveness of EGMs making it difficult to provide enough information for players to make knowledgeable choices.

Levels of Commitment to Responsible Gambling

In assessing North American responsible gambling initiatives, University of Nevada Reno economist, Bill Eadington (2003), described the following four stage model. Stage one is characterized by inaction and government and gambling industry denial. Typical reactions from gambling providers include “there’s no such thing as problem gambling and even if there was, it’s not our fault;” “if these people didn’t gamble they would probably destroy their lives in some other way;” and, “if we take the high road and try to reduce problem gambling, we will lose ground to our less caring competitors.”

Stage two’s theme is described as governmental and gambling industry “lip service,” and reflected in viewpoints such as “we acknowledge that problem gambling exists as long as it doesn’t cost us any business or serious resources;” “our primary responsibility is to our shareholders and stakeholders—it’s too bad about the problem gamblers;” and “we will talk the talk, but won’t walk the walk unless we are certain there is no downside.”

Stage three represents a partial commitment by governments and the gambling industry to responsible gambling measures and is exemplified in the following statement: “we recognize the existence of problem gambling and realize it affects both our business and the public’s acceptance of gambling; however, while we want to be seen to be doing the right thing, we may be constrained by market forces.”

Stage four is the unconditional acceptance of strong measures to attenuate gambling-related harms by governments and the gambling industry and exemplified in statements such as “there is problem gambling and it’s our

responsibility to mitigate it as much as possible;” “harm minimization features must be built into the games, venues and conditions of play;” and, “we have an obligation to do the right thing, even if it conflicts with other objectives and means sacrificing revenues.”

In Eadington’s judgment, progress through the responsible gambling commitment stages has varied by jurisdiction, gambling corporation and tribal government. He also noted that a few leaders championed the responsible gambling movement, and in the process, pulled along some reluctant followers. Eadington’s reading of the North American responsible gambling landscape was that state/provincial jurisdictions and gambling industry entities were generally positioned somewhere between Stages 2 and 3; well short of an ideal engagement.

The responsible gambling movement has been hindered by government and gambling industry reluctance to accept empirical research findings, the goals of a robust responsible gambling initiative, and the means to reach these goals (Hing & Mackellar, 2004). For example, mounting evidence from around the world shows that a high proportion of frequent EGM players are problem gamblers, and consistent with this finding, a range of studies show that a major share (40%) of EGM revenues is drawn from problem gamblers (e.g., Doughney, 2006; Smith & Wynne, 2004; Williams & Wood, 2004). This research (so far, uncontested by gambling studies scholars) has been in the public domain for several years; yet, EGMs continue to proliferate; ostensibly, because gambling providers either disagree with these findings or choose to ignore them.

Similarly, there are proven ways to tighten voluntary self-exclusion programs (e.g., iris scanning) and prevent calamitous financial losses (e.g., smart card technology) that are not widely used; presumably, because their implementation would reduce revenues. The reluctance of gambling providers to heed substantiated research findings has led to the “knee-jerk and patchwork solutions that appear to characterize current efforts in the responsible conduct of gambling” (Hing & Mackellar, 2004, 57), and is a major impetus behind the calls for greater independence in gambling oversight (e.g., Productivity Commission, 1999; Campbell et al, 2005; Adams, 2008).

Responsible Gambling in Ontario

We examined the programs available and their perceived effectiveness in Ontario. The Ontario government’s responsible gambling efforts officially began in 1994. Since 1999, Government has dedicated 2% of gross revenue from charity casino and racetrack slot machines to problem gambling programs. This fund, which increased from \$1 million in 1996 to \$36 million by 2005, is allocated to treatment, prevention and research. It is noteworthy that, because of other government priorities, in some years the full \$36 million was not spent on problem gambling programs (Sadinsky, 2005). The percentage of funding by program component when the full allotment was spent, is: treatment services \$24

million (66%), prevention/education \$8 million (23%) and research \$4 million (11%).

Initially, responsibility for the problem gambling strategy rested with the Ministry of Health and Long-Term Care. In recent years, authority for the components has been divided among a number of government ministries and program areas, thus making it difficult to assess the comprehensiveness, effectiveness and accountability of the overall strategy.

1. Problem gambling treatment—there are 47 facilities that provide integrated services for problem gamblers, some of which cater to special populations such as women, seniors, Aboriginals, youth and so forth. The Mental Health and Addictions Branch in the Ministry of Health and Long-Term Care is responsible for this component.
2. Problem gambling prevention and education—consists of funding to the 47 facilities for local prevention initiatives; province-wide agencies such as the Responsible Gambling Council--Ontario whose mandate is to disseminate information on problem gambling and implement problem gambling prevention initiatives; the Ontario Problem Gambling Help Line; the YMCA youth gambling program and the University of Toronto Problem Gambling Prevention Program for Youth. Responsibility for the funds associated with this component is divided between the Ministry of Health and Long Term Care and the Ministry for Health Promotion.
3. Research—the Ontario Problem Gambling Research Centre funds peer reviewed research to enhance understanding of problem gambling, and to strengthen treatment and prevention practices through research. The Research Unit in the Ministry of Health and Long-Term Care administers these funds.

In 2005 the Ontario Ministries of Health and Long-Term Care and Economic Development and Trade released a jointly sponsored report entitled *Review of the Problem-Gambling and Responsible-Gaming Strategy of the Government of Ontario*, authored by Stanley Sadinsky (2005). Sadinsky's task was to assess, existing responsible and problem gambling programs and the appropriate government funded agencies. In terms of government accountability, the key agencies were the sponsoring Ministries, as well as Ontario Lottery and Gaming and the Alcohol and Gaming Commission of Ontario.

OLG's main role is to provide responsible gambling information at provincial gambling venues, supply on-site problem gambling information and counseling, and educate gambling industry employees about problem gambling. The Alcohol and Gaming Commission (AGCO) regulates the OLG to ensure that gambling is operated in the public interest and "in accordance with principles of honesty, integrity and social responsibility" (Sadinsky, 2005, 60). The AGCO's chief duties in this area are to approve new gambling formats, test EGMs, monitor gambling advertising, promotions and the extension of credit and ensure that minors and those in self-exclusion programs are kept out of gambling venues.

Despite the fact that Ontario dedicates more funding per year for responsible gambling undertakings than any jurisdiction worldwide, Sadinsky (2005) made 72 recommendations for improving the province's responsible gambling system. It is not our intention here to examine his recommendations in detail, only to summarize and comment on his main suggestions for its refinement.

The main thrust of Sadinsky's report was the need to strengthen Ontario's commitment to mitigating problem gambling and its associated harms, and to upgrade its responsible gambling policies and practices. It can be gleaned from Sadinsky's report that, despite the significant financial outlay, Ontario's approach to responsible gambling had been half-hearted and disjointed. Sadinsky chided the government for its lack of transparency, leadership and public consultation on responsible gambling issues, and, as a first step, proposed codifying the government's commitment to a culture of responsibility in the Gaming Control Act.

Another key recommendation was to remove the problem gambling portfolio from the Ministry of Health and Long-Term Care and place it within the Alcohol and Gaming Commission of Ontario (AGCO). This idea was prompted by perceived inadequacies in the administration for not allocating all of the earmarked problem gambling program funds and not being proactive toward problem gambling concerns.

Whether the AGCO is the appropriate agency to champion the problem and responsible gambling strategy is open to question. On the one hand, Sadinsky noted that the AGCO is already a statutory body mandated to "exercise its powers and duties in the public interest and in accordance with the principles of honesty, integrity and social responsibility in the regulation of gambling" (142). One obvious flaw in this suggestion is that a major component of Ontario's responsible gambling strategy is treating and preventing problem gambling; the AGCO, as presently constituted, would appear to have neither the expertise nor motivation to assume this challenging role.

Many of Sadinsky's recommendations dealt with the mechanics of treating problem gamblers; that is, various ways of delivering counseling services, determining which treatment options work best, tailoring treatment programs to target groups and improving the client counseling database. In terms of problem gambling prevention policies, Sadinsky proposed a province-wide social marketing campaign, providing more information to gamblers about the hazards of gambling and how the games are played, the odds and paybacks and urged involving the Responsible Gambling Council – Ontario (RGCO) to deliver these programs. Many of these suggestions were implemented.

Sadinsky's advice regarding research included identifying the most pressing gambling issues, making findings more available to practitioners in the field and using findings to inform policy development. The report was, however, silent on who should establish research priorities and how this would be done.

The Sadinsky report examined key areas of an optimal responsible gambling strategy and offered thoughtful ideas on how to improve the situation; however, the report fell short of making the tough recommendations that would give Ontario a level four (in Eadington's terms) responsible gambling program. For example, the social responsibility of existing gambling operations was taken for granted, when he might have challenged the propriety of practices such as the granting of credit and issuing of "comps" by casinos (practices not condoned in some Canadian jurisdictions), bill acceptors on EGMs, gambling venue ATMs and high maximum wager limits. Sadinsky discussed finding the proper balance between generating revenues from gambling and protecting citizens from gambling-related damages as if this were easily achievable and both goals equally important.

Sadinsky praised the Ontario government for not permitting video lottery terminals (VLTs) throughout the province in licensed premises, as has been the case nationwide except for British Columbia and the Territories.

Two obvious questions stemming from the Sadinsky report are: Is Ontario doing enough in the area of responsible gambling and harm minimization? And, compared to what? In the next section we examine reforms made in other jurisdictions to promote safer and more controlled gambling practices.

Responsible Gambling in Other Jurisdictions

The availability of gambling opportunities and how gambling is operated and regulated varies by jurisdiction and by cultural, historical, ideological and political economic context (McMillen, 2007). In this section we focus on three jurisdictions (Holland, Australia and New Zealand) where responsible gambling programs have recently been fortified in response to a growing public perception that state sponsored gambling was getting out of hand.

Holland

Holland is known worldwide for its liberal attitudes toward prostitution, drug use and, at one time, gambling. In the early 1970s, gambling in Holland began to be viewed differently than its counterpart vices. Because flourishing illegal casinos coexisted with other criminal activities in the same venues, players were being cheated and sometimes subjected to physical violence (Hoogendoorn, 1993). In response to this situation, the Dutch parliament amended its Betting and Gaming Act to permit legal casinos. The two main reasons for this were to combat illegal gambling and to recapture Dutch gamblers who were frequenting legal casinos in bordering countries.

"Holland Casino," an incorporated coalition of several government agencies, was granted exclusive authority to operate all casinos in the country. The intention of the Dutch parliament was to address the existing consumer interest in gambling,

but not create a demand (Hoogendoorn, 1993). The first legal casino opened in 1976, followed shortly by two others, all in resort communities. Casinos gradually spread throughout Holland including the major urban centers; at present there are 14 casinos, including one at Schiphol (Amsterdam's international airport).

Discouraging immoderate gambling was an important consideration from the outset of casino gambling in Holland. Over the years Holland Casino experimented with entrance fees, dress codes, presentation of valid identification and low maximum bet limits in an attempt to mitigate problem gambling. However, the introduction of slot machine gambling in 1986 created an increased demand on problem gambling counseling resources (Hermkens & Kok, 1991), which in turn, spurred the formation of a more robust responsible gambling program that debuted in 1990.

Hallmarks of the present day Holland Casino Responsible Gambling Program (RGP) as described by Rob d'Hondt (2007) include:

- A mission statement which lists its two main goals as making a profit from gambling and adhering to the goals of the RGP. Most importantly, the mission statement has a qualification stating that should there be a conflict between these ideals; the goals of the RGP prevail over making a profit.
- As in many Canadian jurisdictions, Holland offers brochures that outline the risks of the games, and trains casino staff to identify and deal with suspected problem gamblers. Front-of-house staff must take refresher sessions every three years.
- Gambling advertising is limited and low key; for instance, it cannot be aimed at youngsters or other at-risk groups, there can be no mention of big winnings, getting rich or jackpots and the emphasis must be on entertainment, not on gambling.
- All 14 Holland casinos are linked to an ID based computerized registration system which tracks individuals' frequency of play; locations of play; hours played; money spent; and lists any incidents or observation reports involving the individual.
- Upon entry to a Holland casino, players must register by showing ID. Players concerned about an inability to control their gambling may ask to be excluded from the casino or placed in the "limited visit" category, which means no more than 8 visits per month. An entry ban can be for 6 months, a year or indefinite. The combination of the central computer system and having to show ID is virtually a foolproof method of enforcing the limited visit and entry ban rules.
- In addition to voluntary self exclusion, Holland casinos monitor high risk players (those who have averaged 18 visits per month over the past 3 months; those between the ages of 18-23 who average 4 or more visits per month; and new clients who have dramatically increased the frequency of their visits).

Those who meet or exceed these levels of play are interviewed by senior casino administrators, who can, if warranted, suspend their play and/or refer them to a problem gambling treatment specialist. Once an entry ban has expired the player must undergo a return interview before being allowed back in the casino, and in such cases, a trial limited visitation schedule is usually imposed.

- Players may also request loss-limit protection; that is, once they have reached their session loss-limit they are precluded from further gambling. Loss-limits are mandatory for players in the 18-21 age group.
- Holland Casino also has a responsible gambling strategy for on-line gamblers; players must double register (both on-line and at a regular casino); for the first 30 days gamblers play for points only, not money; and when money play is allowed, they must start with minimum stake bets (0.04 Can \$). The maximum on-line bet that can be made through Holland Casino is \$90 Canadian. An entry ban from a land based casino also applies to on-line play.

In addition to monitoring patron playing patterns to spot potential problem gamblers, Holland Casino also relies on their well-trained staff to flag at risk gamblers who may need an on-site intervention.

Australia

Gambling has been called Australia's "national passion" (Charlton, 1987), partly because gambling is woven into its history through the exploits of convicts, settlers, gold miners, and shearers who all faced a hostile environment and, in effect, were gambling with their lives; and because of the prominence of the gambling industry in modern times. As in Canada, Australia's federal government relinquished authority over gambling to states and territories. Gambling formats and outlets have proliferated (most notably, in Victoria, New South Wales and Queensland), to the point where Australia leads the planet in the number of legal electronic gambling machines (over 200,000) and average annual gambling loss per adult (AUS \$988) (Bostock, 2005).

A national study (Productivity Commission, 1999) showed 2.1% of adult Australians were experiencing moderate to severe gambling problems and, that these at-risk gamblers were contributing an estimated one-third of the country's gambling revenues. The study also projected an estimated annual cost from gambling-related depression and suicide of AU \$502 to \$1,230 million and total adverse impacts (including bankruptcy, loss of productivity, separation and divorce, policing and justice) of AU \$1.2 to \$4.3 billion. The report also noted that there were few legislated or prescribed standards for responsible gambling in Australia, and those that did exist were inadequate to ensure the informed consent of consumers or to reduce the risks of problem gambling. As a result of the sobering social cost estimates, a national strategic problem gambling framework was developed in 2004 by the Ministerial Council on Gambling (MCG) for implementation by state and territorial governments. The National Framework on

Problem Gambling focuses on four primary areas: (1) public awareness, education and training, (2) responsible gambling environments, (3) intervention, counseling and support services and (4) national research and evaluation (Ministerial Council on Gambling Progress Report, 2005).

While it is beyond the scope of this report to discuss these reforms in detail, listed here are the major new responsible gambling initiatives:

- Responsible gambling embedded in legislation—Gambling industry self-regulatory codes of practice were deemed insufficient. Consequently, the premise was adopted that responsible gambling is a prevention strategy aimed at minimizing harm and maximizing benefits to the community. The gambling industry must operate in conjunction with community standards and expectations, and in so doing, go beyond mere compliance with laws and regulations. The Australian Capital Territory introduced the Gaming and Racing Control Act in 1999 which specifies that the Gambling and Racing Commission is obligated to act in the public interest and must promote consumer protection, minimize the possibility of criminal or unethical activity and reduces the risks and costs of problem gambling to the community and individuals.
- Restrictions on electronic gambling machines—Depending on the state, restrictions include capping the number of machines in the state, regions and sites; allowing local councils a say in the placement of machines; and disallowing ATMs near machines.
- Social impact assessments—Legislation requires any hotel or club applying to increase the number of machines to prepare a social impact assessment detailing for the neighborhood and community (a) the current number of machines, (b) the demand for gambling, (c) the incidence of problem gambling, (d) the availability of problem gambling services, (e) proposed harm reduction measures as a result of increasing the number of machines, (f) any likely changes in demand on local infrastructure such as traffic congestion, need for improved public transportation, need for improved social services and so forth. Some jurisdictions require an independent review of the social and economic impact of all forms of gambling every three years.
- Gambling regulations—were tightened and made explicit relative to:
 - Providing players with information about how poker machines work, their chances of winning, availability of problem gambling support services, and how much time and money they have spent per gambling session.
 - Limiting the amount of cash that can be accessed around gambling venues.
 - Placing cash dispensing facilities outside of gambling areas.
 - Ensuring advertising and promotions do not encourage problem gambling nor target youth or other vulnerable groups.

- Requiring self-exclusion programs at all gambling venues (not just casinos), and venue-based exclusion programs for players demonstrating signs of problem gambling or intoxication.
- Developing programs that use smart card technology to activate EGMs and allow players to pre-commit the amount of time and/or money they will spend in a gambling session.

New Zealand

Prior to 1980 gambling in New Zealand was tightly regulated and consisted mainly of horse racing, church and community run bingo and a national raffle known as the “Golden Kiwi” (Adams, 2004). In the mid 1980s the New Zealand government introduced dramatic economic policy changes that resulted in deregulated markets and a reduction in the cost and size of government. Gambling expansion dovetailed with this ideology and created a lucrative alternate source of government revenue. Previous constraints on gambling were lifted and an electronic gambling machine format known as “pokies” were introduced in 1991. Situated in convenience locations such as pubs and clubs, pokies quickly became the most dominant gambling format, both in terms of revenue production and exacerbating problem gambling.

As with Australia and Canada, most of the adverse impacts of gambling in New Zealand have been traced to EGMs. The Problem Gambling Foundation of New Zealand (2007) statistics showed that New Zealand’s “pokie machines” produced \$1.4 billion in revenue (\$906 million from those not in casinos and \$493 million from those in casinos). The Foundation also indicated that the machines were concentrated in the most vulnerable communities and were the preferred gambling format for 83% of the problem gamblers seeking help; and that approximately one in five regular pokie players had a gambling problem. Adams (2004) noted how a trusting public was blindsided by the pokie onslaught, as ten years elapsed before the New Zealand government formally recognized gambling as a public health concern and another two years before the extensive Gambling Act was approved. The main drivers of the Gambling Act were the proliferation of gambling (especially gambling machines) and frustrated communities wanting input into gambling decisions, especially the location of casinos (Secker, 2005).

The primary objectives of New Zealand’s Gambling Act (2003) were to (1) control the growth of gambling, (2) prevent and minimize harm from gambling, (3) ensure that money from gambling benefits the community, and (4) facilitate community input in decisions about the provisions of gambling. Key harm minimization provisions in the Gambling Act include:

- A maximum EGM wager of \$2.50; a maximum prize of \$500 from an individual EGM; and a maximum jackpot of \$1,000 from an EGM linked to other machines.
- EGMs must display the following: (1) the odds of winning the game; (2) the average winnings paid to players over a period of time or certain number of

plays; (3) the duration of the player's session of play, (4) the amount expressed in dollars and cents that the player has spent and the player's net wins or net losses during the session.

- EGMs must include an interrupt feature that stops play at irregular intervals (not exceeding 30 minutes of continuous play).
- No publicity about gambling jackpots either inside or outside a gambling venue.
- Problem gambling awareness training for all gambling venue staff that have direct contact with players. Besides providing information about problem gambling to players, staff may intervene with players and, if justified, ban them from the premises for up to two years.

The harm minimization measures introduced in Holland, Australia and New Zealand were a response to the social and economic turmoil caused by years of minimally controlled gambling expansion. And, while these reforms are seen as progressive in contrast to what has occurred in other jurisdictions, there is still ample room for improvement. For example, Livingstone and Woolley (2007) believe that Australian EGMs still do not meet acceptable standards for consumer safety.

In the next two chapters we depict the regulatory framework for gambling in Ontario; describe what our interviewees considered to be "best practices" in the administration of gambling in Ontario; and compare the enabling legislation for the operation and regulation of gambling in Ontario with how gambling decision makers interpret their mandates.

Chapter 5

Ontario's Operating and Regulatory Frameworks

This chapter describes Ontario's legal gambling framework. Ontario Lottery and Gaming Corporation (OLG) is the operator reporting to the Minister of Public Infrastructure and Renewal. The Alcohol and Gaming Commission of Ontario (AGCO) is the regulator, reporting to the Minister of Government and Consumer Services. While our focus is on government accountability for these two agencies through the responsible Ministries, we also include information on the mandate for the Province's prevention, treatment and research programs in the area of problem gambling. Not included in this study are charitable gambling and horse racing.

Research Methods

In studying Ontario's legal gambling framework original legislation was reviewed, governance and policy documents analyzed, Castel's (2008) authoritative text *Gaming Control Law in Ontario* consulted, and interviews with senior level respondents responsible for the operation and regulation of gambling in Ontario conducted (see Appendix A). Also examined were government documents containing explicit statements about conducting and managing gambling honestly, fairly, with integrity and social responsibility and in the public interest.

Basic Model of Accountability

When a Crown agency is created, enabling legislation defines its purpose, mission and powers. Enabling legislation is a social contract between society and the government body authorized to provide public goods and services, relative to prevailing social norms and values. For the AGCO, a key enabling statute is the *Alcohol and Gaming Regulation and Public Protection Act, 1996 (AGRPPA)*. This Act defines in part the public accountability of the AGCO. The *Ontario Lottery and Gaming Corporation Act, 1999* defines in part the public accountability of OLG.

The accountability system for Crown agencies such as the AGCO or OLG is based on the principle of ministerial responsibility; that is, there is a chain of accountability from Cabinet to responsible ministers to Chairs of Boards of Directors and/or Chief Executive Officers of Crown agencies such as OLG and the AGCO. Figure 1 illustrates the Ontario model and outlines the accountability relationships that define, as a minimum, the answerability, authority and public

expectations upon those exercising powers. All those in this governance arrangement can be held to account by the Legislative Assembly of Ontario for the exercise of their authority. The Legislative Assembly, as the responsible government, is expected to act on behalf of the ultimate owners of all Crown agencies-the citizens of Ontario.

The Legislative Assembly is the source of the enabling legislation for a Crown agency. Standing Committees may review the policy framework that defines the operating environment of an agency. These committees may also hold the agency to account; for example, calling the Board Chair or Chief Executive Officer (CEO) to appear before a committee to render an account of stewardship. Standing Committee membership typically includes representatives of both the government in power and opposition parties. The mandates of such committees vary according to their function.

Two Ontario Standing Committees consider gambling matters; the Public Accounts Committee and the Committee on Government Agencies. The Public Accounts Committee has nine members, with the Chair being a member of the Opposition. The Standing Committee on Public Accounts is empowered to review and report to the House its observations, opinions and recommendations on the Report of the Auditor General and the Public Accounts; documents that are deemed to have been permanently referred to the Committee as they become available.

There are also nine members of the Standing Committee on Government Agencies; and again, the Chair is a member of the opposition. The Standing Committee on Government Agencies is charged with reviewing and reporting to the House its observations, opinions and recommendations on the operation of all agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. Reviews are aimed at reducing redundancy and overlap, improving accountability, rationalizing functions, identifying those agencies or parts of agencies that are subject to sunset provisions, revising mandates and roles, and reviewing intended appointments to agencies, boards and commissions to corporations in which the Crown is a majority shareholder (excluding re-appointments and appointments for a term of one year or less). The oversight role of such Committees is based on the principle of ministerial responsibility.

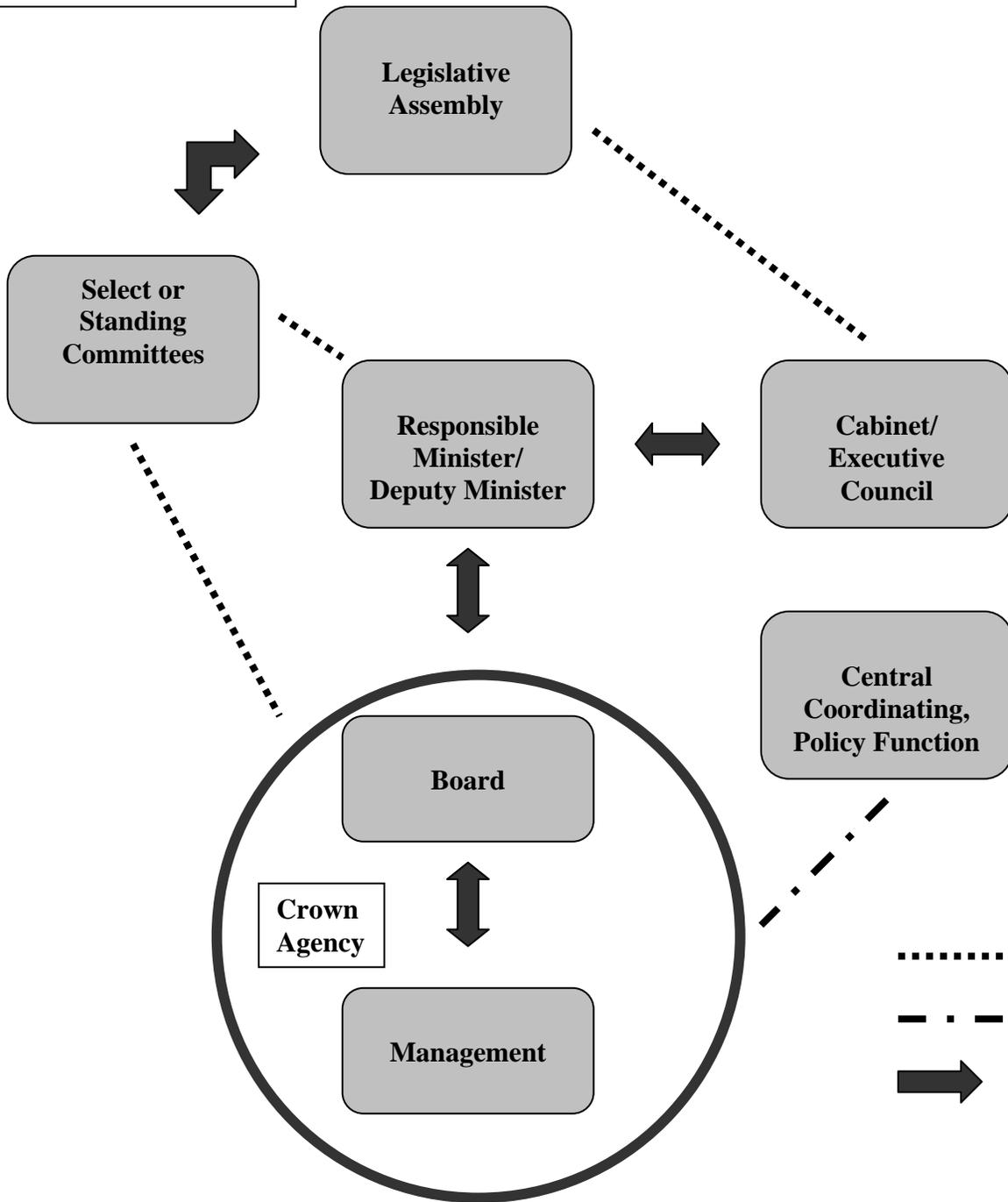
As part of the ongoing accountability of government, each individual minister is also expected to be responsible and accountable in and to the House, especially to the Opposition. This is referred to as ‘ministerial responsibility.’ The House requires ministers to render accounts, especially when things go wrong in their spheres of responsibility. Ministers must account for how they and their officials use ministerial authority in carrying out their statutorily assigned responsibilities. And the House passes judgment on them (Aucoin & Jarvis, 2005). This holding to account occurs every day during question period and during meetings of Standing

Committees. For example, in the early days of the 2006 OLG controversy, numerous questions about the issue were raised in the Legislative Assembly of Ontario. Such questions were generally asked by opposition members. During meetings of the Public Accounts Committee on OLG, questions pertained to the effectiveness of efforts to mitigate gambling-related harm. Providing acceptable responses is a key part of the principle of ministerial responsibility.

A responsible minister is part of cabinet. The Executive Council coordinates important administrative issues, such as preparation of agency budgets and performance reports and may also be involved in the appointment of Board members and CEOs of Crown agencies.

Embedded in this basic accountability model are Offices of the Auditor General, and the Provincial Ombudsman. These bureaus report to the Legislative Assembly on the performance of Crown agencies and provide credible, independent and relevant information used in holding Crown agencies to account. These are illustrated in Figure 1.

**Figure 1
Crown Agency Model of
Accountability**



Legend: Connect markers with headings
 Chain of Accountability Relationship
 - . - . Functional Accountability Relationship
 <--> Oversight Accountability Relationship

Crown agencies are required to table audited financial statements, an annual report (including performance measures) and a long-term business plan with the Legislative Assembly. The government sets out the timing and requirements of these documents; and the Auditor General, or a designate, audits the financial statements of the Crown agency.

In annual performance reports a Crown agency describes how it has satisfied its mandate. For example, the AGCO would discuss its enforcement and licensing activities and OLG, its financial status and the efficacy of its responsible gambling initiatives.

Within the broad framework set out in Figure 1, our research examined:

- The Regulator
 - Enabling Legislation - The regulator
 - Interpretation of Enabling Legislation – The Regulator
- The Operator
 - Enabling Legislation – The Operator
 - Interpretation of Enabling Legislation – The Operator
- Legislative Oversight.

One aspect of our research was to determine how the enabling legislation is interpreted; this was done by searching documents such as Memoranda of Understanding (MOUs) between a responsible minister and a Crown agency, policy papers and briefs. The mission statements of the AGCO and OLG were reviewed and compared to the enabling legislation. As well, our research examined public messages communicated by the AGCO and OLG through annual reports, press releases and corporate websites. These public documents serve both to hold those responsible to account and reveal how the enabling legislation is being interpreted.

The Regulator

Enabling Legislation—the Regulator

The Government created the Alcohol and Gaming Commission of Ontario (AGCO) with the passage of the *Alcohol and Gaming Regulation and Public Protection Act, 1996* (AGRPPA). Castel provides an excellent summary of the AGCO’s mandate: “to ensure that legal games of chance are conducted with honesty, integrity and in the public interest, by persons who will not damage the reputation or adversely affect the credibility of the gambling industry (Castel, 2008, 3-1).” According to Castel, this mandate includes the objectives of crime

prevention as well as consumer and social protection. Castel summarizes these aspects as follows:

“Crime prevention involves ensuring criminal elements do not operate, provide supplies to or work in a gambling venue. Crime prevention also means ensuring assets such as cash are protected through tight internal controls, security and surveillance (Castel, 2008).

Consumer protection means ensuring that: the rules of play for games of chance are fair; that gaming equipment is not susceptible to cheating; that electronic gaming equipment meets acceptable standards of randomness and safety; and that gamblers know the minimum/maximum wagers for games of chance and have access to the rules of play, which are to be administered consistently across gambling premises. (In Chapter 7 we note that gambling consumers are covered by the *Gaming Control Act*, 1992 and not the more comprehensive *Consumer Protection Act*, 2002).

Social protection includes regulations preventing persons less than 19 years of age from accessing gambling premises; protecting individuals who are problem gamblers; protecting intoxicated individuals from gambling; and, protecting individuals from gambling above their financial means through the use of casino credit (Castel, 2008, 3-2).”

OLG operates lotteries, casinos, charity casinos and slot facilities, while the AGCO regulates charitable gaming, lotteries, casinos, charity casinos and slot facilities (Castel, 2008).

In Ontario’s enabling legislation, the *Alcohol and Gaming Regulations Public Protection Act (AGRPPA)* grants broad powers to the authority of the Alcohol and Gaming Commission of Ontario (AGCO). Key sections of the *Act* are illustrated in Table 7. They set forth the normative expectation in Section 3 (3) that “the Commission shall exercise its powers and duties in the public interest and in accordance with the principles of honesty and integrity, and social responsibility.” Table 7 differentiates between Sections of the enabling legislation and regulations promulgated pursuant to the enabling legislation. Enabling legislation articulates the will of the Legislative Assembly, whereas regulations specify how Crown agencies such as the AGCO implement these statutes. All gambling regulations are approved by Cabinet and constitute government policy.

AGCO administers the *Gaming Control Act (GCA)*. The focus of the AGRPPA is on protecting the public interest; the focus of the *GCA* is on administering legalized gambling. The *GCA* does not explicitly mention the public interest, honesty and integrity and specifies social responsibility only once. The core of the *GCA* is a set of rules to address the mechanics of procurement, registration of suppliers, regulation of registrants, investigation and enforcement issues.

Table 7
Illustrations of Enabling Legislation: Regulator

| Statute | Honesty | Integrity | Social Responsibility |
|---|---|--|--|
| Gaming Control Act | <p>Registration of operators of gaming premises; all suppliers of equipment; most employees and trade unions. Intent is to exclude criminals and undesirable elements (Castel, 2008). (Section.1, 3)</p> <p>Reporting. Large and suspicious cash transactions (Castel, 2008).</p> <p>Restricted Access. No statute, but regulations provide that the Registrar may make standards regarding access (Castel, 2008).</p> | | <p>Exclusion. Section 3.6 (1) “In accordance with the regulations, the Commission (Gaming Control) may issue a written direction to Ontario Lottery and Gaming requiring it to refuse access to its gaming premises to any individual who meets criteria prescribed by the regulations.”</p> <p>Regulations under the <i>Gaming Control Act</i> provide that the Registrar may require gaming premises to comply with a policy, which has been approved by ACGO, whereby individuals who have a problem with or addiction to gambling may request to be trespassed from gaming premises and operators are required to enforce. (Reg 385/99 S3.6 1)(Castel, 2008).</p> <p>Advertising. Regulations provide prohibitions on lifestyle and escapist advertising; use of celebrities; encouraging persons under 19 to gamble; comparisons of other games (Castel, 2008). No specific mention in Act.</p> |
| Alcohol and Gaming Regulation and Public Protection Act (AGRPPA) | <p>Establishes Regulator with mandate: Section 3 (3) “The Commission shall exercise its powers and duties in the public interest and in accordance with the principles of honesty and integrity, and social responsibility. “</p> <p>Establishes Registrar (Section 6) (1). Broad powers interpreted to provide for regulation of rules of play; set rules for internal controls over cash (Section 24)(7) (Castel, 2008).</p> | <p>Commission responsible for administration of <i>Liquor License Act</i> and <i>Gaming Control Act</i>.</p> <p>Broad Powers to establish guidelines. (Section 3(1)).</p> <p>Broad powers of Registrar interpreted to set regulations for gaming equipment. (Section 21(4)(a))</p> | <p>Statutory powers interpreted to require casinos to submit policies with respect to the offering of complimentary to the registrar (Castel, 2008).</p> |

Interpretation of Enabling Legislation--the Regulator

The AGCO website and most recent Annual Report (2006-2007) were reviewed to assess the agency's interpretation of its enabling legislation. We noted that the AGCO consistently uses the term "public interest," but not "social responsibility."

AGCO Vision: A leader in the alcohol and gaming sectors through effective regulation and services that are fair, responsive and in the broader public interest."

The focus is on regulation and services that are fair and responsive, rather than in accordance with the principles of honesty and integrity. The vision is silent on social responsibility.

AGCO Mandate: To regulate the alcohol and gaming sectors in accordance with the principles of honesty and integrity, and in the public interest"

The mandate is also silent on social responsibility.

In its 2006-2007 Annual Report the AGCO described its activities under the heading Regulating Ontario's Gaming Sector. These included:

- Registering commercial suppliers and gaming employees of charitable gaming events, casinos, charity casinos, and slot operations at racetracks.
- Administrating the regulatory framework for issuance of charitable lottery licenses.
- Licensing games of chance at fairs.
- Approving the rules of play or changes to the rules of play for games of chance managed and conducted by OLG.
- Excluding persons from accessing gaming premises in the Province of Ontario pursuant to the Gaming Control Act, 1992 and its regulations.
- Investigating, inspecting and monitoring.

The AGCO Annual Report (2006-2007) commented on performance goals in reference to satisfied customers, internal staff development and satisfaction, effective resource management and business/operational excellence as well as response time to requests. The report concluded that "end results for performance goals established for the agency were all on target." Also provided was extensive detail in the areas of licensing and registration; investigation, enforcement and compliance; and operational efficiencies and highlights.

The report covered AGCO's mandated responsibilities; however, there was no commentary on whether Ontario's gambling offerings met high standards of honesty, integrity and social responsibility. Nor was there information on how well the regime worked to ensure the provision of gambling in the public interest. This issue is discussed in more detail in the next Chapter.

While we did not anticipate an exact match between enabling legislation and how the agency has interpreted its mandate, we wondered about the implications of Section 3 (3) of the *AGRPPA* that states: “The Commission shall exercise its powers and duties in the public interest and in accordance with the principles of honesty and integrity, and social responsibility.” In the next chapter AGCO representatives explain their interpretation of *Section 3*. In the dialogue between the Legislative Assembly and the AGCO there should be a clarification of how the AGCO is expected to discharge its duties in accordance with the principle of social responsibility. Should it be on a case by case basis, or is there a need for a broader oversight report on the extent to which the gambling regime is adhering to the principles of social responsibility and the public interest? These complex issues are more fully explored in the last two Chapters.

The Operator

Enabling Legislation--the Operator

The key statute for the operator is the Ontario *Lottery and Gaming Corporation Act (OLGCA)*, 1999. The *OLGA* provides for a Corporation “to develop, undertake, organize, conduct and manage lottery schemes on behalf of Her Majesty in right of Ontario.” The *OLGA* is silent about normative expectations regarding the public interest, honesty, integrity or social responsibility. The key normative expectation is that OLG will operate legal gambling in accordance with all the relevant statutes and regulations, most of which are enforced by the regulator, the Alcohol and Gaming Commission of Ontario (AGCO). OLG is also required to comply with rules set by AGCO that deal with honesty, integrity and social responsibility.

Essentially there is a crossover of AGCO’s social responsibility requirements that are specific to the OLG including the authority to demand a responsible gambling strategy, and the requirement that OLG have, monitor, and enforce a self-exclusion policy. These are important elements of the operating environment in Ontario.

Interpretation of Enabling Legislation--the Operator

OLG’s interpretation of its enabling legislation was ascertained by reviewing the corporation’s Memorandum of Understanding, corporate website and most recent annual report. Cabinet provides governance direction to the Chair of OLG via the responsible Minister. Ontario’s *Agency Establishment and Accountability Directive of 2000* requires a Memorandum of Understanding (MOU) between a responsible minister and a Crown agency such as OLG. The MOU establishes the agency’s mandate and accountability relationships and provides policy direction regarding balancing revenue targets and the public good.

The MOU between OLG and the responsible Minister (the Minister of Public Infrastructure and Renewal) (since July 2009 OLG come under the Minister of

Finance) states that OLG: “will be a benchmark in the lottery and gaming industries and is responsible for:...Carrying out its responsibilities within the limits of its jurisdiction and consistent with its business plan, in accordance with the relevant law, and in the public interest...Pursuant to the MOU, both the Board of Directors and the Chief Executive Officer, pursuant to Section 6.6 (g), are “responsible for: ensuring that the Corporation has established and implemented policies encouraging responsible gambling...” The MOU does not modify, affect or interfere with either party under law. “In the event of a conflict between the Memorandum and the law, the law will prevail.”

It is notable that OLG answered to four different ministries between 2002 and 2005; in 2002, it was the Ministry of Tourism, Culture, and Recreation; in 2003 it moved to the Ministry of the Attorney General and Ministry Responsible for Native Affairs; in 2004 it fell under the authority of the Ministry of Economic Development and Trade; and in 2005 it was transferred to the Ministry of Public Infrastructure Renewal. OLG now comes under the Minister of Finance. Commenting on OLG’s frequent shifting between ministries, Klassen and Cosgrave (2009) contend that “ministerial responsibility for the Crown corporation is unstable...and there is no agreement on how closely lottery and gaming activities should be overseen by politicians, and the extent to which political direction is given” (133). Consequences of this impermanence include a lack of policy expertise on the impacts of OLG operations and OLG acquiring “more autonomy from its supposed political masters than would be the case had it had a constant reporting relationship” (Klassen & Cosgrave, 2009, 133).

We reviewed the OLG website and the latest Annual Report (2006-2007), for assertions pertaining to the public interest, honesty, integrity or social responsibility in the provision of gambling products and services.

Purpose:

“Make life better for people across Ontario-by generating revenue provincially and economic and social benefits locally” (8).

Vision:

“Be the role model for gaming entertainment worldwide-by creating excitement and possibility for customers and generating economic return, while upholding the public’s best interest” (8).

In OLG’s value statements there are no explicit references to honesty, integrity or social responsibility. Although the term “responsible gaming” is not defined, the Code declares OLG “will build a responsible gaming culture that cascades throughout our operations.” The Responsible Gaming Code appears to provide a sound basis for citizens to hold OLG, and the responsible Minister to account. The Code is explicit with regard to “Education: Advertising, Marketing and Customer Communications,” for example:

- Dispelling myths about gambling.
- Not encouraging excessive play.
- Not targeting minors or including images attractive to them.
- Stepping up efforts to warn customers about risky forms of play and help them to reduce risk.
- Customizing responsible gaming messages to effectively impact the right customers at the right time.

In other sections of the Code, there are clear statements about collaboration with gambling stakeholders and other government agencies, staff training and education, keeping minors out of gambling venues, introducing Responsible Gaming Resource Centres (RGRCs) within properties and a discussion of its self-exclusion program. The focus is on identifying customers who may have a gambling problem and referring them to professional counselors.

OLG's Annual Report (2005-2006) contains information on its corporate philosophy, highlights of operations, required financial information and the auditor's report. The report does not include performance data; however, OLG senior officers told us they are developing performance standards in consultation with national and international gambling organizations and Ontario agencies that focus on responsible gambling for inclusion in future reports.

In interviews and written submissions to the researchers, OLG stated that each of the resort casinos provide responsible gaming training to its staff. OLG reports that it works to educate and inform people about: how games work, the difference between myths and facts, and the risks of problem gambling through a variety of channels including highly trained employees, Responsible Gaming Resource Centres in all OLG casinos and new Responsible Gaming (RG) education web site.

As the operator of legal gambling in Ontario, OLG is a critical link in the development and implementation of gambling policies. Consequently, it should be a leading source of information for holding the government's gambling operations to account. At present, OLG's Annual Report provides financial data with respect to the achievement of revenue targets. The issue for consideration is the need for additional information on how its revenue generation mandate coordinates with the public interest and aligns with principles of honesty, integrity and social responsibility.

Mandate for Problem Gambling Strategy

There are no specific legislative statutes covering the mandate for problem gambling minimization. Responsibility for the problem gambling portfolio was assigned to the Ministry of Health and Long-Term Care as the result of a 1996 policy decision. This ministry was the lead agency for problem gambling

treatment services, prevention programs and research initiatives and received funding for its problem gambling agenda in the amount of 2% of annual gross revenues from race track and charity casino slot machines (about \$36 million). What is unique about this funding is that it's earmarked; in contrast to alcohol revenue which goes into the Consolidated Revenue Fund. The Ministry of Health Promotion, created in 2005, was tasked with problem gambling prevention and allotted \$9 million of the slot machine derived funds to operate this program.

The overall \$36 million subsidy for problem gambling is the highest of any jurisdiction in the world, yet Ontario's per capita expenditure on problem gambling treatment ranks it third among Canadian provinces. While problem gambling can be a high profile issue in Ontario, especially when featured in an unfavorable mass media release, it often takes a back seat to other health-related matters (in the \$40 billion Ministry of Health and Long-Term Care budget, \$27 million is seen as a drop in the bucket).

Within the Ministry of Health and Long-Term Care, the Health Program and Standards Branch, Health System Strategy Division develops policies, standards, legislation and/or regulations for and across the traditional health sectors and leads in the areas of: enhancing access to appropriate health services, improving safety and effectiveness of health services, and improving integration of health service providers and system process.

Legislative Oversight

In a parliamentary democracy, Select or Standing Committees of the Legislative Assembly hold both agencies and responsible Ministries to account. At our request, the Clerk of the Public Accounts Committee (PAC) reviewed the Committees Status of Business for the 38th Parliament (1st and 2nd session from 2003 to 2007). Two reports related to gambling were found. The Public Accounts Committee (PAC) held public hearings and released a report on "Charitable Gaming" on November 15, 2006. The report is available on the Legislative Assembly web site at www.ontla.on.ca under "Committees/Committee Reports/Standing Committee on Public Accounts." The PAC reviewed the Auditor General's report, called witnesses from AGCO and endorsed the recommendations of the Auditor General. We did not review this report because charitable gambling is outside the scope of this study.

The Standing Committee on Government Agencies tabled a "Report on Agencies, Boards and Commissions: The Ontario Lottery and Gaming Corporation" on December 19, 2006. Relative to problem gambling, OLG testified that it is committed to responsible gambling, but noted that 12,000 of its employees at 4 casinos had yet to receive the necessary training to intervene with problem gamblers. The Committee was clearly interested in social responsibility and problem gambling as well as revenue generation.

Based on our review of the Committee hearings, it appears the Committees were intent on obtaining accountability information sufficient to assess whether legal gambling was provided in the public interest with due regard to honesty, integrity and social responsibility. It also appears that the Committees sought accountability information in order to understand and evaluate the extent to which the government has balanced revenue generation with its companion goals of harm minimization and mitigation of the effects of problem gambling.

Chapter 6

Interview Results

In this Chapter we present the findings from our interviews with Ontario senior government and Crown agency administrators responsible for operating and regulating gambling and for overseeing responsible and problem gambling policies and programs.

Respondent Selection and Interview Format

The authors conducted interviews with three groups (regulators, operators and policy advisors) in a group setting at the respondents' place of business. Interview sessions ranged from two to four hours in length and involved one to five respondents. One week prior to the interviews respondents were provided with an overview of our research and a copy of the questions. There was considerable overlap in the questionnaires with some distinct questions asked of each group.

To capture responses both researchers took extensive notes. Following each interview session, the researchers met to compare notes and accurately transcribe the answers to, and discussion around each question. In the write-up below, we summarize the related commentary from each of the respondent groups.

“Best Practices” in Ontario

Respondents from all three groups were asked to identify aspects of gambling policy, operations and regulations that they were proud of and that they thought would be considered by other jurisdictions as a “best practice.” These reported exemplary areas of Ontario gambling administration include:

- Ontario Cabinet Ministers generally are interested and involved in gambling policy decisions.
- Regulation is separate from operation; while still under the same government, each is responsible to a different ministry, thus providing a greater degree of independence than is found in some other provinces.
- As a result of the Ombudsman's report on lotteries the AGCO now also regulates activities related to the sale of lottery products.
- The Government's response to the Ombudsman's report was speedy and effective; OLG cooperatively met and exceeded the report's recommendations.
- OLG has implemented Responsible Gaming Resource Centres, on a pilot basis at several Ontario gambling facilities; and operators have committed to

implementing a Responsible Gaming Code of Conduct, which includes the training of front line staff.

- Key players in policy development, regulation and operations work in a collegial and inclusive manner to promote the integration of gambling policy development and implementation.
- The amount of money (\$36 million) dedicated to problem gambling treatment, prevention and research is the highest of any jurisdiction in the world.
- Ontario has steadfastly refused to put Video Lottery Terminals (VLTs) in neighborhood bars and pubs.
- Ontario's Problem Gambling Helpline, treatment and research programs are highly regarded by their counterparts in other jurisdictions.
- The Province is a good citizen in providing 20,000 plus gambling-related jobs to local communities and gambling proceeds support worthwhile charitable purposes and fund important government programs such as health care.

Respondents were also asked if there were any pressing concerns in existing gambling statutes, regulations or policy that they wished to see changed. Health Ministry respondents reported being discouraged that the Problem Gambling Strategy has not been made public, but our impression was that there is general satisfaction among the senior administrators we interviewed with current gambling policies and regulations.

Participants uniformly appeared to take pride in their work and repeatedly stated their intent to be seen as one of Canada's leading gambling regimes. They spoke of welcoming a meaningful dialogue with citizens and members of the Legislative Assembly about gambling policies and practices in Ontario. Accordingly, in this report the researcher's identified topics for discussion, related to the goal of Ontario becoming an emerging leader in this area.

Regulators

The regulators described their role as administering the law effectively and efficiently and reporting to a responsible Minister who is accountable to the Legislative Assembly. The AGCO is a Crown agency, which under statute, is the registrar that checks eligibility criteria (who is or is not to be registered), issues gambling licenses (who is and is not in compliance) and enforces regulations. Gambling regulations are made by Cabinet pursuant to the *Gaming Control Act* and formally approved by the Lieutenant Governor in Council. Although regulators are sometimes asked for gambling policy advice, they do not draft policy.

The regulators' main challenge is to balance social and economic issues and ascertain what is in the public interest. They spoke about passionate debates surrounding gambling regulation, with stakeholders trying to push and pull them

in various directions. Under these circumstances, “we are not always popular because we often have to say no.” The contentious issues they face change over time. For example, once there was a need for strong regulatory oversight with charity bingo—now the regulatory approach with bingo is less intrusive and more flexible.

The gambling studies literature raises the complex question of whether or not the management system in Ontario’s major casinos violates the *Criminal Code of Canada*. The apparent issue is the extent to which the Ontario government is actually conducting and managing casino gambling when a casino management company runs the day-to-day operations. The regulators were aware of this controversy and said they “had yet to see a convincing legal argument that OLG is off side relative to the *Criminal Code*.” They have read the opinion in the Morris, Rose & Ledgett report (1996), but believe that OLG’s approach to conducting and managing casino gambling is lawful.

When asked about their role in protecting the welfare of individual gamblers and preventing problem gambling, the regulators pointed to the *Criminal Code* expectation that the games be run with integrity and honesty and the provincial obligation to disclose the rules of play. It was also mentioned that preventing problem gambling was outside of the regulator’s mandate; in Ontario, the Ministry of Health and Long-Term Care deals with responsible gambling policies.

In terms of monitoring the effect of their policies, the AGCO does jurisdictional scans and commissions relevant research; for example, a consultant was hired to help determine ways to improve the bingo playing environment. Variables considered included competing demands for player’s discretionary dollars and the quality of food served in bingo venues. In another instance, an independent evaluator was commissioned to compare Ontario’s Electronic Gaming Standards with other worldwide jurisdictions in terms of consumer protection measures.

When questioned about transparency in the regulatory system, the regulators said “it’s all there on the web, Board decisions, annual reports and so forth.” Respondents noted, however, that some areas are not for public scrutiny; for example, security issues and casino management contracts.

When asked how social responsibility and the public interest apply to gambling regulation, the regulators said they were guided by judicial decisions concerning the public interest that indicate how the concept is to be applied; for example, in gambling registration and licensing the AGCO is obliged to serve the public interest as opposed to a private interest. Respondents told us there are gambling-related court decisions dealing with issues of honesty and integrity, but not with social responsibility. The regulators contended that there is no direction, either through statute or case law for them to act on social responsibility issues in a gambling context. “It’s not up to us as gambling regulators to decide whether something is socially responsible, if it’s in the regulations we will enforce it.” The

regulators indicated that social responsibility is an evolving concept that is more advanced in its application to alcohol than to gambling policy.

Section 3(3) of the Alcohol and Gaming Regulation and Public Protection Act states that “the Commission (the AGCO) shall exercise its powers and duties in the public interest and in accordance with the principles of honesty, integrity, and social responsibility;” respondent’s appeared to interpret this as a guideline for conducting their regulatory duties as opposed to a directive to provide overall oversight of Ontario’s gambling regime. This is a critical distinction that requires discussion and clarification.

Regarding their thoughts on gambling research dealing with social responsibility issues, respondents raised concerns about the credibility of the research. Respondents noted that research of this type can be unreliable and used to advance a philosophical position; for example, in counting gambling-related suicides, “how can a researcher know for sure that it was gambling problems and not depression or some other addiction that led to a suicide.”

In general, the regulators reported that they were satisfied with the existing legislative framework for legal gambling in Ontario, and although adding significantly to its workload, the AGCO willingly took on the responsibility of regulating Ontario’s lottery program. When asked to comment on how this report might add value to the regulatory process, the regulators cautioned us to recognize that the gambling business is complex, dynamic and hard to predict, and therefore not reducible to a simplistic level. For example, when assessing best practices in gambling regulation, “you have to be careful of cherry picking or taking the practice out of context. What works in one jurisdiction may not work here; besides who’s to say that one practice is better than another, perceptions differ.”

Policy Advisors

Ministry of Infrastructure Renewal and Ministry of Government & Consumer Services Group

The policy advisors in this category justified the Ontario government’s involvement in gambling on the grounds that it results in economic development, helps fund the charitable sector and provides entertainment. In their view, although gambling policy is a balancing act among multiple goals, “it is always seen through the lens of responsible gambling.” Consideration for fairness, transparency and the public interest play a prominent role in gambling policy development. When asked how the policy balancing act works in practice, they said “it’s more of an art than a science.” In gathering data to inform gambling policy, pilot testing is done (e.g., electronic bingo) and economic indicators, research reports, measures of the public interest, and external indices such as the Ombudsman and Auditor General reports and court decisions examined. Although the term “public interest” is used in gambling policy documents, none of our interviewees could pin down what the public interest is or how they know

for certain whether a given gambling policy is in the public interest. One respondent commented: “This is why the Ontario Problem Gambling Research Centre (OPGRC) is funded—to do research that will help us do our job.”

When it was explained that the OPGRC is mandated to focus on problem gambling issues, which is only one aspect of gambling policy, the respondent seemed surprised and asked “what else is there?” Cost/benefit studies of gambling were mentioned by the researchers as being critical to justifying a province’s involvement in gambling—only one respondent knew what this research entailed and was aware that two provinces (Nova Scotia and Alberta) are currently funding province-wide projects in this area. (The Ontario Problem Gambling Research Centre has funded a five year study that is examining social and economic impacts in one community [Belleville] before and after the opening of a slot facility).

This policy advisory group reported not being convinced of the need for a systematic gambling research plan that focuses on high risk areas; instead, they rely on research produced by the OPGRC and other scholarly sources. The empirical research is not always useful they said, because much of it is driven by academic curiosity and is not always practical or relevant to their needs. The researchers suggested that some OPGRC sponsored studies have definite public policy implications; for instance, the Williams and Wood (2004) research showing the high percentage of Ontario gambling revenues derived from problem gamblers. Respondents expressed doubts about controversial findings such as those in the Williams and Wood study, on the grounds of flawed methodology; without stating how the methodology was substandard or what they estimate the real percentage of problem gamblers financial contributions to be. Discussions are now being held with the OPGRC about directed research projects which would help policy advisors deal with the pragmatic problems they face.

Respondents were asked about the concept of social responsibility as it applies to gambling policy. Although respondents were not aware of an operational definition of the term, one respondent’s personal definition was “the need to evaluate the risk of harm of a policy and weigh it against the potential benefits.” As researchers, we pointed out that this involves making tradeoffs between non-equivalent resources such as money versus personal and social harm.

We were told that gambling policy is driven in numerous ways. For example, it can be: top down, where the Cabinet or responsible Minister directs staff to research a particular area; bottom up, where staff or an agency such as the AGCO make suggestions for change; event driven, as was the case with the Ombudsman’s report; or driven by stakeholder or constituent group lobbying. Once started, the policy development process is similar to any other policy area; that is, a submission to Cabinet that includes details such as context, implications, recommendations, etc.; followed by brokerage across the affected ministries and reaction from these ministries; then to a Cabinet committee who either approves, rejects, amends or sends back for revisions. Once over this hurdle, it goes to

Cabinet for approval, then to the lead ministry for implementation. If new or amended legislation is required, a bill is drafted to go before the Legislative Assembly.

Gambling regulations are approved by the Lieutenant Governor in Council, not the Legislative Assembly, although regulations can be questioned in the Assembly. This process allows for flexibility and a quick response, as was the case with the Ombudsman's report.

There does not appear to be a set of established and publicly available principles or guidelines that are followed in Ontario's gambling policy development. For example, we asked if the precautionary principle was a consideration in gambling policy deliberations—the impression conveyed was that few were familiar and comfortable with the principle, at least not by that name. Participants indicated that “risk management” is weighed in gambling policy decisions.

With respect to responsible gambling, we asked about the status of the government commissioned Sadinsky Report (2005) which produced 72 recommendations on ways to deliver gambling in a more responsible fashion. One respondent reported that the main recommendation (removing the responsible gambling mandate from the Ministry of Health and Long-Term Care) had been rejected, but was unsure why; while none of the other interviewees were aware of what happened with the Sadinsky Report.

Policy advisors concurred with the regulators, in that government gambling policy is not found in any one place; there is no policy manual for gambling. Respondents agreed that such a manual would be helpful to themselves as well as concerned citizens. Respondents noted that Castel's (2008) book does this to some extent, but it is not an official government document.

Contentious issues currently facing policy advisors include municipalities wanting a bigger slice of slot machine revenue; racetracks losing money and wanting more help ('how far,' one respondent wondered, 'can/should the government go to prop up a faltering industry?'); and, Internet gambling (“it's competition that we can't control. Should the Ontario government provide Internet gambling?”)

Ministry of Health and Long-Term Care and Ministry of Health Promotion Group

Respondents in this sphere were asked to explain their roles in Ontario's gambling regime and how they linked with gambling oversight agencies such as OLG and the AGCO. While the responsibility for minimizing problem gambling cuts across four Ontario government ministries, the Ministry of Health and Long-Term Care is the primary source of policy development on this issue. Articulation with the other three ministries occurs mainly through meetings of the inter-departmental Problem Gambling committee. OLG's and AGCO's ministries are represented on this committee but there are no delegates from these agencies as such. In this

committee forum, problem gambling policies are discussed, and over the past three years, a draft provincial problem gambling strategy was formulated, but has yet to be made available to the public. One of our informants who has seen the new strategy described it as “systematic, proactive, inventive and unique—a model for other addiction approaches.”

When asked how citizens could hold them to account in the absence of public statements about their mission and goals, respondents agreed this is a problem, one that should be rectified in 2010/2011 when the problem gambling strategy is widely disseminated. Respondents did add that they were accountable to the government for how their budgets are spent; however, unlike OLG or the AGCO no annual report on problem gambling activities is produced.

The two health ministries do not see themselves as proactive champions of social responsibility in the gambling realm. With regard to what occurs in gambling venues, they rely on OLG and the AGCO to raise gambling-related social issues. The social responsibility function that the Health Promotion ministry performs relates to the social marketing and public awareness campaigns carried out by the Responsible Gambling Council—Ontario.

The Ministry of Health and Long-Term Care evaluates the major components of their problem gambling program, namely research (Ontario Problem Gambling Research Centre), problem gambling treatment efficacy and the training of problem gambling counselors. On the other hand, the Ministry of Health Promotion has identified program evaluations as an area for consideration, but so far the effectiveness of its problem gambling programs has not been assessed. Neither ministry systematically reviews the problem gambling initiatives of other jurisdictions—knowledge of programs in other jurisdictions tends to be ad hoc and haphazard; one respondent suggested “we can always call OPGRC to find out what’s new.”

Respondents were asked how their ministries dealt with the fact that a disproportionate share of gambling revenues come from the small percentage of the population that are problem gamblers. Both health ministries said they were aware of this variance and were concerned about it (one respondent called it “a shocking statistic”), but concluded that, because it was outside of their mandates, they were limited as to what they could do. For example, the Ministry of Health Promotion endeavors to raise public awareness about problem gambling, but does not have sufficient data to know whether this public education strategy is working. The Ministry of Health and Long-Term Care attempts to solve the problem by intervening before people become problem gamblers. When told that other jurisdictions do this by using card technology to track playing duration, frequency and expenditures, it was pointed out to us that “Ontario is sensitive to that intrusive kind of intervention.”

Both ministries claimed that information on the percentage of gambling revenue contributed by problem gamblers is not available to them, though they wish it

were, because it could serve as a performance indicator. For example, if the proportion of gambling revenues from problem gamblers remains high year after year, it reflects poorly on the soundness of the province's problem gambling strategy.

When asked how terms such as “duty of care,” “informed consent,” “the precautionary principle” and “the public interest” informed their work, respondents told us they had heard them used at times but did not necessarily identify with them. “If we need a definition of duty of care we go to a lawyer.” Respondents reminded us that they were “small players in a big game,” both in terms of the gambling landscape and their roles within their own ministries. From this response we got the impression that Health Ministry interviewees saw themselves as being “out of the loop” in terms of influencing mainstream gambling policy. Sure they would likely be consulted if the government considered a drastic policy shift such as implementing VLT gambling, but questionable practices that are already in place such as the granting of credit at casinos, high maximum bet limits and proliferating slot machines are not to be challenged.

The 2005 Sadinsky report dealt specifically with Ontario's problem and responsible gambling programs. Only a few of its 72 recommendations were implemented (mainly an increased emphasis on public education about gambling and problem gambling), and whether or not related to the report, the Ministry of Health Promotion was created shortly after its release. We were informed that government reaction to the Sadinsky report was “very political.” One of Sadinsky's main criticisms of the existing programs was that they tended to be reactive and not particularly robust. Sadinsky also felt that problem gambling was a low priority amid the numerous consequential issues dealt with by the Ministry of Health and Long-Term Care and would be better served under a gambling agency such as the AGCO. The Ministry of Health and Long-Term Care ended up shifting problem gambling prevention to the Ministry of Health Promotion while retaining control over problem gambling treatment and research. It is not clear whether or not the problem gambling profile has improved under this arrangement.

Respondents indicated that for citizens and MLAs to be better informed about problem gambling issues there should be regular problem gambling prevalence studies, evaluations of public awareness efforts and, most importantly, an assessment of the impact that government initiatives have had on the incidence and prevalence of problem gambling.

Suggested ways of improving social responsibility, accountability and transparency with regard to Ontario's problem gambling offerings include:

- “With four ministries involved more coordination is needed, without an overall master plan for gambling our efforts are fragmented.”

- “The whole issue of responsible gambling and prevention needs to be better linked, we are all so busy, we don’t have time to focus on the issues.”
- “We would like to have more influence on provincial gambling strategy.”
- “We need to tell the public what we are doing, provide them with a scorecard if you will; for example, release the Problem Gambling Strategy and report on our progress.”
- “Who should champion gambling-related social responsibility concerns?” At present, we are reactive to public outcry and media revelations.”
- “If we really wanted a strategy of moderation, it would not be hard to do—take liquor sales, there’s a reason why bars are not allowed to be open all night. A responsible gambling regime is possible but it would be very different than the Las Vegas model (e.g., Caesars Ontario casinos).

Operators

In discussing OLG’s role in the provision of legal gambling in Ontario, respondents told us “it’s not just about making money.” OLG’s organizational structure is supported by four pillars (revenue production, entertainment provider, community partner and guardian of the public trust). “These pillars are like table legs; pull one away and the table collapses.” When asked what happens if pillars conflict (for example, maximizing gambling profits and guarding the public trust can be opposing goals), respondents indicated “there are tradeoffs” but did not provide detail as to how these tradeoffs are made.

It is noteworthy that revenue generation is the only one of the four pillars that is negotiated annually with government. The process for arriving at revenue targets begins with an OLG business plan that takes into account market conditions, foreign exchange rates and economic analysis. The business plan is proposed to the Board of OLG, and once approved, presented by the Board to the responsible Minister. The revenue projections then proceed through Cabinet to the Legislative Assembly where they are approved as part of the overall provincial budget.

OLG is an agency that strives to be best in its class. Indicators used to determine where the agency stands include: independent assessments such as requests to speak at conferences; being evaluated against World Lottery Corporation standards; and internal responsible gambling and performance measures. OLG reports seeking advice from the Centre for Addiction and Mental Health, Ontario Problem Gambling Helpline, Ontario Problem Gambling Research Centre and Responsible Gambling Council in support of its goal of enhancing the RG program.

The lack of normative expectations for OLG in its legislative framework was explained by the fact that the *OLGCA*, which was minimal legislation, came before the *AGRPPA* which provided some additional thoughts on the normative

side. Although there are no explicit statutes in Ontario dealing with harm minimization or social responsibility with respect to the provision of legal gambling, OLG respondents said that “responsible gaming is at the core of everything we do.”

The researchers referred to the Williams & Wood (2004) report that indicated up to 40% of OLG’s machine gambling profits come from the 3.4 of the adult population that are problem gamblers. It was unclear from the interview whether the OLG had data on the extent of profit that comes from problem gamblers. OLG’s policy on this complex and contentious issue was not answered directly. However, reference was made to OLG’s reliance on advice from Ontario responsible gambling agencies, with which they have MOUs, including the Responsible Gambling Council (RGC), Ontario Problem Gambling Research Centre (OPGRC), Centre for Addiction and Mental Health (problem gambling treatment) and the problem gambling helpline. It seemed interviewees relied on these organizations to advise them if they are not offering gambling in a responsible manner.

OLG participants described steps being undertaken to protect and educate gambling consumers, such as: the Responsible Gambling Code of Conduct; a new video jointly developed with OPGRC that debunks myths about gambling-related probabilities; iris scans and other technologies to put more rigor in its voluntary self-exclusion program; and mandatory employee training to help gamblers in distress. One OLG objective is to have gamblers “playing with open eyes;” that is, understanding the phenomenon of gambling (what the odds and payouts are, how EGMs work and so forth).

This discussion of issues relative to social responsibility led to a consideration of duty of care. OLG respondents made it clear “there is no duty of care case law with respect to gambling; the prospect of legal liability does not drive what we do, we try to do right thing.” The researchers noted that one reason there is no case law on duty of care is that many relevant cases have been settled out of court and include confidentiality agreements. Fourteen lawsuits have been launched against OLG in recent years, with 10 settled out of court and 4 still pending (Chung, 2007). This raises the question, do out of court settlements compromise OLG’s guardianship of the public trust pillar; in that, the public is not informed of the particulars of the cases or the precedents they might set?

We asked how concepts such as public trust, public interest, social responsibility and responsible gambling are interpreted and connected to organizational accountability. We were told there is a problem with using this undefined language. While these terms may be intended to express OLG’s intent and commitment to providing a safe gambling environment, respondents told us that because they are indeterminate and not operationalized, they are not helpful in assessing accountability. Instead they focused on the terms and specific initiatives discussed above as indicators of accountability.

Other Issues Raised in the Interviews

A consistent theme from the policy development personnel we interviewed was that gambling policy making is a “complex and dynamic process,” and “a balancing act involving revenue generation, entertainment concerns, social responsibility issues, economic development possibilities, impacts on local communities, gambling industry and charity group interests, to name but a few of the considerations to be weighed.” A few interviewees spoke of the frustration of being “the meat in the sandwich” between various competing interests.

The academic literature contains several concepts that are deemed essential to offering gambling in a socially responsible fashion; these include, the “precautionary principle,” “harm minimization,” “informed consent” and “duty of care.” During our interview sessions we tried to determine whether these cornerstones of responsible gambling were blended into Ontario gambling policy and operations.

By and large these terms did not appear to be part of our interviewees’ job-related vocabulary nor are they integrated into Ontario’s gambling policy framework. The fact that these key concepts are seldom mentioned by government officials, does not necessarily mean that citizen and community welfare is short-changed when it comes to gambling policy decisions; corresponding terms used by interviewees to express the government’s commitment to accountable gambling practices are “social responsibility” and “the public interest.” Although government uses these terms to justify its involvement in gambling, they remain undefined and can be perceived differently depending on one’s view of the role of gambling in society. One informant spoke about the anomaly of duty of care as it relates to gambling: “Gambling is more highly monitored than an airport, you have a distressed person gambling for 24 hours at a stretch, wearing diapers and leaving exhausted. This person would have been closely monitored by cameras, yet where is the duty of care?”

Two concerns related to this language include (1) government officials’ apparent discomfort with the academic literature on emerging robust practices for responsible gambling; and (2) the difficulty of holding the government to account for its gambling decisions and operations when key terms are nebulous. Interviewees concurred that the general lack of clarity on important principles and concepts complicates every policy discussion. For example, the regulators noted that honesty, integrity and social responsibility were important criteria in making their decisions; but that, honesty and integrity are easier to apply because there is ample case law relating to these terms in a gambling context, but not so for social responsibility. Most gambling-related civil cases in Ontario with a social responsibility focus are settled out of court. The regulators also noted that they frequently have to distinguish between public and private interests, and decide in each instance, which takes precedence.

The terms “public interest” and “social responsibility” were also discussed with gambling policy officials who confirmed there are no guidelines for applying them to policy development, determining what they mean in the context of legal gambling or weighing potential conflicts such as revenue generation versus social responsibility.

The only explicit policy reference to the public interest and social responsibility was found in *Section 3* of the *Alcohol and Gaming Regulation Public Protection Act (AGRPPA)*. However, again the terms are not defined nor are meanings provided for related terms such as honesty and integrity. Although the regulators thought that Section 3 provided useful criteria for decision making on a case by case basis, they did not feel bound to develop a set of regulations to meet the expectations set out in Section 3. Normally, regulators do not initiate or even refine gambling policy; their role is to enforce the existing rules.

In assessing the level of public debate on Ontario gambling issues, we were told that the last meaningful dialogue with citizens occurred in the 1990s when referenda were held in 44 communities regarding their acceptance or refusal of casino gambling. Since the enactment of the enabling legislation, there has been limited public debate on gambling policy in the Ontario Legislative Assembly. Most policy pronouncements are made through regulations, which are enacted pursuant to the powers granted to the Executive Branch through enabling legislation.

The last area of policy development scrutinized was the sources of information used by gambling policy makers. We explored whether there was a systematic approach to identifying and gathering the evidence-based information needed to formulate new policy as well as to assess policy effects. We also assumed that this policy making trail would allow interested citizens to hold policy makers to account for their ability to make effective decisions about gambling in the public interest.

When we mentioned existing academic research dealing with issues such as the high percentage of government gambling revenues derived from problem gamblers, gambling-related suicides, crime and bankruptcies associated with problem gambling; invariably, methodological concerns were raised. That is, there was an apparent distrust of information that explored the unintended outcomes of gambling. This skepticism exists even though the research in question was done by reputable academics and had undergone peer review. This observation concurs with that expressed by Hing and Mackellar (2004); the idea that gambling-related social responsibility initiatives have not been strongly endorsed by gambling providers who question the veracity of the research and the need for rigorous preventive measures. In our view this situation denotes two solitudes and suggests the need for an independent oversight agency (discussed in the next chapter) to arbitrate these differences of opinion.

OLG respondents said they do keep apprised of emerging practices in other jurisdictions. An OLG goal is to gain international recognition for providing gambling products and services in an efficient and responsible manner, and toward this end, it is establishing performance measures to determine whether this goal has been achieved. It will be important to consider whether data on social costs related to its gambling operations becomes part of the self-assessment equation.

OLG reports periodically on its performance to the appropriate ministry, a primary form of feedback being its annual report. These reports mainly contain financial data, which is helpful to interested citizens, but not comprehensive enough to ascertain whether gambling is being conducted in the public interest.

One of our research objectives was to determine whether concerned citizens have enough information to make an informed assessment of the extent to which gambling in Ontario is being conducted in the public interest. We conclude that adequate information is available to evaluate revenue generation performance, and to some extent whether or not legal gambling is being conducted fairly and honestly. However, at present, there is no definitive way of knowing whether the provision of legal gambling in Ontario meets high standards of social responsibility. In terms of honesty and fairness, the academic literature suggests there are unresolved issues surrounding electronic gambling machines, for example: whether certain features (stop buttons, near misses) are potentially deceptive or misleading; whether responsible gambling features (interruptions of play, spending limits, tracking of time, frequency and money played/lost) are effective; and whether gamblers are provided with the information and resources required to understand how the machines work (repeated random events, the meaning of payout rates and real versus perceived odds) and can transfer this knowledge from one machine and/or game to another.

Other than the Ombudsman's report (Marin, 2007), we found no detailed evaluations of legal gambling in Ontario. In our view, a regime of accountable and socially responsible gambling needs easily accessible information that supports the rationale for existing policy as well as regular, transparent and impartial evaluations of whether or not the public interest is being served.

The prevailing view of informants was that gambling is not much different from other sensitive and potentially contentious areas of government policy. Interviewees felt the present mechanisms were adequate for holding the government to account for its gambling policies and operations. Respondents from the two Health Ministries were an exception to this rule in that they mentioned a several possible ways to enhance government accountability and transparency.

In the final chapter we summarize what are perceived to be accountability and social responsibility concerns, and consistent with good practice guidelines in the

gambling studies literature, suggest ways of achieving closer alignment with the public interest.

Chapter 7

Advancing Accountable and Socially Responsible Gambling

In this chapter a framework for accountable and socially responsible gambling in the public interest is proposed. A set of seven principles is presented along with guiding questions that flow from these principles to assist citizens in assessing Ontario's gambling regime. This framework is then applied to gambling public policy issues in Ontario and refinements discussed that we believe would enrich accountability and social responsibility standards.

A Framework for Accountable and Socially Responsible Gambling in the Public Interest

An extensive blueprint for operating and regulating gambling in the public interest was presented in the Australian Productivity Commission Report produced a decade ago. This independent investigation into gambling in Australia, examined the economics and regulatory structure of the gambling industry as well as the social ramifications of expanded legal gambling. A central finding was that widespread gambling in Australia had generated major social costs as well as economic benefits, and that the social impacts pertaining to problem gambling "had not been adequately addressed, either in policy formulation or industry regulation" (Banks, 2003, 7).

The Productivity Commission report was supported by Australian state and territorial governments, lauded by non-government organizations, and received mixed reactions from the gambling industry. Gambling studies scholars were impressed with the scope of the report and its insights into more appropriate ways to administer gambling in accord with the common good. The report spurred considerable activity in Australia in the form of new legislation, policies and programs aimed at mitigating problem gambling and encouraging responsible gambling, some of which were outlined in Chapter 4.

A similar initiative was undertaken in New Zealand whereby a group of academics and health care professionals organized the 2003 Auckland conference around the theme of public health in gambling. The primary aim of the conference was to consider an International Charter for gambling, which would "draw the attention of governments around the world to the need for them to exercise their duty of care towards their citizenry with regard to gambling" (Raeburn, 1).

Building on these pioneering efforts to promote high standards for government conduct in the provision of gambling, in the following section we offer a

framework for government-run gambling based on the touchstones of accountability, responsibility, trustworthiness and harm minimization.

Principles

As a foundation for a gambling regime that operates in the public interest, we present the following principles and appropriate actions and policy mechanisms to support these principles.

Principle #1 Fact-finding Mission

A national independent review of gambling in Canada is needed.

A national review of gambling would determine: the scope of gambling in Canada; the social and economic costs and benefits of the activity; the rationale for governments' role; how gambling is implemented and regulated; whether gambling consumers are adequately protected; and how the associated harms of gambling are addressed.

National reviews of gambling have occurred in Australia (1999), the United States (1999) and Great Britain (2001) and gambling-related social and economic cost/benefit studies are currently underway at the provincial level in Nova Scotia, Alberta and one community in Ontario (Belleville). Noting shortcomings in the Canadian gambling regulatory process, Azmier (2001) advocated a review of gambling activity in Canada. Campbell et al (2005) concurred with this recommendation and supported “adopting the Australian approach—an adequately funded, independent federal public inquiry along the lines of a Royal Commission with the power to subpoena testimony and a two year time frame to complete the task” (81).

Such a review should be placed in the public domain and form the basis for debate; policy deficiencies could then be addressed based on the best available evidence. No such wide ranging review has been undertaken either Canada wide or in Ontario. The Sadinsky authored *Review of the Problem-Gambling and Responsible-Gaming Strategy of the Government of Ontario*, was narrow in focus. Even so, the report offered 72 recommendations to improve the situation, only a few of which were implemented.

Principle #2 Explicit Mission Statement and Objectives

Social responsibility and harm minimization must become higher priority objectives than revenue generation, and the precautionary principle should underpin all gambling public policy.

A critical observation raised about gambling operation and regulation in the Productivity Commission Report (1999) was that “governments’ failure to follow good regulatory process and design principles, compounded by and combined

with revenue raising imperatives, may well lead to perverse regulatory outcomes in gambling” (Ch. 12:16). It was argued that if gambling is to be operated in the public interest, the ultimate goal of a gambling regulatory regime should be to maximize net community benefits.

Ontario’s gambling mission statement contains high-minded ideals such as social responsibility and harm minimization; however, based on day-to-day operations, the defacto goal appears to be maximizing revenue. For example, included in the 2005-2006 OLG Annual Report are phrases such as “sustaining revenue,” “optimizing total return to the shareholder,” “improving competitiveness” and “new revenue generation.” Readers are left to ponder how revenue goals may or may not relate to OLG’s stated purpose of (*making life better for people across Ontario*), *its core values of acting with integrity, respecting customers and being accountable and its stated goal of upholding the public interest.*)

Principle #3 Promoting a Culture of Social Responsibility

A culture of responsibility starts with a respect for the dignity of all citizens and is a prerequisite for a just, ethical and caring society.

A culture of social responsibility with regard to the provision of legal gambling consists of three primary elements (informed choice, consumer protection and therapeutic measures). (1) Informed choice refers to enabling consumers to make sound decisions about a gambling format on the basis of probabilities, how the game works, what the house edge is and the foreseeable consequences of participating in the activity. (2) Consumer protection pertains to the gambling provider’s duty of care to implement a plan of action to discourage improvident gambling behavior and safeguard against contributing to the incidence and prevalence of problem gambling. In reviewing the literature for this report we found no definitive jurisprudence in Ontario or any other province that defined a duty of care for gambling providers. As noted earlier, a number of civil liability suits have been filed against OLG and venue operators arguing that gambling patrons are owed a duty of care to inhibit their excessive gambling. These cases have been settled between the parties and settlement terms kept confidential. In the past few years several class action law suits have been launched against Canadian lottery corporations alleging that these entities have a duty of care to warn citizens about the addictive potency of electronic gambling machines. The resolution of these cases will no doubt set a precedent for future legal decisions. (3) Therapeutic measures are programs designed to assist those at risk for developing, or who have already developed, gambling problems, to help them stop or curb their reckless gambling behavior and temper the impacts of these behaviors on the problem gamblers, their families, friends, employers and the community at large. Ontario, like most Canadian provinces, does a solid job of providing problem gambling counseling and prevention initiatives. However, improvements are needed in the areas of informed choice (particularly with regard to machine gambling) and consumer protection (as noted earlier, it is baffling that the *Ontario Consumer Protection Act* is not applied to the provision of gambling).

Principle #4 Transparency

Greater transparency is needed in terms of government policy, practice and dissemination of information related to gambling. The frequent use of stigma neutralization techniques by government officials when dealing with contentious gambling-related matters is counter to the public interest as it puts a higher priority on the consequences for government versus the impact on citizens.

Transparency is a strong indicator of a government that is citizen-focused and service-oriented; however, with regard to gambling, governments are noted for embracing the activity through legislation, but being reluctant to openly discuss the issue publicly. There are three main circumstances where governments are likely to comment on gambling matters: (1) On the occasion of a good news story; for example, yearly revenue announcements, job creation or advancing a charitable cause. (2) When new initiatives are planned or new legislation is being considered. And (3), when in a damage control mode such as responding to a gambling-related suicide, an increase in the problem gambling prevalence rate or a gambling-related scandal. Because gambling public policy is often controversial, government officials tend to be defensive and restrained when discussing the subject; in fact, it is usually a public relations officer, rather than an elected representative, relaying the government's position to the media. This exercise often involves official understatement and a preference for minimizing the number of problems there are and how interconnected they are.

Presumably, this process has evolved because, despite its wide availability, gambling is still viewed in some quarters as a stigmatized activity (Preston, Bernhard, Hunter & Bybee, 1998). As a consequence, when discussing gambling matters publicly, politicians and bureaucrats are prone to use "techniques of stigma neutralization" (Sykes & Matza, 1957). The Ontario Ombudsman report noted how OLG officials used deception, distortion and intimidation to trivialize contrary viewpoints and rationalize their own behavior. Transparency is also compromised when government employees are told to be 'gaming neutral' or when gambling-related law suits against the government are settled out of court with confidentiality agreements as part of the deal (Chung, 2007).

Transparency in public policy is a primary tool in holding public officials accountable and in combating corruption. In a gambling public policy context the main form of transparency is the annual reports produced on various gambling activities; however, more can be done in this realm to keep interested citizens apprised of provincial gambling operations. For example, facilitating citizens' understanding of policy making processes; timely release of pertinent information (e.g. no burying or delaying the release of controversial material); well defined regulations and procedures that are open to public scrutiny; and declarations of financial contributions to political campaigns by gambling interests.

Principle #5 Evidence Based Research to Inform Gambling Policy

High quality, independent research should be the foundation of both government and industry policy in an accountable and socially responsible gambling regime (Adams, 2008).

It is axiomatic to state that public policy should be informed by timely, high quality empirical research; regrettably, this is seldom the case with gambling because of governments' reluctance to interrupt the revenue flow. As noted earlier, solid research that could improve the administration of gambling in the public interest exists, but often goes unheeded. Inattention to or dismissal of research developments leaves the government open to allegations of neglect and failing to promote the public interest.

Principle #6 Community Consultation

As part of the gambling licensing process the affected community should play a role in determining public interest in the activity, the appropriateness and location of the proposed venue and preparing a social and economic impact assessment to confirm that the benefits of the proposal will outweigh the costs.

It is important to note that legal gambling is generally supply driven and not a case of consumer demand. As Goodman (1995) maintained, there is no known case of a grassroots community group clamoring for more gambling outlets. Public consultation is seldom sought in the development of gambling policy, and when it is invited, the openness and independence of the process is often questioned. The lack of community dialogue before policy decisions are made has led to some communities being disproportionately exposed to the harmful effects of machine gambling or adverse infrastructure impacts such as increased traffic and crime associated with the opening of a new gambling facility.

Principle #7 Independent Oversight

A gambling regulatory regime that is free of conflicting objectives and interests; open, consultative and informed by empirical research; and conducted in the public interest, can best be administered by an independent commission with powers akin to those of an Ombudsman or Provincial Auditor (Productivity Commission, 1999; Campbell, et al 2005).

Perhaps the most prominent shortcoming of Canadian gambling regulation is the inherent conflict of interest that exists whereby provincial governments perform the multiple overlapping roles of gambling providers (for example, licensing, regulating, marketing and operating the activity), while simultaneously, reaping the lion's share of the profits. Provincial governments not only have a monopoly on gambling within their borders, they also self-regulate. This state of affairs has led to regulatory regimes that lack transparency and accountability; give special treatment to their private sector gambling industry partners; and value revenue

over reducing the social costs associated with gambling (Campbell, et al 2005, 82-83).

Insufficient government accountability with respect to gambling is raised throughout this report. We suspect that one reason for this is the multiple Ministries that play a role in Ontario's gambling regime. As it now stands four different Ministries comprise the gambling regime in Ontario; the Ministry of Public Infrastructure Renewal is accountable for operating all gambling except horse racing, the Ministry of Government Services oversees horse racing and is accountable for regulating gambling, the Ministry of Health Promotion deals with public awareness related to problem gambling and the Ministry of Health and Long-Term Care is responsible for problem gambling treatment and problem gambling research. Moreover, we surmise that by changing the ministerial oversight for OLG so frequently, no single Ministry has been able to develop a long-term vision for gambling and a full commitment to its responsibilities. To some extent this uncertainty was evident in our interviews as various stakeholders were reluctant to address matters of social responsibility, the public interest and duty of care.

In our view the issue is not a lack of opportunities to hold stakeholders and government accountable but rather the absence of a focal point within government that carries overall responsibility for the provision of commercial gambling. The Sadinsky et al (2008) report discussed in Chapter 2 referred to Ontario's gambling structure as "siloes" and noted the lack of a master plan for gambling in Ontario. Sadinsky et al recommended the establishment of a Gaming Secretariat to remedy this situation; whereas we believe that stronger measures are needed to overcome the inherent conflict of self-regulation in an industry that has a history of untoward practices.

In the gambling regulatory paradigm outlined by the Australian Productivity Commission, policy development would still reside with the legislature; however, public consultation and open information gathering processes would be prerequisites for legislative change. The Productivity Commission recommended that gambling policy be "entrenched in legislation with clear standards for subsequent decision making by an independent authority" (22:24); reconsidered periodically; and that processes be put in place to ensure that such reviews are transparent and well-informed. The Productivity Commission also asserted that since the federal government has an interest in the social welfare and community impact aspects of gambling, it should play some role in ensuring that gambling operates in the public interest; for example, in Canada this could mean taking the lead on issues of national importance such as instituting a Royal Commission on gambling, standardizing gambling machine testing and amending the *Criminal Code* to clarify indistinct language such as "conduct and manage" and "lottery scheme."

An independent oversight body is a cornerstone of sound regulatory practice, because independence is required to ensure that the regulator functions without

influence or fear of reprisal and operates in the public interest. An independent overseer's duties would be detailed in legislation along with a proviso that public processes be used to inform its decisions. The Productivity Commission Report suggested how this independent statutory body might be structured and what its duties would be (for example, gambling control, enforcement, adjudication and administration), and most importantly, considered the following criteria as central to its mandate:

- It should have no revenue or taxation functions.
- It must have no industry development or tourism-related functions, or in any way be involved in promoting gambling.
- It should cover all legal gambling formats offered in the jurisdiction.
- Its processes should be open and transparent.
- Public consultation is essential.
- It should have responsibility for: funding counseling, harm minimization and community awareness programs; funding research and information gathering and dissemination; and conducting evaluations of these programs.

Guiding Questions

In regard to the upgraded standards advocated in the preceding principles, what is appropriate for Ontario? In our view, this question merits serious public debate. To encourage this dialogue, we present a sampling of questions for citizens to ask government about its provision of gambling (Table 8).

These questions are framed on the vertical axis by the seven principles and on the horizontal axis by the caveats of gambling that make it challenging to provide the activity in a socially responsible fashion.

Detailed responses to the questions in Table 8 could be provided in policy statements, press releases, statutes, regulatory policies, documents for public consultation, program evaluations (measures of program effectiveness), internal and external audits and investigations, public consultations, and financial and performance reports. The questions in Table 8 should ideally be addressed from a sectoral rather than an agency or departmental perspective, because sectoral coverage would consolidate, in one report, all relevant information on gambling and provide a comprehensive picture of gambling's intended and unintended outcomes.

Accountability and Social Responsibility: The Situation in Ontario

Based on our review of materials in the public domain, more complete data is needed to answer the gambling-related questions in Table 8. A thorough response to the issues raised in Table 8 would propel the Province of Ontario into the national and international spotlight for its use of best practice guidelines and its display of moral leadership in promoting accountable and socially responsible gambling.

In this concluding section we propose the following steps for enhancing accountability and social responsibility in Ontario's gambling regime:

- Provide a comprehensive rationale for government's involvement in gambling;
- Delineate an appropriate level of gambling promotion;
- Define the key terms used in mission statements and objectives;
- Provide greater disclosure of government/gambling industry contracts;
- Address consumer protection shortcomings and ambiguity;
- Specify how social responsibility issues are to be monitored and which government agency has the lead role in this regard;
- Link gambling policy with evidence-based research;
- Clarify revenue targets and their compatibility with the public interest;
- Consider an independent oversight model for Ontario gambling; and,
- Facilitate the accountability of Ontario's gambling regime by providing a sectoral report on commercial gambling in Ontario.

The Rationale for Government Providing Gambling

In justifying its gambling involvement government should indicate:

- Why gambling is used to generate revenue rather than taxation and, given the associated social costs, calculate whether gambling is more cost-effective than taxation for raising revenue.
- How gambling is compatible with the notion of equity where citizens with higher incomes shoulder a greater share of the tax burden.

- Why government offers an entertainment service that could be provided by the private sector.
- The amount of money invested by government in the gambling infrastructure.
- Where gambling money comes from.
- And, how gambling money is disbursed.

Appropriate Promotion of Gambling

Ongoing dialogue on the appropriate marketing of gambling in Ontario is an important social responsibility issue. Should government promote gambling to increase its social acceptance as entertainment? Government's role in actively encouraging a shift in social/moral norms is usually related to unhealthy or harmful behavior such as smoking, drinking and driving, and so forth. Presently, the Ontario government spends more than \$265 million annually (Note 12 to audited financial statements, March 31 2006) to promote the consumption of gambling).

The Government of Ontario, as part of its rationale for providing commercial gambling should define the appropriate level of gambling promotion, supporting its position with program evaluations of the effectiveness of its efforts to protect the vulnerable. The Government should also make public its emerging Problem Gambling Strategy and report progress against the goals and objectives articulated in this strategy.

Define Key Terms

Precision in language is critical to establishing public confidence in the processes of government. Vague terms lead to confusion and weakened accountability. The meaning of terms such as "social responsibility" and "public interest" are undefined in enabling legislation and public policy statements; nevertheless, they persist and are widely used by the Ontario government in reference to its provision of gambling products and services. Government accountability would be heightened if these terms were precisely defined rather than open to interpretation.

Acknowledging the complexities of policy development and implementation, holding the Government of Ontario to account for its policies on gambling would be facilitated if the following were provided:

- A definition of social responsibility, as it applies to legal gambling.
- A statement of priorities and how they are applied to complicated issues such as revenue generation, community revitalization and social responsibility.
- Guidelines on how the "public interest" is interpreted and applied by decision makers in the development and implementation of gambling policy.

- A clear statement about the extent to which the Province adheres to the principle of harm minimization and the precautionary principle as it pertains to gambling policy and regulation.
- A consolidation of all the disparate elements of gambling policy in Ontario.
- A statement of the steps and principles used in formulating gambling policy.

Gambling Industry Relationships

There are general concerns pertaining to contractual arrangements with the gambling industry and the possibility of undue influence by gambling corporations on government policy. Ontario's hybrid casino model is based on partnerships between the province of Ontario and private sector corporations. Contracted casino corporations run Ontario's four major casinos, consequently citizens need sufficient information to assess whether these industry partners are operating in the public interest.

The gambling industry has a reputation for influencing the political process. According to Denton & Morris (2001), this occurs "by its contributions to politicians, its tax revenues to reliant public treasuries, its hold over collateral enterprise, and not least, its millions spent for ceaselessly lobbying that leaves nothing to chance, the industry gains and wields unique influence throughout the nation and the world" (8). Citizens should be apprised of the depth and breadth of the gambling industry's influence on government and whether, and to what extent, the public interest is jeopardized as a result of this affiliation. This disclosure is particularly important before and after major capital investments in gambling infrastructure. Currently this information is unavailable in Ontario.

The Government of Ontario should be transparent about the details of its contractual arrangements with private sector gambling industry partners. At a minimum, this disclosure should include:

- An elaboration of the process used to award contracts for the construction of new major capital projects designed to augment existing commercial gambling operations, as well as terms and conditions of significant contracts and commitments.
- The terms and conditions, as well as the monies paid to and received from private sector gambling industry partners for the ongoing operation of existing gambling venues operated under the "hybrid" model.
- Details on the accumulated investment in commercial gambling infrastructure (including the amounts from general revenues), as well as information on who owns this infrastructure, relative to the Government of Ontario and its industry partners.
- Disclosure of the gross gambling revenues generated and how these revenues are spent, including details on payments to private sector commercial gambling partners.

Consumer Protection Ambiguity

Serious concerns about gambling-related consumer protection have been raised in the academic literature (see Chapter 3). For example, games with unfair odds and poor payout rates, deceptive electronic gambling machines, lottery ticket sellers appropriating customer's winning tickets, and casinos mailing promotional materials to patrons who have signed voluntary self-exclusion contracts. Interviews with senior personnel in the Policy and Consumer Protection Services Division indicated uncertainty as to how the *Consumer Protection Act, 2002* applies in gambling situations.

In response to a recent Ontario Gambling Watch Network inquiry about gambling-related consumer protection, Minister of Government and Consumer Services, Ted McMeekin (2008), stated that Ontario's *Consumer Protection Act* has only a "general application to consumer transactions in Ontario." In reference to gambling, Minister McMeekin went on to explain: "Where a specific statute regulates a sector, as is the case with gaming, the ministry defers to the regulator under that regime, in this case the AGCO, which administers the *Gaming Control Act, 1992*, rather than resorting to the *Consumer Protection Act, 2002*."

The Government of Ontario should clarify how consumer protection laws apply to gambling.

Connecting Gambling Policy to Evidence-Based Research

Interviewees indicated that empirical research was not overly influential in informing Ontario gambling policy or operations. Other than the agenda of OPGRC, government representatives we spoke with were unaware of a systematic government research plan for gambling and were generally unfamiliar with recent academic research trends or findings; this is the scenario described earlier that leads to ineffectual responsible gambling programs (Hing and Mackellar, 2004). The presumption stated by some respondents was, "if there is something out there that we should know, surely CAMH or the Ontario Problem Gambling Research Centre would tell us about it." In the same vein, respondents indicated a level of distrust for research dealing with the harmful effects of gambling.

The Government of Ontario should:

- Make a concerted effort to link gambling public policy with widely accepted empirical research findings.
- Evaluate and report on the effectiveness of harm minimization strategies.
- Conduct and report on a province-wide social and economic impact assessment of gambling.

Clarity Regarding Revenue Targets

Given that gambling nets nearly \$2B annually for the province of Ontario, there is a danger of the government becoming overly dependent on this revenue and losing sight of public interest goals. Indeed, the Ontario Ombudsman's Report (2007) maintained that this happened with OLG. Because of the possibility that revenue production will trump social responsibility and public interest considerations, government should articulate its priority when there is a conflict between the two.

Citizens should be informed of the rationale for provincial revenue targets. In creating a rationale for revenue generation from gambling, the government should declare its assumptions about the efficacy of its measures to promote responsible gambling and its provision of harm minimization programs. Citizens need to know whether the Government of Ontario plans to promote a gambling culture of moderation, or other goals. These assumptions and goals could later be evaluated against results and made public.

Regulatory Independence and Oversight

In Ontario, the gambling regulatory function is fulfilled by the AGCO which enforces compliance with provincial laws and prevents criminal elements from infiltrating legal gambling in Ontario. In this vein, it is important to distinguish between an oversight and a regulatory function: to wit, oversight is a broader concept than is regulation, in that the sweeping effect of an activity on the public interest is analyzed and compliance is weighed against principles of honesty, integrity and social responsibility. Regulation, on the other hand, is hands-on checking for rule abidance; whereas, oversight involves a panoramic view of the industry to ensure that the public interest is well served.

It is unclear whether the AGCO's mandate includes an oversight function, particularly in the area of social responsibility. Does the AGCO have a role to provide an overall assessment of the extent to which the gambling regime in Ontario is operated in a socially responsible fashion? If not, should it have such a mandate? The distinct characteristics of gambling as compared with other government services and products, suggests that a higher level of oversight is required for gambling, one that goes beyond that expected of a regulator.

The Province of Ontario should consider an independent oversight agency for gambling. The mandate of which would be to monitor and report on the extent to which commercial gambling is "in the public interest and in accordance with the principles of honesty and integrity, and social responsibility." (Section 3, *AGRPPA*)

Facilitate Citizens' Assessment of Ontario's Gambling Regime

Citizens can form a reasonably accurate assessment of government policy in areas such as education, health care or highway maintenance. However, it is difficult

for the public to ascertain the social and economic costs and benefits of gambling and whether or not the activity is being conducted in its interest. To this end, there is a need for a sectoral report on government provided gambling that includes all facets of the undertaking, including the social costs.

The Province of Ontario should prepare an annual sectoral report on its gambling involvement that addresses questions such as those set out in Table 8 for accountable and socially responsible gambling in the public interest.

Summary

In identifying the distinct features of gambling and analyzing the current Ontario gambling regime, we detected gaps between the government's expressed ideals and its routine practices. In particular, consumer protection for gamblers is uncertain; citizens lack information with which to hold the government accountable for its gambling operations; responsible gambling initiatives are uninspired; and the government's inherent conflict of interest as both provider of gambling and beneficiary of gambling proceeds, compromises its ability to operate and regulate the activity in the public interest. On the plus side, Ontario has been a leader in separating gambling operations from regulation, refusing to provide EGMs in convenience locations and committing sufficient funds for research, problem gambling treatment and prevention.

To assist Ontario gambling administrators in reaching the goal of being internationally recognized for providing gambling in a socially responsible and humane fashion and being acclaimed for implementing sound and thorough harm minimization practices, we offer a framework and guiding principles for conducting gambling in the public interest. Certainly, we do not pretend to have all the answers to the perplexing questions that surround the administration of gambling, and realize that reasonable people may disagree over the proper course of action to take. It is our hope, however, that this report stimulates discussion among Members of the Legislative Assembly and Ontario citizens that leads to the province being an innovator in this important area of governance.

**Table 8
Accountable and Socially Responsible Gambling in the Public Interest**

| Principles of Social Responsibility | Critical Caveats of Commercial Gambling | | | | |
|--|---|--|---|--|--|
| | Not Essential | Morally Contested | Hazardous to Some | Consumer Protection Unclear | Potential for Profit to override goals |
| 1. Fact-Finding Mission | Why is it necessary or desirable for government to provide gambling? | What do the majority of citizens want? What are citizen's attitudes toward gambling as offered in Ontario? | What gambling formats should be allowed? In what numbers? And, in what locations? Are the vulnerable adequately protected? | How should consumer protection apply to commercial gambling? | Are Crown agencies the proper vehicles to assure that gambling is conducted in the public interest? Is the search for profit eclipsing other values such as social responsibility? |
| 2. Explicit Mission & Objectives | What are the government's objectives in providing gambling? | What is a proper balance between revenue generation and social responsibility? | Why is it that a level of harm built into policy is assumed to be acceptable? | What are the Province's objectives in the area of consumer protection for gamblers? | What social outcomes do the operator and regulator of legal gambling intend to achieve; what actual outcomes are achieved? |
| 3. Effective Culture of Responsibility | How intrusive should exclusion measures be? Should there be a review of gambling regulations such as the granting of credit at casinos, maximum bet limits, hours of operation, etc.? | Is there a threshold of harm, beyond which gambling should be severely restricted? | Are harm minimization and mitigation measures effective? | Does the Province have a duty of care for gambling consumers? To what extent are informed consent and the precautionary principle applied to gambling policy and practice? | Does the operator of gambling have a duty of care to track the gambling patterns of frequent gamblers and aggressively intervene before severe harm occurs? |
| 4. Transparency | Should the Province make a credible case for gambling, as opposed to other means of raising revenue, creating economic development or funding charities? Is it clear to citizens how much the Government has invested in gambling infrastructure; where the money comes from; and, where it goes? | Should there be an open discussion of the pros and cons of gambling? | Should there be disclosure of the amount of revenues from problem gamblers and the efficacy of harm minimization and mitigation strategies? | Do Ontario gamblers know whether or not they are not protected by provincial consumer protection laws? | Should there be a comprehensive disclosure (on a sectoral basis) of the effects of gambling in the annual reports of the operator and regulator of gambling? Is it clear to citizens whether a desire for profit is balanced by adherence to the principles of honesty, integrity and social responsibility? |
| 5. Evidence-Based Research | Should citizens be provided with an analysis of the net costs and benefits of gambling? | What is the entertainment value for non-risk gamblers; the personal and social cost of problem gambling? | How does the government know whether efforts to protect problem gamblers are effective? | Does the government know whether its gambling policies are consistent with the public interest? | Are agencies effective in discharging a duty of care, implementing a regime of informed consent and adhering to the precautionary principle in major decisions affecting the scale and nature of gambling? |
| 6. Community Consultation | Should the Government create a dialogue with citizens on why gambling is provided and what the expected outcomes are? | Should the Province consult the public before major gambling expansions? | Should there be a full, frank and comprehensive dialogue, based on fact, on the social costs and benefits of gambling? | Should there be a public discussion on the extent to which gamblers need consumer protection legislation? | Should the involved Crown agencies (operator and regulator) conduct public consultations on the nature, scale and type of gambling to be provided and on potential major expansions of gambling? |
| 7. Independent Oversight | Is there need for an independent oversight agency charged with reporting on whether Ontario's gambling regime is promoting the public interest and adhering to the principles of honesty, integrity and social responsibility? | Is there need for an independent body that can inform the debate? | Is there need for independent oversight and reporting on the extent to which the vulnerable have been protected? | Is there need for independent oversight of the extent to which the province has exercised a duty of care and adhered to the precautionary principle and the principle of informed consent? | Should there be independent oversight and regular reporting on the extent to which Crown agencies (operator and regulator) are providing accountable and socially responsible gambling in the public interest? |

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Appendices

Appendix A

Interviews Conducted

The researchers very much needed to see gambling from the perspective of those accountable for developing and implementing government policy. These interviews were critical to the completion of our research. Those interviewed include:

- Jean Major, Chief Executive Officer, and Don Bourgeois, Chief Legal Counsel of the Alcohol and Gaming Commission of Ontario.
- Frank E. Denton, Assistant Deputy Minister, Policy and Consumer Protection Services Division and Deborah Brown, Sector Liaison Branch, of the Ministry of Government & Consumer Services.
- Mary Shenstone, Assistant Deputy Minister, and Barbara Hewett, Director, Gaming and Alcohol Policy Branch, Ministry of Public Infrastructure Renewal.
- Kelly McDougald, Chief Executive Officer, Alexandra Aguzzi, Executive Director Policy and government Relations and Betty Palantzas, Manager, Responsible Gambling, Policy and government Relations, Ontario Lottery and Gaming Corporation.
- Vincenza Ronaldi, Manager, Strategic Policy and Planning Strategic Policy and Planning Support Branch, Jayson Doll, Policy Advisor and Laurie Belfie of the Ministry Health Promotion; Ann Bowlby, Manager, Mental Health and Addictions Health Program; and, Standards, Ministry of Health and Long-Term Care and W.J Skinner, Clinical Director, Concurrent Disorders Program, Centre for Addiction and Mental Health.