

Cartels and Casinos

First Nations' Gaming in Canada

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Executive Summary

In 1985, Parliament amended the Criminal Code to give the provinces jurisdiction over gambling. The provinces have used their new jurisdiction to create cartels for their own profit, in which they are either the owners of licensed casinos or take a large share of the profit. First Nations challenged the provinces in court but lost. Hence, they have had to fit into the cartel system and take leftovers—with a few exceptions, casinos located far from the main action. Only Alberta has let them into lucrative metropolitan markets, with one casino each in Edmonton and Calgary. Saskatchewan and Manitoba have recently licensed First Nation casinos not too far from Saskatoon and Winnipeg. In Ontario, Casino Rama is in a popular resort location, and the Membertou VLT parlours are situated within the small city of Sydney, Nova Scotia.

Obviously a lot of money moves around in casinos, but does it benefit the host First Nations? The answer is an emphatic “Yes” for the half-dozen casinos located in or near cities and destination resorts. In all these cases, the opening of a casino was an inflection point in the time series of their Community Well-Being (CWB) index scores. (CWB is an aggregate of income, employment, education, and housing data collected by Statistics Canada.) Their scores rose more rapidly than their previous rate of progress because large profits from the casino can be used to provide better housing and other social services for First Nation members. Money from the casinos can also be leveraged for large-scale business and real-estate development, as is now happening in Edmonton and Calgary.

Elsewhere, the answer is only a qualified “Yes”. The casinos in rural locations are generally profitable and honestly run, and they do generate useful amounts of cash and jobs for the host First Nations. However, in most cases hosting a casino has no discernible effect on the Community Well-Being of the hosts. The CWB scores of less favourably located First Nation casinos have not risen more rapidly than the general rate of improvement for First Nations because the revenues generated from their remote locations are not large enough to have a transformative effect.

British Columbia and Manitoba plan to follow Ontario in giving First Nations a larger percentage of all gambling revenue in the province. Other analysts suggest allowing First Nations to keep a greater share of what they generate in their casinos. Without denying the merit of these suggestions, an even better policy would be to relax cartel restrictions so that First Nations can earn more for themselves. They have demonstrated that they can operate casinos efficiently in the locations they have been allocated. It is time to take off the shackles.

One step would be to allow more First Nations casinos into profitable big-city markets. That might mean that some First Nations would operate casinos in multiple locations off their present Indian reserves. If that is seen as a problem, let them buy urban land and incorporate it into their reserves. That model is already well established in Saskatchewan and Manitoba and could easily be applied more widely.

If the provinces will not take these steps, Ottawa can nudge them by threatening to resume jurisdiction over gambling. What Parliament gave, Parliament can take back. Or Parliament could leave general jurisdiction with the provinces but assume regulatory power over First Nations casinos. The gambling ventures of Indian tribes are federally regulated in the United States, where they are far more numerous and generate far more revenue for their hosts than in Canada.

The best policy of all would be to abolish the provincial cartels. Ironically, they were created just as Canada abolished cartels and reduced over-regulation in telecommunications and air-passenger travel. Because of the large amount of money involved, gambling needs government regulation to keep out organized crime, money laundering, and profit skimming. Beyond that, gambling can operate in a free market like other entertainment industries. First Nations have shown the ability to compete, and they would be winners in such a market.

Introduction

Earlier publications have tried to identify the factors associated with First Nations that appear to be prospering (Flanagan, 2019a; 2019c). One robust finding is that such First Nations tend to have a higher proportion of own-source revenue generated through business activities, in what I have called “community capitalism.” That activity can be land development in an urban area (Flanagan, 2019b) as well as natural resource development (Flanagan, 2018). In this study, I want to look at casino gaming as another form of community capitalism for First Nations, and to enquire whether it is associated with a higher standard of living for members. It is obvious that casinos can generate cash flow, but does that translate into improved income, housing, employment, and educational achievement for members of the host First Nation?

Yale Belanger (2014) carried out an appraisal of how much benefit casino gambling confers upon First Nations in Alberta, Saskatchewan, and Ontario. He made a valuable contribution to the literature by documenting revenues raised for First Nations in these three provinces and also estimating the number of jobs created by hosting casinos. Revenue and jobs, however, are intermediate variables between the existence of casinos and the well-being of the members of First Nations. In contrast to Belanger’s work, the methodology used here looks at all provinces where First Nations have casinos and not just at intermediate variables but at an actual measure of welfare for the members of host First Nations. The methodology used here has its own limitations, discussed *en passant* in the paper. It is, therefore, encouraging that my conclusions and those reached by Belanger, while not identical, have considerable overlap. It enhances confidence in research findings when different methodologies lead to similar results.

A second focus of the paper is the organizational structure of First Nations gaming. The whole gaming industry is cartelized at the provincial level in Canada as a result of the transfer of legislative authority over gaming from Ottawa to the provinces in 1985. As has happened more recently with cannabis, the provinces have used this authority not just to regulate the industry but to become major owners and taxers, thus limiting the revenue flow to First Nations from gaming and increasing their own returns. This peculiar industrial structure helps to explain why First Nations have not been able to make more extensive use of casino gaming.

First Nations also sponsor many other gaming activities, such as bingos, raffles, lotteries, and video lottery terminals (VLTs) in restaurants and convenience stores. However, there is no centralized source of data on such small-scale operations. Casinos offering an assortment of slot machines and table games are the largest and most lucrative form of organized gambling and hence deserve special treatment. There is also a body of public financial data on casinos, albeit imperfect, which can be used to explore the question of whether hosting casinos benefits members of the host First Nations.

Cartels and Casinos

Historically, gambling in Canada was illegal under the Criminal Code, although many exceptions were legislated to allow for horse racing, charitable events, and games of chance at county fairs. In 1985, the federal government turned the field over to the provinces in return for a contribution of \$100 million to the 1988 Olympics and small annual payments thereafter (Belanger, 2006: 52). Gambling remained illegal unless authorized by a provincial government (Government of Canada, 1985: s. 207). There was no mention of First Nations in the amendment to the Criminal Code.

This proved to be a fateful decision because it endowed the provinces with superior legislative authority, which they have used to limit the role of First Nations. The provinces developed a large financial stake in the cash flow from gaming, and they used the legislative authority transferred from Ottawa to restrict the cash flow to First Nations by siting their casinos in less lucrative locations, with a few exceptions.

As the provinces started to license casinos after 1985, First Nations wanted to get in on the action. Some were emboldened by the 1987 *Cabazon* decision of the Supreme Court of the United States, which held that states could not prohibit Indian tribes from entering the gaming business unless all gambling was illegal in the state (United States Supreme Court, 1987). This decision upheld the tribal sovereignty that exists in the United States subject to the ultimate sovereignty of Congress. Several Canadian First Nations opened their own establishments without seeking provincial approval (Belanger, 2006: 84–88). To simplify their argument, they held that they could host gaming establishments as part of their aboriginal right of self-government protected by s.35 of the Constitution Act, 1982. However, the Supreme Court of Canada held otherwise in the 1996 *Pamajewon* decision (Supreme Court of Canada, 1996). High-stakes gambling, the Court said, was not a historical part of First Nations culture and thus was not a protected aboriginal right. This effectively ratified the transfer of legislative authority to the provinces that had taken place in 1985.

First Nations had little choice but to accept the *Pamajewon* decision, so they started to negotiate with the provinces. As a result, there are now 23 (depending on how one counts) casinos in Canada hosted by First Nations (**table 1**). There are only about 110 casinos in Canada, so it superficially may seem that First Nations have more than their fair share of the action. However, First Nations host only one casino in British Columbia, and none in Quebec and in the four Atlantic Provinces except Nova Scotia, where the Membertou First Nation operates three VLT establishments that are somewhat comparable to a casino. Moreover, apart from one casino in Edmonton and one in Calgary, First Nations do not have good access to potentially lucrative metropolitan markets. They are not present in Victoria, Vancouver, Regina, Hamilton, Ottawa, Montreal, Quebec City, and Halifax. In other words, they are excluded from much of urban Canada, although there are now First Nation casinos at a reasonable driving distance from Saskatoon, Winnipeg, and Toronto.

Table 1: First Nation Casinos

Casino	Date opened	First Nation host(s)
Alberta		
Casino Dene	2007	Cold Lake First Nation
Eagle River	2008	Alexis Nakota Sioux First Nation
Grey Eagle	2007	Tsuut'ina First Nation
River Cree	2006	Enoch Cree First Nation
Stoney Nakoda Resort	2008	Stoney Nakoda First Nation
British Columbia		
St. Eugene	2002	Ktunaxa Nation
Manitoba		
Aseneskak Casino	2002	Chemawawin Cree Nation, Mispawistik Cree Nation (formerly Grand Rapids First Nation), Mosakahiken Cree Nation, Opaskwayak Cree Nation, Sapotawayak Cree Nation, Wuskwi Sipiik First Nation
Niichi Gaming & Leisure Centre	2004	Roseau River Anishinabe First Nation
Sand Hills Casino	2014	Swan Lake First Nation
Swan Lake Gaming Centre #7	1999	Swan Lake First Nation
Swan Lake Gaming Centre #8a	2015	Swan Lake First Nation
South Beach Casino	2005	Black River, Bloodvein, Brokenhead Ojibway, Hollow Water, Little Grand Rapids, Pauingassi, Poplar River First Nations
Nova Scotia		
Membertou Gaming Commission	2002	Membertou First Nation
Ontario		
Casino Rama	1996	Chippewas of Rama First Nation
Golden Eagle	1994	Anishinabe of Wauzhushk Onigum First Nation
Great Blue Heron	1997	Mississaugas of Scugog Island First Nation
Saskatchewan		
Bearclaw	1996	White Bear First Nation
Dakota Dunes	2007	Whitecap Dakota First Nation
Gold Eagle	1996	Mosquito, Grizzly Bear's Head, Lean Man First Nations
Gold Horse	2018	Little Pine First Nation
Living Sky	2008	File Hills Qu'Appelle Tribal Council, Nekaneet First Nation
Northern Lights	1996	Peter Ballantyne Cree Nation
Painted Hand	1996	Kahkewistahaw First Nation

Sources: Wikipedia, 2020 updated with information from 500 Nations, 2019 plus scattered Internet sources for names and dates.

Because so much cash moves around in casino gaming, there is a case to be made for governmental regulation to keep out organized crime and to prevent theft and money laundering. These are not merely abstract considerations. In 2000, the Chairman and CEO of the Saskatchewan Indian Gaming Commission (SIGA) was found to have taken \$360,000 in unauthorized debit- and credit-card advances and to owe SIGA \$811,000 for unsupported travel expenses (Belanger, 2011: 231). Ethnic gangs were at one time laundering money at the River Cree casino by using high-denomination bills to pay for chips and then cashing them in, rendering untraceable the bills used for the original purchase (Belanger, 2014: 76). And an investigation found that money laundering was rampant in casinos in the Lower Mainland of British Columbia (Hoekstra, 2018). The money laundering in British Columbia did not take place in First Nations' casinos, but it is a further illustration of what is possible if regulation is lax.

However, regulation in Canada goes much farther than trying to prevent corruption; it effectively establishes a series of provincial cartels in the casino industry, in which government is the regulator and sometimes the owner. Below are some of the main features of this cartelizing regulation.

- ∞ Provinces set up commissions that grant all casino licences. They routinely use this power to protect existing casinos from competition.
- ∞ Provinces dictate where casinos may locate. In the case of First Nations, all casinos must be on reserve land. (There has been a partial escape from this restriction in Saskatchewan and Manitoba, where several First Nations have been allowed to set up urban reserves for business purposes.)
- ∞ Provincial governments own 15 casinos in Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Nova Scotia. These are typically situated in lucrative urban locations. In confining First Nation casinos to less rewarding places or keeping them out altogether, provincial governments are often protecting their own operations.
- ∞ Provinces dictate how many and what type of games a casino may operate, and the percentage take for the house for each game.
- ∞ Provinces dictate what proportion of the profits they will take from casinos they do not own, including First Nation casinos, and how those profits will be distributed. The provincial take is so large that the province could almost be considered a part owner even where a First Nation or consortium of First Nations is the legal owner.

As with the sale of alcohol, this degree of governmental control is publicly defended by defining the product or activity as a vice that needs to be carefully controlled. However justified that may have been in the past, most Canadians now see gambling as a legitimate recreation (Goldberg, 2020); and provincial governments treat it in reality not as a vice to be controlled but as a cash cow to be exploited for revenue. Gambling is a multi-billion dollar industry that provincial governments carefully control to increase their own take, while leaving much less for First Nations.

To understand the obstacles that this degree of regulation presents for First Nations, conduct a thought experiment. Imagine you would like to open a restaurant and you dream of expanding it into a chain. Under a regime like the one applying to casino gaming, you must get a licence from the Provincial Restaurant Commission. If the Commission grants you a licence (and there is no guarantee that it will), it tells you where you can locate, what menu you can offer, what price you can charge for each dish, and what share of the profits it will take. If your restaurant thrives, you will not be allowed to expand into other provinces or even into other locations in the same province. You certainly will not be able to open premises in heavily trafficked parts of major cities where the government operates its own restaurants.

It makes an instructive comparison to look at how tribal gaming is regulated in the United States. After the *Cabazon* decision held that tribal sovereignty outranked state authority in the gaming field, Congress created the National Indian Gaming Commission (NIGC) in 1988 by passing the Indian Gaming Regulatory Act (NIGC, 1988). The Act gives tribes themselves the authority to license casinos, with approval of the Chairman of the NIGC. The tribe retains the revenue and can decide what to do with it, subject to certain standards in the Act. The only qualification is that the tribe may be required to enter into a “compact” with the state government, and many states have used this to get a share of the revenue (Johnson, 2006: 227–232). But apart from allowing state governments to cut themselves in, the American regulatory scheme sticks to the ordinary purposes of regulation and does not cartelize the tribal gaming industry. Not surprisingly, this more open approach has allowed far more tribal casinos to operate in the United States—501 casinos hosted by 241 tribes in 29 states (500 Nations, 2019)—than in Canada.

Following the Money

Gross gaming revenues for American tribes were \$33.7 billion (USD) in 2018 (NIGC, 2018). To put that in context, the American Gaming Association website reports that the gross revenues of commercial casinos in 2018 were \$41.7 billion (American Gaming Association, 2019). Commercial casinos have to pay taxes (\$9.7 billion in 2018) but tribal casinos on reservations are not taxed. The NIGC charges administrative fees, but these are modest, totalling no more than 0.08% of annual gross gaming revenues. A much larger amount is lost through compacts with various states, but I could not find an overall figure for these compacts. In any case, it is obvious that the tribal casino gaming industry is a major player in the United States, similar in aggregate size to commercial casinos.

In contrast to the American numbers, First Nations' casino revenue in Canada is of a smaller order of magnitude. One cannot compute an exact amount for Canada because provincial regulatory authorities do not always publish timely, or indeed any, financial information about First Nations gaming. Yale Belanger, the leading scholar in this field, has estimated that net revenue to First Nations in 2016, after the provinces took their cut, was about CA\$750 million, unequally divided among more than 300 First Nations (Belanger, 2018: 176–177). Below I take a closer look at the available financial figures for the three largest First Nation operations—Alberta, Saskatchewan, and Ontario.

Alberta

Figure 1 shows the most recent iteration of Alberta's complex formula for dividing the revenue from First Nation casinos. Explanation of key terms makes the flow chart shown in figure 1 more understandable.¹ Starting at the top, the money that is divided among First Nations consists of the net revenue from slot machines in the five casinos hosted by First Nations. The host First Nations keep for themselves any revenue derived from table games such as blackjack and roulette, as well as all profits or losses from restaurants, bars, hotels, and convention and entertainment centres that they operate in connection with their casinos.

Shown on the right of the diagram, 30% of the revenue goes to the Alberta General Revenue Fund. Until recently, that 30% went to a separate Alberta Lottery Fund, but the money has now been folded into the General Revenue Fund. All communities in Alberta, including First Nations, can apply for project funding from this revenue, though First Nations have not made much use of it in the past (Iamsees, 2019).

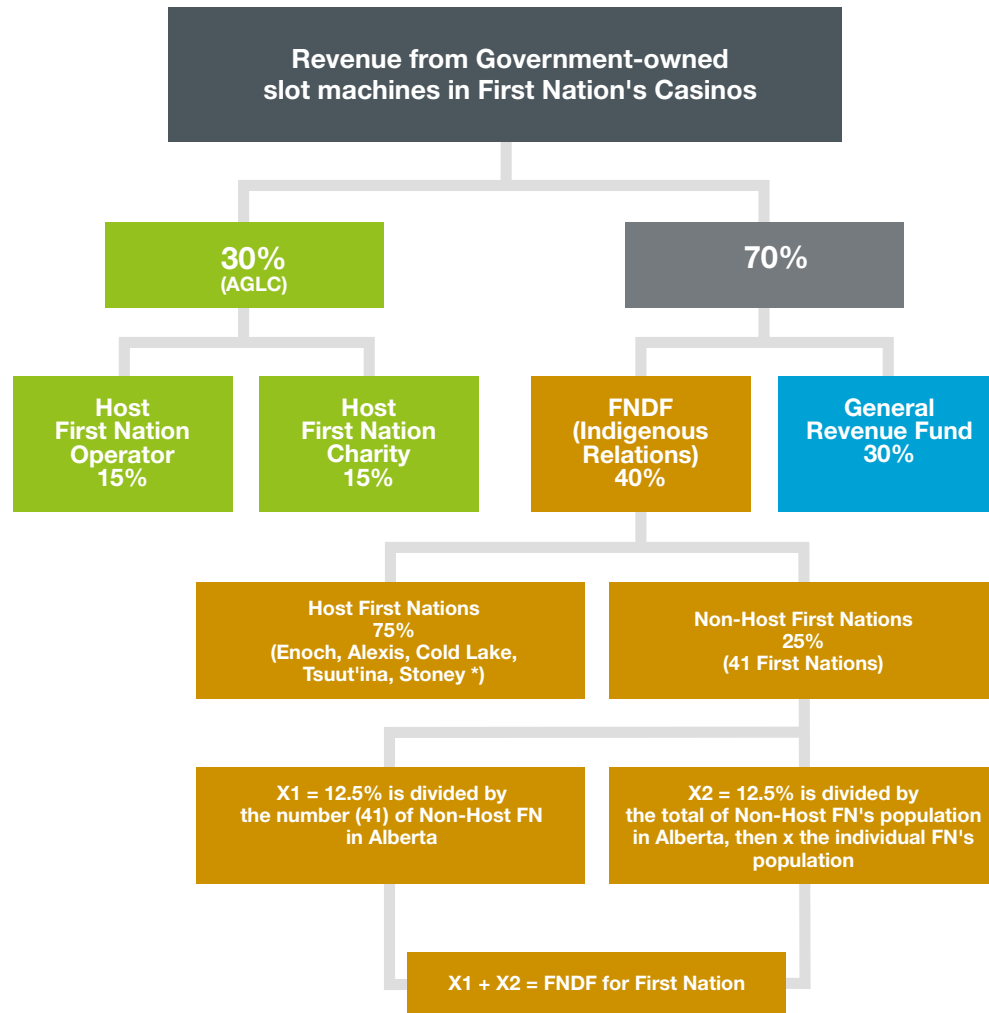
Some observers think this 30% provincial share is an unjustifiable raid on revenue that the First Nations generate and should go to them (Belanger and Williams, 2012: 570–571; Iamsees, 2019).

1. Personal communication via telephone with Arlene Thunder, Director, First Nations Development Fund, April 8, 2020.

Figure 1: Alberta First Nations Casino Funding Model

First Nations Development Fund

(FNDF) Funding Model



Legend:

Alberta Gaming, Liquor and Cannabis Commission (AGLC)

FNDF Indigenous Relations

General Revenue Fund Initiatives

*The three Stoney Tribes of Chiniki, Bears paw and Wesley, are considered one Host First Nation



Source: © 2020 Alberta Government. Reproduced with permission from Alberta Indigenous Relations.

It violates the original intent of the First Nations gaming policy proposed by Premier Ralph Klein in 2000, and it reduces the benefit to Indigenous economic development. For its part, the province has not really defended its 30% take; to express its position in colloquial language: “We make the rules, and this is the way it’s going to be.” Whatever the merits of the critics’ arguments, the 30% provincial take exists and is part of the cost of doing business for First Nations in the Alberta casino industry; and no government is likely to abolish it in the foreseeable future in view of the enormous provincial deficits imposed by the coronavirus pandemic (Johnson, 2020).

On the left of the diagram, 30% of the total revenue goes to the Alberta Gaming, Liquor, and Cannabis Commission (AGLC), the government-appointed body that regulates all gaming in the province. Total net revenue for fiscal 2019/20 from the five First Nation casinos is estimated to be about \$103 million.² Let’s call it \$100 million for ease of illustration, so the 30% that goes to the AGLC equates to about \$30 million. That amount is then divided equally into two shares. The operators of the five casinos receive a total of about \$15 million (15%). The operators were originally outside contractors, but all five Alberta hosts have now assumed the operator mantle, so the operators’ allotment goes to the First Nations themselves.

The host First Nations also receive a total of \$15 million (15%), which goes not directly to their band government budgets but to charities that they are required to set up. These charities, upon application, can dispense to the First Nations money for cultural and social projects including housing and education. In essence, the Indigenous gaming revenues are converted into a provincially managed trust fund for distribution to the First Nations for designated charitable purposes.

The \$15 million for the operators and the \$15 million for the First Nation charities are distributed in proportion to the revenues their casinos generate. The precise numbers are not disclosed to researchers because the casinos are considered commercial operations. However, it is well known that, because of their urban locations, the River Cree casino operated by the Enoch Cree First Nation and the Grey Eagle casino operated by the Tsuut’ina Nation are much more lucrative than the other three, so they get the lion’s share of this revenue stream (Belanger, 2014: 565).

The remaining 40% of the revenue—\$40 million—goes to the First Nations Development Fund (FNDF). The name makes it sound like an independent body but it is actually a branch of Alberta Indigenous Relations, that is, the department of the provincial government that deals with Indigenous peoples. Of this money, 75%, or \$30 million, is returned to the five host First Nations in proportion to the revenue generated by their casinos. As with the AGLC revenue, it does not just go into band budgets; the band must apply to FNDF on a project basis. FNDF rules are more flexible than those of the AGLC and allow applications for business development for new enterprises and infrastructure, but not for subsidies to existing First Nation enterprises.

The last revenue tranche—10% or \$10 million—is divided among the remaining 41 First Nations that do not host casinos. Every First Nation can get something but the formula shown

2. Personal communication via telephone with Arlene Thunder, Director, First Nations Development Fund, April 8, 2020.

at the bottom of the flow chart takes population into account, thus ensuring larger allocations to more populous First Nations. With \$10 million to be divided among 41 First Nations, the average allocation would be about \$250,000. As with the other revenue streams, distribution is on a project application basis.

The Alberta model is rather paternalistic. Money does not flow directly to band budgets but is dispensed on a project application basis. This may ensure that the money is spent, more or less, for worthy purposes, but it also generates a large amount of non-productive activity to generate and review the project applications. At a time when Alberta's provincial budget is tremendously stressed because of Covid-19 and low oil prices, it might be worth simplifying the project application model and moving in the direction of Indigenous self-government.

In the aggregate, the province takes 30% of the revenue from slot machines, the five host First Nations get 60% through three revenue streams, and the other 41 First Nations can apply for up to 10%. The Alberta model, therefore, is highly "capitalist" in that the host First Nations get well over half of the revenue generated by their casinos, plus the extras from table games and hospitality facilities. It has thus allowed the Enoch Cree First Nation and Tsuut'ina Nation to become wealthy through operation of their casinos located in Edmonton and Calgary. Both First Nations are now leveraging their casino and other hospitality revenues to fund large commercial real estate developments on their reserves.

Casino Dene is located in Cold Lake and the Eagle River Casino in Whitecourt, both of which are much smaller towns with limited potential for generating revenue. The Stoney Nakoda Resort is at the intersection of highways leading to the Banff and Kananaskis Parks, which does generate some traffic, but the volume is small compared to a metropolitan location. The Stoney Nakoda originally applied to locate their casino much closer to Calgary but were rejected because it would have competed with existing Calgary casinos,³ illustrating how the cartel model of regulation can restrict opportunities for First Nations.

The overall revenue from First Nations gaming reflects business conditions in Alberta. After the casinos opened in 2006, revenue rose steadily, reaching a high of \$318.5 million in 2014/15 (Iamsees, 2019). Then, after the collapse of oil prices in 2015, revenue declined each year. The amount is now estimated as \$103 million for 2019/20 and will probably be less in the foreseeable future. All casinos will be closed for several months in 2020 because of the coronavirus pandemic; and even when they re-open, they will probably have to observe social distancing regulations that limit traffic. Also, the province may linger for a substantial period of time in recession because of low oil prices. In the past, casino spending has been higher in boom times, so things do not look bright for Alberta casinos, including those hosted by First Nations, in the foreseeable future.

Because of commercial confidentiality, it is not possible to track the flow of casino revenue to individual Alberta First Nations with any precision. Their audited annual financial reports are (mostly) posted on the federal government's First Nation Profiles website, but each First Nation

3. Personal communication via telephone with Arlene Thunder, Director, First Nations Development Fund, April 8, 2020.

uses different categories and labels, under which gambling revenue and expenses are often included with other items. It's impossible for an outsider to understand all the details. However, some broad-gauge conclusions are possible.

Let us look first at the two metropolitan casinos. In 2019, Enoch Cree reported \$34.3 million revenue for "First Nation Development Fund-Resort," offset by \$32.8 million "Equities Loss Resort Entities."⁴ In addition, Enoch Cree reported revenue of \$16.0 million from the First Nations Development Fund, \$34.1 million from Mechet Charities, and \$27.7 million from "Business Enterprises." Income was similar in 2018 except that revenue from "Business Enterprises" was only \$14.7 million. Statements of expenses in both years were impossible to interpret, but the First Nation reported a substantial operating surplus in both years: \$32.3 million in 2019 and \$14.7 million in 2018. The provincial government should be doing so well!

The Tsuut'ina Nation on the edge of Calgary, host to the Grey Eagle Casino, stopped reporting after fiscal 2014/15, probably because, when the Liberals were elected in 2015, they announced they would not enforce the law requiring First Nations to post public financial reports (Canadian Press, 2015). But to judge from available data, the Tsuut'ina are doing very well. For 2015, they reported "Own Source Revenue" of \$98.9 million and an operating surplus of \$34.1 million. Comparable figures for 2014 were \$108.8 million and \$38.9 million. The totals may have gone down since then because of the difficult economic situation in Calgary and the general decline of casino revenue, but the Tsuut'ina are probably still in the black from their combination of casino, hotel, restaurant, and entertainment revenue.

Compared to these two mega-casinos, the other three seem to be only modestly profitable. The Alexis Nakota Sioux Nation, host to the Eagle River Casino in Whitecourt, reported "Other" revenue of \$4.90 million in 2018, offset by "Expenses for Economic Development" of \$3.52 million. The corresponding figures of 2017 were \$3.24 million revenue and \$2.10 million expenses. The reports of the Cold Lake First Nations are not clearly itemized in recent years but seem to be in the same general league as those of the Alexis Nakota Sioux. The reports of the Stoney Nakota Sioux Nation show larger figures for both revenue and expenses but suggest an annual profit of about \$2 million on their casino, much smaller than anticipated when it was set up (Belanger, 2006: 135).

Job creation is also a factor. Belanger estimated that in 2010 the five host First Nations in Alberta created around 155 jobs for Indigenous people, with a payroll of about \$3.1 million (Belanger, 2014: 77). These numbers would probably be smaller now because of economic conditions. Unfortunately, it is not known how many of these jobs went to members of host First Nations and how much room there was for advancement in the work force.

The overall conclusion for Alberta is that, while the three smaller casinos generate some revenue and create some jobs for their hosts, only the River Cree casino in Edmonton and the Grey Eagle Casino in Calgary are generating earnings that could be transformative for their host First

4. All statements about the revenues and expenses of particular First Nations come from the financial reports in the First Nation Profiles (INAC, 2020).

Nations. Both now have large real-estate development plans that could eventually dwarf the impact of their casinos, but their experiment with high-stakes gaming provided the seed capital for these bigger ventures.

Saskatchewan

First Nation casinos in Saskatchewan are regulated by the Saskatchewan Indian Gaming Authority (SIGA), which is owned by the 74 First Nations in the province (SIGA, 2020). SIGA is in effect a cartel within a cartel; it has operational authority over its own casinos, but major decisions such as opening a casino at a new location have to be approved by the Saskatchewan Liquor and Gaming Authority, which regulates other casinos and other forms of gambling in the province. Saskatchewan has excluded First Nation casinos from its largest cities, Saskatoon and Regina, but has cooperated with the establishment of casinos in urban reserves in secondary urban markets such as Prince Albert and has allowed Whitecap Dakota to open a casino within convenient driving distance of Saskatoon.

The members of the SIGA Board of Directors are chosen by the Federation of Sovereign Indigenous Nations and the tribal councils within the province. Almost all members of the Board are First Nations people. According to the most recent SIGA annual report, the seven First Nation casinos generated \$262 million in gross revenue in fiscal 2018/19, yielding \$82.5 million net (SIGA, 2019).

The net amount from SIGA is distributed as follows: 25% to the general revenue fund of Saskatchewan; 25% to regional Community Development Corporations, which fund projects around the casino locations; and 50% to the First Nations Trust, which divides the funds among the 74 First Nations in the province. In the most recent year, the First Nations Trust, in addition to \$41 million from SIGA, received about \$11 million from other casinos in Saskatchewan for distribution, making a total of about \$52 million (First Nations Trust, 2019). The average grant per First Nation will be about \$700,000. From a First Nation's perspective, this is a welcome addition to the band's budget but not a game changer.

Unlike Alberta, Saskatchewan makes no provision for host First Nations to receive extra revenue. All of the seven Saskatchewan First Nations' casinos are owned by SIGA and their revenue flows to SIGA. The seven casinos are each hosted by one or more First Nations who get the benefit of local job creation as well as revenue from related enterprises such as bars, restaurants, and hotels. Belanger reports that in 2010 there were 1,235 Indigenous employees at the (then) six Saskatchewan casinos, with a payroll of \$51.4 million (Belanger, 2014: 77). The same caveats apply as with Alberta, namely that it was not clear how many of these people were members of host First Nations, or indeed of any First Nation.

The Saskatchewan model is overall much more egalitarian than the Alberta model, spreading the wealth around more or less equally. In contrast, the Alberta model rewards host First Nations much more generously than the others and allows for transformative wealth generation by host First Nations with choice urban locations. The two models represent two types of entrepreneurship. In Alberta, the five host First Nations are the main entrepreneurs, with much smaller

benefits being redistributed to other First Nations. In Saskatchewan, all 74 First Nations constitute a collective entrepreneur acting through SIGA, which in a sense competes against other casinos in the province. The host First Nations get some minor additional benefits through table games, hospitality facilities, and jobs associated with the casinos. The Alberta model seems more capitalist, while the Saskatchewan model is more egalitarian.

Ontario

The first large Indigenous casino in Ontario was Casino Rama, established in 1996 and hosted by the Chippewas of Rama First Nation on their reserve land near Orillia. According to the initial agreement with Ontario, the province would take 20% off the top. Of the remaining proceeds, 35% would go to the Chippewas of Rama and 65% would be distributed to the other First Nations. After a few years, the agreement dissolved in litigation when the other First Nations challenged the 35% share going to the host.

A new agreement was reached in 2008 whereby the Ontario Liquor and Gaming Commission would pay 1.7% of gross gaming revenues from all establishments, not just those operated by First Nations, to a body known as the Ontario First Nations (2008) Limited Partnership, which in turn would distribute the money to all Ontario First Nations other than the Chippewas of Rama (Manitowabi, 2011: 260–261). This amounted to about \$152 million in fiscal 2019/20, an average of a little more than \$1 million each for the 132 First Nations who were party to the agreement. The actual amount varies for each First Nation and is calculated according to a formula in which 40% is the base allocation, 50% is for population, and 10% is for remoteness.⁵

In 2011, the Chippewas of Rama signed a 20-year agreement with the Ontario Lottery and Gaming Commission (OLG) whereby the latter pays substantial fees to the Casino Rama Corporation (OLG, 2019: 44–45). Rama also gets the benefit of substantial job creation—750 Indigenous employees with a payroll of \$22.5 million in 2010 (Belanger, 2014: 77). The most recent Rama annual report shows several large revenue items for 2019 that appear related to the casino complex: \$5.21 million for “Casino Rama Ground Rent,” \$7.44 million for “User Fees,” \$12.0 million for “Sales from Business Enterprises,” and \$7.01 million for “Casino Rama Fees.” There is also a “Provincial Government Transfer” of \$71.4 million, which seems to have been unusually large; the same line item was only \$5.1 million in 2018. These revenue items were partially offset by \$13.2 million in expenses for “Economic Development and Business Operations” (Chippewas of Rama First Nation, 2019). Although these categories are not transparent to the outside observer, there seems to be a large surplus from the casino and associated operations that would put the Chippewas of Rama in the same league with the Enoch Cree First Nation and Tsuut’ina Nation in Alberta.

The Great Blue Heron Casino started as a charity casino in the 1990s, hosted by the Mississaugas of Scugog Island First Nation (MSIFN). It is located on Scugog Island, which like Orillia is a resort location about an hour and a half by car from downtown Toronto but much

5. Personal communication via e-mail to the author from Randy Sault, General Manager, Ontario First Nations (2008) Limited Partnership, March 28, 2020.

closer to outer suburbs such as Oshawa and Whitby. In 2016, it completed a deal to become part of the so-called GTA Bundle, which also includes OLG Slots at Woodbine and Ajax Downs (OLG, 2016). MSIFN also remains part of the Ontario First Nations (2008) Limited Partnership.

The financial details of the GTA Bundle agreement are not public. For 2019, the MSIFN reported revenue for “Commercial Operations” of \$23.1 and expenses for Economic Development” of \$14.6 million (INAC, 2020). This seems like substantial profit for a First Nation with a total registered population of only 247 in 2016. MSIFN’s revenues do not appear to be in the same league as the major operations of Casino Rama in Ontario and Enoch Cree and Grey Eagle in Alberta, but the First Nations of those casinos have much larger populations among which to distribute the benefits of hosting.

The Golden Eagle Casino, operated by the Anishnabe of Wauzhushk Onigum (Rat Portage) Nation near Kenora since 1994, is actually a large bingo hall with some table games. The host has long wanted to convert it into a full-fledged casino with slot machines, but its application failed with OLG, which preferred to license another casino in Thunder Bay (Rinne, 2019). This is another example of how the cartelization of the gaming industry can disadvantage an ambitious First Nation. Golden Eagle Casino continues its operations and remains a member of the Ontario First Nations (2008) Limited Partnership. Financial statements for 2019 show revenue from the casino of \$2.4 million and expenses of \$2.0 million, so this is a small operation compared to others (INAC, 2020).

The Ontario model stands in sharp contrast to both the Alberta and Saskatchewan models because of its emphasis on revenue-sharing. Except for the three exceptional cases of Rama, Great Blue Heron, and Golden Eagle, the Ontario First Nations do not host their own casinos but receive a share of revenue generated by the provincial cartel. The Ontario model offers a modest but secure revenue source to First Nations at the cost of blocking their entrepreneurial development in the field of gaming.

The Ontario model shows signs of spreading across Canada. In 2019, British Columbia adopted a version of it whereby First Nations will receive 7% of net provincial gaming revenues, about \$100 million a year at the beginning (BC First Nations Gaming Revenue Sharing Ltd. Partnership, 2019). Distribution among First Nations will follow the Ontario model as described above. BC First Nations get some immediate revenue but entrepreneurship is stifled. Rather than establish their own casinos to compete in the entertainment market, they receive a small slice of the profits generated by the provincial cartel. Manitoba First Nations are also asking for a similar model to be adopted in their province (CBC, 2019).

The Effect of Hosting

Does a First Nation's hosting of a casino contribute to the well-being of its members? Available information does not allow for a definitive answer to the question, but the Community Well-Being index (CWB) does offer some indications. The CWB amalgamates Statistics Canada data on income, participation in the work force, housing quality, and years of formal education (Indigenous Services Canada, 2020). It has been computed every five years since the census of 1981, except for 1986. Note that it applies only to reserve communities; it says nothing about First Nations people who live off reserve, because they are enumerated in different census sub-divisions.

The analytical strategy employed here is to graph over time the CWB of First Nations that host casinos to see if there is an upward inflection in the curve after the casino is opened. For purposes of reference, the CWB curves are also shown for the average of all First Nations and of all non-Indigenous communities. Hosting a casino means more revenue from casino operations (except in Saskatchewan where such revenue is redistributed among all First Nations in the province). The casino is also often associated with hotels, restaurants, bars, and golf courses that bring additional revenue to the host. Such revenue can be used to support housing and education for band members. The casino and other businesses also create jobs that may be filled by band members. If such additions to housing, education, and employment occur, they should show up over time in the First Nation's CWB.

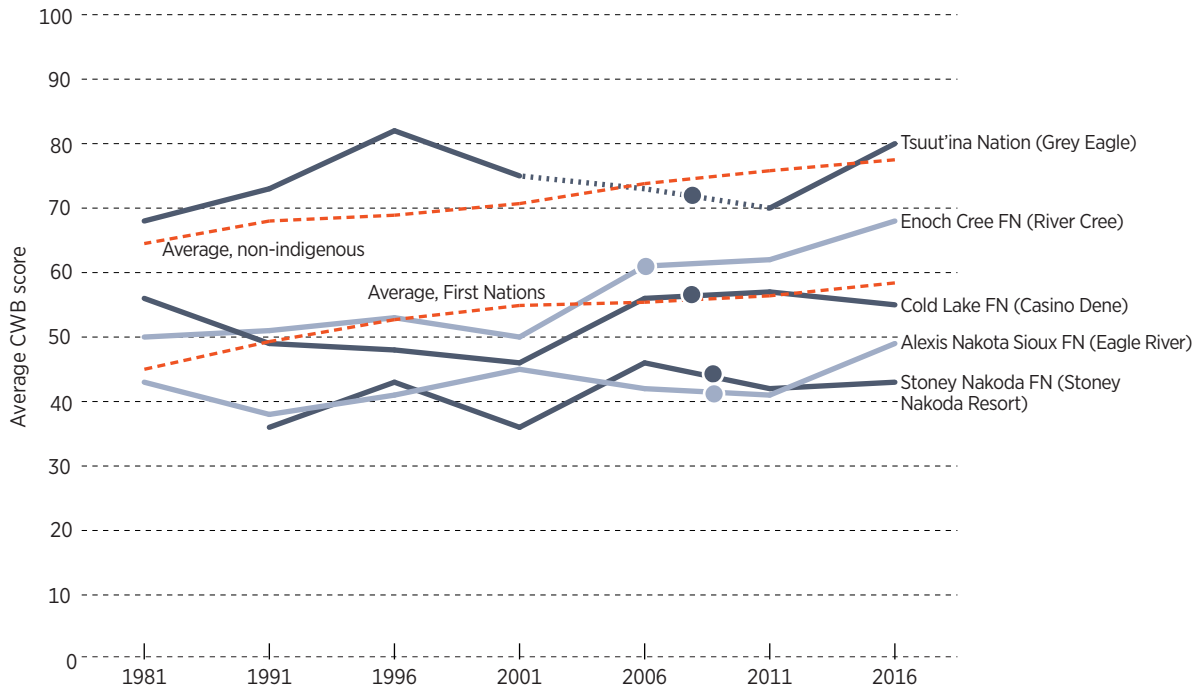
Inspecting graphs is admittedly a simple way to proceed. The data, however, have limitations that preclude more sophisticated analysis. The number of cases is limited, time periods are short, and there is quite a bit of missing CWB data. There is also a problem of data quality because these host First Nations are mainly located near towns or cities, making it easy for members to move off reserve. Some benefits of hosting a casino may accrue to members living off reserve, while members who become better off as a result of the casino may choose to move off reserve to find better housing or pursue more varied job opportunities; and the CWB does not allow us to measure such trends. In view of these limitations, the results of the CWB analysis should be regarded as tentative. As will be seen, however, they are largely in accord with common-sense expectations, and thus deserve some measure of confidence.

There could also be some negative effects, such as corruption of leaders, more divisive elections, less inclination to tax members and to hold leaders to account, weaker incentives to pursue higher education, allocation of the best jobs to non-members, and an increase in gambling addiction among members. Although this paper focuses on the benefits of casino gambling for First Nations, these possible negative effects would also be worth investigating.

Alberta

We will look first at the three provinces of Alberta, Saskatchewan, and Ontario, where First Nations have the largest presence in the gaming industry. **Figure 2** shows the graphic picture for Alberta, which has five First Nations’ casinos, all hosted by single First Nations, which simplifies the analysis. The dot for each casino shows the approximate date of opening.

Figure 2: Community Well-Being ratings for hosts of casinos in Alberta, and averages for First Nations and non-indigenous communities, 1981-2016



Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

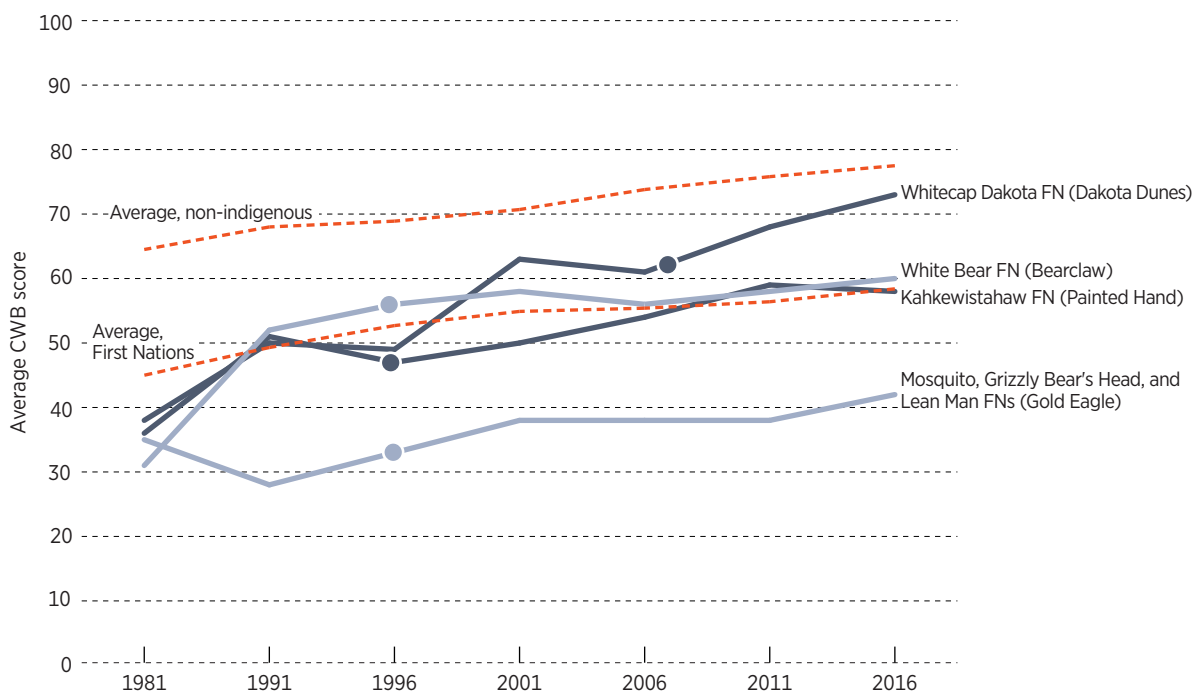
The two largest casinos are Grey Eagle (Tsuut’ina) and River Cree (Enoch Cree). Tsuut’ina Nation had a sharp uptick from 2011 to 2016, but interpretation is clouded by missing data for the prior two census years, 2001 and 2006 (broken line). Enoch Cree First Nation saw a small increase after opening its casino in 2006, followed by a sharp increase from 2011 to 2016. Overall, though the data are somewhat fragmentary and short-term, hosting a large urban casino seems to bring some improvement in CWB.

Of the three smaller casinos, the CWB of two host First Nations—Cold Lake First Nation, which operates Casino Dene, and Stoney Nakoda First Nation, which operates the Stoney Nakoda Resort on the way to Banff—has actually declined since opening their casino. But the picture for smaller casinos is not entirely negative; the Alexis First Nation showed some improvement after opening the Eagle River Casino at Whitecourt.

Saskatchewan

Saskatchewan has seven First Nations casinos. CWB curves are shown below in **figure 3** for five of the seven. They represent average scores for all First Nations involved in hosting each casino (see table 1). The Gold Horse Casino is omitted for lack of data because it was not opened until after the 2016 census, and the Living Sky Casino has so many hosts tied together in a cooperative arrangement that a CWB would not be informative.

Figure 3: Community Well-Being ratings for hosts of casinos in Saskatchewan, and averages for First Nations and non-indigenous communities, 1981–2016



Note: The CWB curve associated with Gold Eagle Casino represents the average score for Mosquito, Grizzly Bear's Head, and Lean Man First Nations.

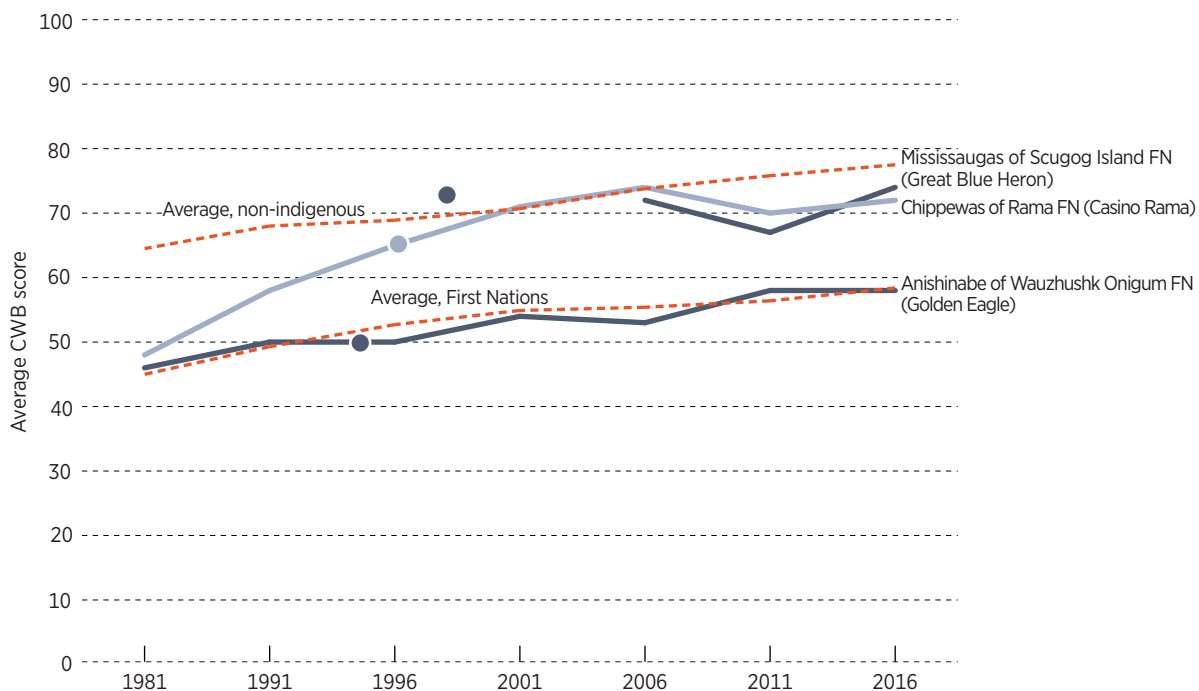
Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

Four of the five First Nations shown in figure 3 appear to be tracking more or less synchronously with the general rate of improvement over time for all First Nations in Canada, with no obvious improvement after opening a casino. The one exception is the Whitecap Dakota First Nation, which opened the Dakota Dunes casino in 2007. That First Nation was already on a path of rapid improvement, which inflected upwards after opening its casino. Favourable location seems to be the likely explanation. Only 26 kilometres from Saskatoon, the Whitecap Dakota First Nation has exploited its scenic location along the South Saskatchewan River to open a golf course, hotel, and restaurant. It hosts business meetings as well as tourists and golfers. The casino, then, fits seamlessly into its other offerings, making it a destination resort for its region.

Ontario

The CWB data for Ontario (figure 4) are not very enlightening because of its scheme for distributing 1.7% of revenue from all casino sources to all First Nations. First Nations, therefore, are not generating the revenue they receive. The main exception is Casino Rama, which has a special deal in view of its unique history. The host Chippewas of Rama First Nation were already on a strongly upward track prior to opening a casino in 1996, but the presence of the casino seems to have helped maintain that trend, except for a dip between 2006 and 2011. Casino Rama, situated in Orillia, is an hour and a half from Toronto, but Toronto is very big, and Orillia has long been a vacation resort for Torontonians.

Figure 4: Community Well-Being ratings for hosts of casinos in Ontario, and averages for First Nations and non-indigenous communities, 1981-2016



Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

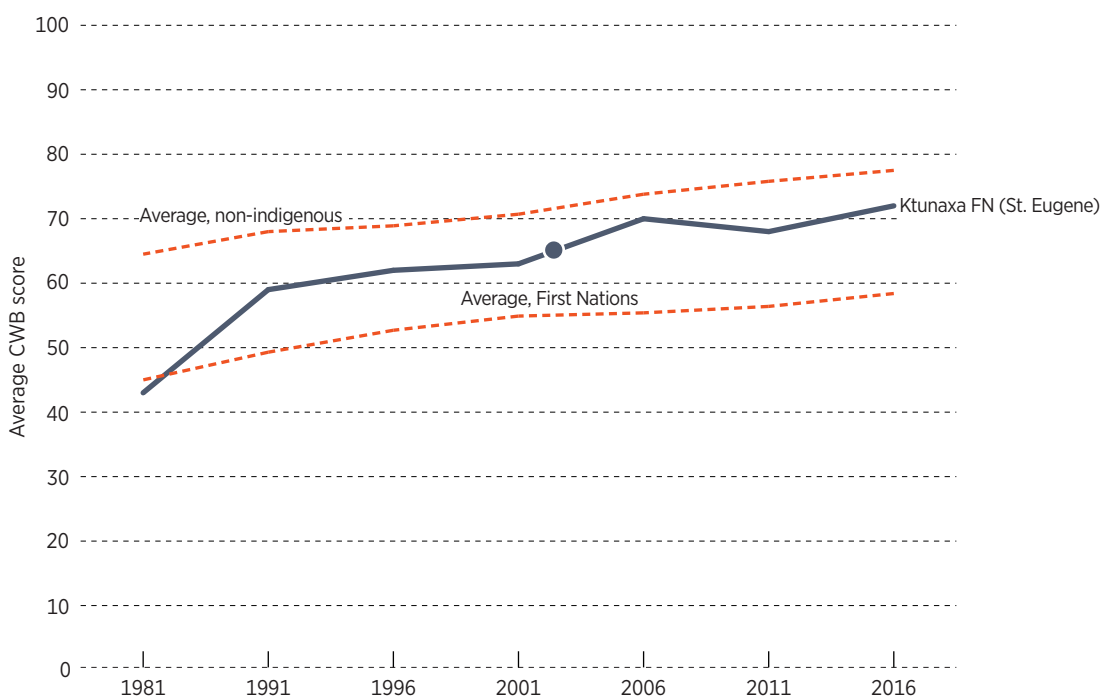
The Great Blue Heron Casino hosted by the Mississaugas of Scugog Island First Nation (MSIFN) might be another success story. MSIFN’s most recent CWB score is close to the average for non-Indigenous communities in Canada, which is very high indeed. Unfortunately, missing data from previous years make it impossible to reach a firm conclusion about the impact of gaming upon First Nation members.

The curve for the Anishnabe of Wauzhusk Onigum (Golden Eagle Casino) has run parallel with the curve for the average of all First Nations ever since their casino was opened. It is not surprising that the presence of their casino would not have provided an inflection point for their CWB score because the small operation does not provide enough revenue to have a transformational impact.

British Columbia

We will also look briefly at CWB results for three jurisdictions that are less important in the overall First Nations casino scene. As shown in **figure 5**, Ktunaxa Nation, the hosts of the St. Eugene Casino, the only First Nation casino in British Columbia, experienced a mild up-tick after their casino opened, followed by a decline, and then a recovery. Overall, by 2016 they had improved their CWB relative to the average for all First Nations. St. Eugene also has a golf course and markets itself as a destination resort but, located near Cranbrook in the mountains of southeastern British Columbia, is far from any large urban market.

Figure 5: Community Well-Being ratings for hosts of casinos in British Columbia, and averages for First Nations and non-indigenous communities, 1981-2016

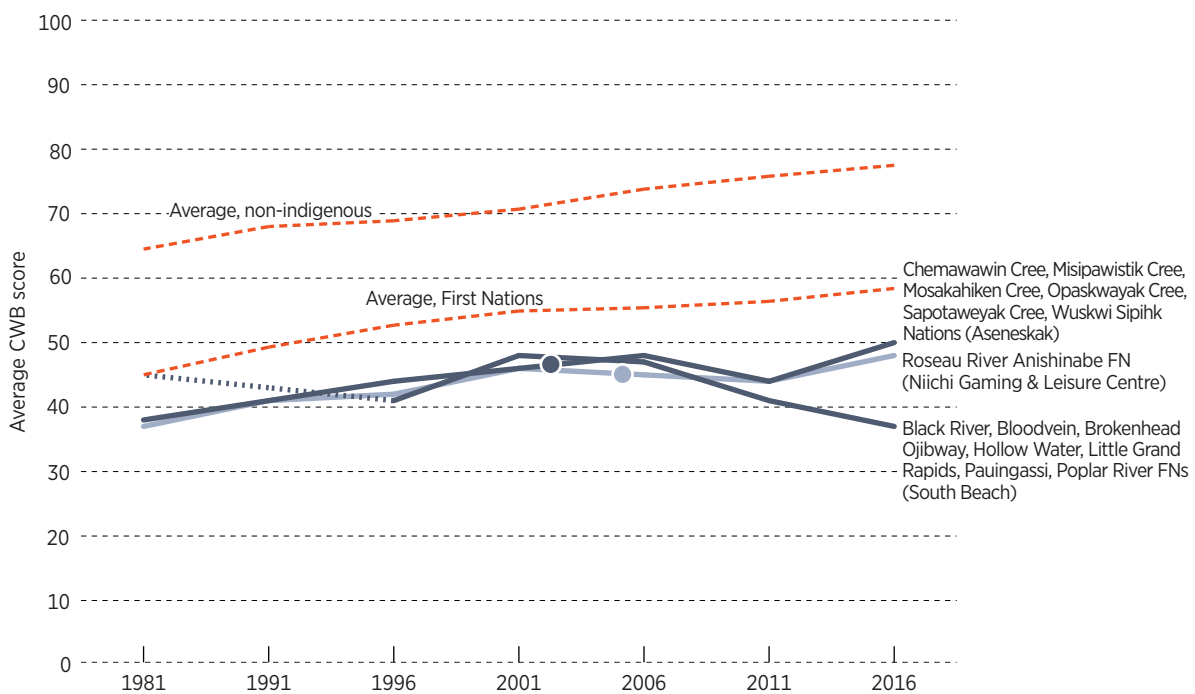


Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

Manitoba

The Manitoba CWB data presented in **figure 6** are not very encouraging, as none of the hosts show an inflection in their rate of increase. As in the case for Saskatchewan, CWB curves in figure 6 represent average scores for all First Nations involved in hosting each casino (see table 1). On the other hand, figure 6 does not include a curve for the Swan Lake First Nation because of missing CWB data. Yet, Swan Lake has opened casinos in three locations, including one on an urban reserve in Headingley, a town on the outer edge of the Winnipeg metropolitan area. If we had data for the Swan Lake First Nation, we might see a picture of improvement.

Figure 6: Community Well-Being ratings for hosts of casinos in Manitoba, and averages for First Nations and non-indigenous communities, 1981-2016

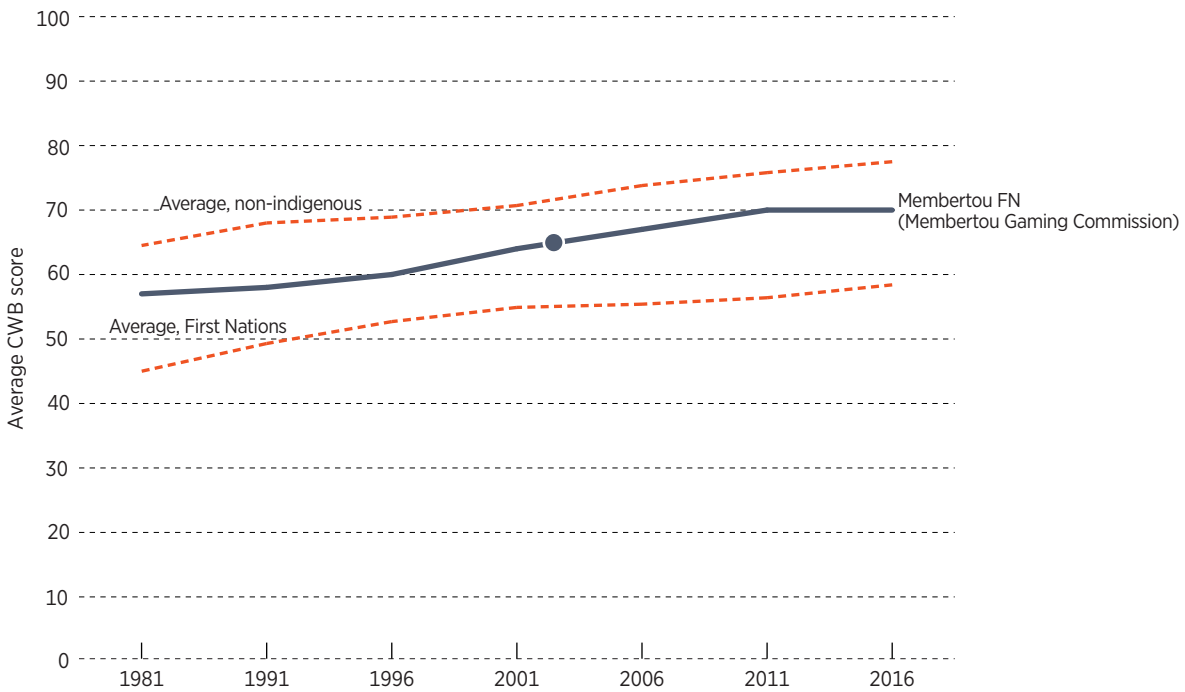


Note: The CWB curves represent average scores for all First Nations involved in hosting each casino.
 Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

Nova Scotia

Finally, **figure 7** shows a picture for Nova Scotia that exhibits only the Membertou First Nation, located near Sydney on Cape Breton Island, which does not have a casino as such but hosts three VLT gaming centres. The Membertou First Nation is a success story for many reasons (Scott, 2006) but its VLTs do not seem to be the critical factor. Its rate of improvement stayed about the same after gaming got underway, and in fact levelled off from 2011 to 2016. Membertou has many economic development projects, including fisheries, a data centre, and a business convention facility and hotel. Gaming is part of its development strategy but is not dominant.

Figure 7: Community Well-Being ratings for hosts of casinos in Nova Scotia, and averages for First Nations and non-indigenous communities, 1981-2016



Sources: Crown-Indigenous Relations and Northern Affairs Canada, 2019; table 1.

Conclusions

Review of these six provinces allows some tentative conclusions about factors that appear to be associated with a positive impact of casinos upon CWB improvement. Recall that the casinos that seem to have been associated with improvement for their host First Nations are St. Eugene (British Columbia); River Cree and Grey Eagle (Alberta); Dakota Dunes (Saskatchewan); Casino Rama and Great Blue Heron (Ontario); and possibly Membertou (Nova Scotia). Below is a tabulation highlighting factors that seem to be involved with the success of these casinos:

Location in or adjacent to a large city

- ∞ River Cree (Enoch Cree First Nation)
- ∞ Grey Eagle (Tsuut'ina Nation)

Location at a convenient driving distance from a city

- ∞ Dakota Dunes (Whitecap Dakota First Nation)

Co-location with a resort

- ∞ Dakota Dunes (Whitecap Dakota First Nation)
- ∞ St. Eugene (Ktunaxa Nation)
- ∞ Casino Rama (Chippewas of Rama First Nation)
- ∞ Great Blue Heron (Mississaugas of Scugog Island First Nation)

Co-location with multiple business developments

- ∞ River Cree (Enoch Cree First Nation)
- ∞ Grey Eagle (Tsuut'ina Nation)
- ∞ Membertou Gaming Commission (Membertou First Nation)

The common denominator in these factors would appear to be customer traffic. First Nations' casinos are more successful and have a greater impact upon the CWB of their members residing on their reserves when they have greater traffic as a result of the surrounding population, the attractions of a resort, or the draw of business activity.

Conclusions and Recommendations

The federal government's transfer of jurisdiction over gambling to the provinces in 1985, confirmed by the Supreme Court's *Pamajewon* decision in 1996, proved to be a limiting factor for First Nations' casino gaming. Always hungry for revenue, the provinces created cartels to control the gaming industry and to ensure that the major share of revenues flows to the provinces themselves while the First Nations' market share is limited. Belanger and I agree on this finding, though we differ in what to do about it. He wants the provinces to reduce their take in favour of the First Nations, whereas I would loosen or even abolish the cartel structure.

Apart from Alberta, which has allowed First Nation casinos to be opened in Calgary and Edmonton, the provinces have generally excluded First Nations from the most lucrative urban markets. Partial exceptions include Dakota Dunes, which is a short drive from Saskatoon; a Swan Lake First Nation facility in Headingley, on the outskirts of Winnipeg; and Casino Rama and Great Blue Heron, destination resorts about an hour and a half from Toronto. Belanger and I agree on this observation.

Location within or not far from a major urban area has allowed the Enoch Cree, Tsuut'ina, Whitecap Dakota, and Chippewas of Rama First Nations to bend the curve, so to speak, that is, to increase the rate of improvement in their CWB scores. That is a welcome development, but it affects only four of 613 First Nations. Provincial location policies have ensured that most First Nation casinos have remained small-scale operations, contributing useful revenue to their hosts and creating some local employment opportunities but not jump-starting economic development. Belanger seems to have an egalitarian bent that welcomes this outcome, whereas I would lean in a more entrepreneurial direction.

The CWB evidence suggests that, with a couple of exceptions, these small-scale casinos have not increased the rate of improvement in the standard of living in the host First Nations. That is not to say they have been without effect; they have probably played a part in helping these First Nations to keep pace with the general rate of improvement of all First Nations. The CWB score of about 20% of First Nations has been static or has even declined in the 15-year period from 2001 to 2016 (Flanagan, 2019a). Just keeping up with the general rate of advance is not a given but requires active measures, of which small casinos can be a part. Belanger and I are in agreement that the revenue generated by even small casinos is a useful supplement to First Nation budgets, and we would both like to increase these amounts, but I would leave more room for entrepreneurship.

Another factor contributing to this pattern of outcomes is the redistribution of earnings from the few First Nations that host casinos to all First Nations in the province. In Saskatchewan all revenue is distributed this way; Alberta allows the five host First Nations to keep 60% of what they generate, while only 10% is redistributed to other First Nations; and Ontario divides up 1.7%

of general gaming revenue among almost all First Nations while maintaining special arrangements for the Chippewas of Rama and the Mississaugas of Scugog Island First Nation (MSIFN) in view of their historical role as pioneers of gaming in the province. Perhaps this marked egalitarianism was a reaction against the extreme enrichment of a few American tribes with small memberships operating mega-casinos such as Foxwoods in Connecticut (Benedict, 2000).

The evidence suggests that hosting casinos can be a positive force for First Nations' economic development, but that the effect has been hampered by the control of provincial cartels over the industry. Given my predisposition to favour entrepreneurship, I would suggest several ways to enable gaming to make a larger contribution to First Nations' economic progress.

Amend s.207

The most straightforward approach would be to amend s. 207 of the Criminal Code to remove First Nations' gaming from provincial oversight. The provinces, which own and derive revenue from casinos, have a conflict of interest. They do not exercise their jurisdiction over First Nations' gaming as a matter of constitutional right; it is a result of a legislative transfer that can be rescinded by Parliament. The Constitution Act, 1867, gives Parliament legislative jurisdiction over "Indians, and the lands reserved for the Indians" (s. 91(24)), so provincial control of First Nations' casinos is an anomaly. If Parliament were to take back its constitutional jurisdiction, a national regulatory scheme could be designed to allow First Nations' gaming to make a greater contribution to their economic development.

Abandon the provincial cartels

If jurisdiction must remain with the provinces, they should abandon the cartel approach to the regulation of gambling in favour of a more competitive approach. This would mean continuing regulation to prevent theft, money laundering, and the entry of organized crime, but in other respects treating gaming like other industries, in which entrepreneurs, not regulators, make decisions about where to locate, what services to offer, and what prices to charge. This would resemble in principle the deregulation of passenger air travel and telecommunications that took place in the 1980s. It is ironic that, just as Canada was abandoning the cartel approach in those industries, it was setting up new cartels for gaming. There is every reason to think that First Nations could succeed in a competitive Canadian market, just as tribes have succeeded in the competitive American market.

Allow First Nations greater access to lucrative markets

Even within the current scheme of provincial cartels, the regulatory commissions could allow First Nations greater access to lucrative urban and resort markets. Creation of more urban reserves could be a useful device to that end. The federal government, which has the primary responsibility for the welfare of First Nations, could nudge the provinces in that direction by threatening to amend the Criminal Code to take back its original jurisdiction.

Adjust distribution of revenue

Again within the current scheme of provincial cartels, the distribution of revenue could be less egalitarian. One would not have to emulate the American system, where host tribes keep all the profit, but the degree of sharing could be reduced in Canada to encourage host First Nations to become more entrepreneurial. Among current provincial schemes of redistribution, Alberta provides an example of allowing host First Nations to keep a greater share of revenue. Some may consider the Alberta model, which allows only 10% for redistribution, to be too tilted towards entrepreneurship; but the Saskatchewan model, which allocates 100% of revenue for redistribution, is even more tilted towards egalitarianism. There might be an acceptable compromise somewhere between the extremes.

None of these reforms will be easy because provincial cartels have created so many vested interests, including private owners and operators, but above all the provinces themselves. Yet reform of over-regulation and cartelization in other industries has taken place, so why not in gaming? Let's roll the dice!

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Tom Flanagan is a Fraser Institute Senior Fellow; Professor Emeritus of Political Science and Distinguished Fellow at the School of Public Policy, University of Calgary; and a Senior Fellow of the Frontier Centre for Public Policy. He received his B.A. from Notre Dame and his M.A. and Ph.D. from Duke University. He taught political science at the University of Calgary from 1968 until retirement in 2013. He is the author of many books and articles on topics such as Louis Riel and Métis history, aboriginal rights and land claims, Canadian political parties, political campaigning, and applications of game theory to politics. Prof. Flanagan's books have won seven prizes, including the Donner Canadian Prize for best book of the year in Canadian public policy. He was elected to the Royal Society of Canada in 1996. Prof. Flanagan has also been a frequent expert witness in litigation over aboriginal and treaty land claims.



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