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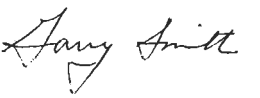
THE HISTORY OF THE LAW OF GAMING IN CANADA



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THE HISTORY OF THE LAW

OF GAMING IN CANADA

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UNDERSTUDY

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"THE HISTORY OF THE LAW OF GAMING IN CANADA"

BY: RONALD G. ROBINSON

ABSTRACT

It has been said that the law of gaming is the creature of statute.[1] Never has there ever existed a better example of a truism. The regulation and organization of man's games by government appears to be a recurring feature in his history. It was the purpose of this study to examine the more prominent attempts of both English and Canadian governments, by the imposition of parliamentary statutes, royal proclamations, statutes of Canada and the Criminal Code of Canada, to dictate the nature of gaming activity one could indulge in.

The period studied begins with thirteenth century England and ends at the time of writing, which is A.D. 1983. It is valid to state that Canadian gambling legislation is steeped in the roots of English precedent as is that of the United States. Although the English were loathe to codify much of their law, the common law system being held in reverence because of its suitability to judicial interpretation, we in the colonies structured our codified sanctions around England's common law provisions.

1. STREET, H.A., LAW OF GAMING (1937)

It is relevant to this study to comment upon the motives behind the legislation in question on occasion. Certain provisions have, throughout the decades, managed to come into prominence in the courts. Accordingly, cases of interest will be subject to quotation, especially those of this century.

While not all-encompassing, this investigation into gaming legislation and its reasons for being is reasonably comprehensive. Much of the contemporary provisions in the Criminal Code appear to be ambiguous and inconsistent to the uninitiated, and a straightforward reading of Part V will not provide relief. In fact, the reasons for certain sanctions, in particular the prohibited games described under Section 189(1)(g), have been lost to history. That is to say, all parliamentary sources have been exhausted without success in some instances, however few.

Readers must bear in mind that in Canada, between 1892 and 1970, the law disallowed anything but pari-mutual racetrack betting and games of chance whose regularity was to be determined by each province. Some exceptions were made for agricultural fairs.

Until 1970, Canada's gaming laws remained relatively unchanged as compared to their inception in the first Criminal Code in 1892. As mentioned, the Code of 1892 had as its origin various English statutes dating from the sixteenth century and in the case of gaming houses, the thirteenth century.

It is only since 1970, therefore, that legalized gambling has burgeoned into its present state in Canada. The law of gaming's historic progression is presented in the material that follows. Hopefully, it will provide a measure of insight, interpretation and understanding as to what has brought us to the status-quo.

CHAPTER ONE

ENGLISH GAMING LEGISLATION AND ITS EFFECT ON THE CANADIAN EXPERIENCE

(1285-1853)

> Historians long ago grasped the importance of law to history. They knew that medieval political theories were expressed in legal terms and also the political conflicts of seventeenth century England; yet they knew also that a country's law takes us far beyond it's constitution, to every social activity important enough to seem worth regulating.[2]

This paper is concerned with a social activity which the governments of England and Canada have continually deemed to be worthwhile regulating. Gaming has been regulated, for various reasons, since the time of the Conqueror through to present day. The legislation of morality was as controversial then as it is now.

Legislation of early periods is, of course, still available for examination. One of the earliest gaming pursuits, fencing, was outlawed by EDWARD I in 1285.[3]

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2. Harding, A., A Social History of English Law, (Penguin, 1966), P.7

3. 13 Edward I. c.7, Statutes of the Realm

. . . 2

The Tudor Monarchs were particularly prolific in this field of legislation and accordingly many sixteenth century Englishmen were prosecuted for playing unlawful games.

> It follows that Yth of February in the 38th year, and c., Ryhill of Moston Thrower; Anthony Barry of Manchester (Joiner cancelled) Butcher, did play at the Bowls on Newton Heath, contrary to lawe.

That games such as football and bowling could be considered contrary to the law seems incredible to us now. Nevertheless, in England until the mid-nineteenth century, the games of football, dice and bowling were prohibited for the masses. The Canadian prohibition against dice games contained in Section 189(1)(g) of the Criminal Code has its origins in Tudor legislation.

In fact, in theory, Englishmen could still be prosecuted under an act of HENRY VIII as late as 1960.[5]

Of some interest is the concept of English statute-law as compared with royal proclamations. Statute-Law is that which is enacted in Parliament and the ultimate power of same is obvious. Royal proclamations, however, were surrounded in controversy in the fifteenth and sixteenth centuries.

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4. Grofton, M.T., A History of Newton Chapelry in the Ancient Parish of Manchester (Chetham Society, 1904) Vol.2, P.73.

5. 33 Henry III, c.9, Statutes of the Realm

> A Proclamation of any period may call attention to and enforce the observation of some existing law, makes a new regulation or prohibition in virtue of a recognized prerogative of the Crown, formally announced some executive act, or (before the great Civil War) enforce the rights of the Crown as the feudal chief of the Kingdom.[6]

STEELE'S view then limits the actual legal effects of royal proclamations to the publication or enforcement of an existing statute or common-law. However, the early Tudor proclamations were cleverly structured so as to conceal their legislative intent and it was difficult to avoid the conclusion that the proclamations were in fact law.

It must be remembered that the medieval English subject lived in awe, if not in fear, of the absolute monarchists that reigned during the middle-ages. Any commoner's challenge to a royal edict was tantamount to treason and was met with the punishment of the day which is now legendary. A traversity of the gaming laws was often met with oppressive fines and in default, lengthy prison terms.

The judicial system employed in early England lended itself to rather strict compliance, however, there existed a passion for gaming that flew in the face of establishment.

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6. R. Steele (ed.) A Biography of Royal Proclamations of the Tudor and Stuart Sovereigns 1485 - 1714, (New York: Burt Franklin, reprinted 1967), Volume I - England and Wales, page IX.

The feudal system, with its custom of frankpledge and its court leets enacted gaming legislation as befitted local situations. It was in this manner that new games were prohibited as they gained popularity. In fact, certain statutes of the day presumed to prohibit "all new games", in addition to a myriad listed.

Again, the reasons for such sanctions were based on the needs of national defence at this time, more about which will be said in the next section. Although I have not dwelled upon the influence of the Church in gaming legislation, that institutinn was of course instrumental in the cause against gambling. Conflict between the Church and the Monarchy is legendary, however, it was not until the time of Henry VIII that the reigning Monarch became the head of the Church of England.

Insofar as enforcement bodies are concerned, this subject too will be covered herein. Returning now to England's gaming legislation and its progressive effects, the following is submitted.

England's earliest gaming legislation addressed itself to usury (loansharking), corruption of public officials, nuisances (vagrancy), cruelty to animals, frauds (cheats), Sunday observances, and as time progressed, bankruptcies, larceny, lotteries, stock-jobbers, wagers of battle ad infinitum.

All of the gaming laws and their related statutes were directed primarily at the poor, for it was from this class that the English yeoman soldier would be recruited. Remembering the ties between anti-gambling laws and weaponry practice, the connection becomes clear. Furthermore, the idea prevailed that gaming was a diversion among gentlemen, but a pernicious vice among the poor. It will be shown that those who could afford licence fees became the keepers of legalized gaming houses drawing their profits from the "inferior classes".

Prior to 1533, successive gaming acts referred to acts passed by Richard II, Henry IV, Edward IV and Henry VIII, for precedent. Richard II, in 1388, made it illegal for servants to indulge in "idle" games on "Holy Days and Sundays".[7]

Henry IV[8] referred to Richard's Act and extended the prohibition to festival days, imposing penalties upon officials who did not enforce the statute, in 1409.

Edward VI, assumed a more fanatical stature and reacted in more general terms. He decreed that no person could participate in illegal games according to the law of the land. He also attacked individuals housing such unlawful activities, threatening those exposed with imprisonment for three years and a fine of 20 pounds.[9]

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7. 12 Richard II c.6 (1388) Statutes of the Realm

8. 11 Henry IV c.4 (1409) Statutes of the Realm

9. 17 Edward VI c.3 (1477) Statutes of the Realm

In 1495[10], Henry VII tempered Edward's edict with his Act allowing servants and apprentices to indulge in games at Christmas, either in front of their master or inside his house. The games of tennis, closh, cards, dice and bowls were mentioned specifically.

It should be noted that verbatum quotations are not offered up to this point as the ancient language and spelling of words are troublesome to read and decipher. As the language improves, quotations will appear.

Perhaps the most colourful English monarch of all time, Henry VIII, made the most significant contribution to gaming laws as we know them today. An avid and expert archer (longbow), Henry VIII promoted that skill with a fervor previously unmatched. In 1509, he reissued all preceding Acts after expressing concern about the decline of archery within the realm.

In 1511, Henry VIII in a proclamation proclaiming statutes and ordinances of war for Calais, attempted to control the gaming pursuits of the army drafted into service.

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10. 11 Henry VII c.2 (1495) Statutes of the Realm

. . . 7

> "also that no man play at dice, cards, tables, closh, handout, nor at none other game whereby they shall waste their money or cause debates to arise by the same. And if any so be found playing at any of these games that for the first time he or they shall be committed to ward, there to remain eight days and to lose all such money as they or any of them play for; be one half to the provost of the marshall and the other half to him that so findth them playing."[11]

In spite of these laws, the situation regarding the decay of archery and the playing of unlawful games continued. Henry again attempted to deal with the problem by legislation.[12] This Act was similar to that passed by Henry in 1511, however, it contained a clause making it perpetual.

In 1526, a proclamation enforcing the statute-law against unlawful games and for archery prohibited all ranks of society from participating. This is significant in that in previous proclamations and statutes, particular groups were singled out and ordered to conform. Perhaps indicative of Henry's increasingly renegade style, he wished to assert his authority over all of his subjects, including his treacherous Court.

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11. 3 Henry VIII c.3 (1511) Statutes of the Realm

12. 6 Henry VIII c.2 (1514-15) Statues of the Realm

> Forasmuch as in the times of the noble progenitors of our most dread sovereign Lord divers and many lotable acts, statutes, and provisions in sundry parliaments have been made not only for punishing and laying down bowling, closh, quoiting, loggatting, playing at tennis, dice, cards, and tables, and other unlawful games; but also like lotable acts and statutes have been made for maintenance and exercising of long bows and archery of this realm; which good acts and provisions for long bows and archery notwithstanding, the said unlawful games be so continually used and exercised within this realm, and no due punishment had in that behalf according to the said provisions and statutes against the said unlawful games, that the exercising of long bows and archery of this realm is almost upperly set apart and extremely decayed; which is to the high displeasure of our Sovereign Lord for remedy whereof his Highness, by the advice of his counsel, straightly chargeth and commandth that from henceforth no person within this his realm of what estate, degree, or condition he or they be, do play or use the said unlawful games nor any of them, nor householder suffer them within their houses, upon pain of forfeiture of the penalties contained in the said acts, statutes, and provisions without any manner favour, redemption, or pardon in that behalf.[13]

In the following year, enforcement officers, including justices of the peace, mayors, sheriffs, bailiffs, constables, petty constables, head burrows and tithing men were reminded, by proclamation, of their duty to enforce the unlawful games legislation.

> "With such circumspection and diligence as the Kings' Highness shall not eftsoons have cause or need to send or give to them any further commandment in that behalf, as they will avoid his indignation and displeasure with condign punishment for their negligence demeanor, to the fearful example of other his subjects which shall happen hereafter to be in like Authority and office.[14]

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13. Hughes, P.L. & Larkin, J.F., Tudor Royal Proclamations, (Newhaven & London: Yale Press, 1964) Vol. 1, The Early Tudors (1485-1553)

14. Ibid., P. 174

By 1528, the "problem" had become rampant and the authorities were authorized "to take and burn tables, dice, cards, bowls, closnes, tennis balls and all other things pertaining to the said unlawful games."[15]

An Act passed in 1535-6 attempted to deal with the problem of unlawful gaming houses by targeting the keepers thereof.

> "Item, it is enacted by thauctoritie aforesaid that no person or persons at any time after the feast of St. John Baptist next coming, shall use (kept and maintain) any open playing house, or place for common bowling, dysing, carding, closhe, tennis, or other unlawful games, taking money for the same or other gain, in any place of this realm, upon paid to forfeit five marks for every month that any such unlawful houses or games shall so be openly kept, used, and maintained in any place within this realm, be it within libtie or without, any grant heretofore made to any person or persons in anyways notwithstanding.[16]

The year 1538 witnessed the publication of yet another proclamation which chronicled all of the pertinent sections of all Gaming Acts passed prior to the reign of Henry VIII. These Acts were still law and Henry no doubt wished to keep the authorities apprised of the legislation governing unlawful games.

Three years later, in 1541, Henry VIII repealed all of the various gaming Acts, with their penalties, along with all other legislation passed during his reign.

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15. Ibid., P. 180

16. Ibid., P. 207-8

. . . 10

> "Be it further enacted by the authority foresaid, that all other statutes made for restrain of unlawful games or for the maintainance of artillery, as touching the penalties or forfeitures of the same, shall from henceforth be void.[17]

The statute in which the above appeared was entitled; AN ACTE FOR MAYNTENNCE OF ARTYLLARIE AND DEBARRINGE OF UNLAWFUL GAMES.

This Act appears as the culmination of the efforts of Henry VIII to promote archery at the expense of other games.

Interestingly, the Act remained law in England, in theory at least, until it was finally repealed in 1960 by the BETTING AND GAMING ACT, after having been partially repealed by AN ACT TO AMEND THE LAW CONCERNING GAMES AND WAGERS IN 1845.

The Act of 1541 had a profound effect upon Canadian gaming legislation in that certain of its provisions were included in the Criminal Code of Canada in 1892. Our present clause 179 insofar as it describes gaming and disorderly houses is in fact worded almost exactly as it was in the Act of Henry VIII. Furthermore, the prohibition against dice games contained in present Section 189(1)(g) C.C., stems directly from this Act of 1541 and in reality the dice sanction was described in an Act of 1388.[18]

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17. 33 Henry VIII c.9 (1541)

18. 12 Richard 2, c.6 (1388) Statutes of the Realm

Henry's Act made it unlawful to keep a common gaming house, which in his time, usually entailed a local pub. However, Henry was the first to introduce legislation that indirectly taxed gaming by providing for licenses to operate such houses.

He reversed himself in this regard to a certain extent by decreeing that only those persons with an annual income of 100 pounds or more could qualify as a licensee.

As regards unlawful gaming houses, a penalty of 40 shillings per day was imposed upon any who maintained such a house and for frequenting such houses, the fine was 6 shillings.

Magistrates were authorized to enter the gaming houses and to arrest keepers and players. Indicative of Henry's plight and frustration perhaps, was the inclusion of a clause imposing a penalty of 40 shillings per month on officials who neglected to make regular searches.

The Act also prohibited artifacers and servants from playing "at the tables (backgammon), tennis, dice, cards, bowles (bowling), closhe (a game of skittles in which a ball was used), coytinge (horseshoes), logatinge (a game of skittles in which bones were used as pins) or any other unlawful game". However, Section XV allowed for the licensing of servants by their masters so they could participate in these activities. Nevertheless, the master had to be in the 100 pound plus bracket before he could license his family, servants or house.

The licensing clauses were the only new aspect of the games legislation that the Act introduced, the rest being essentially a restatement of what had gone before.

After the death of Henry VIII in 1547, the remainder of the sixteenth century witnessed no new gaming legislation. Successive monarchs were content to simply reissue 33 Henry VIII c.9. This Act, as aforementioned, remained law with few alterationsuntil modern times.

The passing of one hundred and ten years and the reigns of six monarchs saw the emergence in 1664 of gaming legislation by the hand of Charles II (1660-1685). This Act penalized excessive gaming and such gaming as distinct from the game being played was declared illegal. It also dealt with legal actions against winners by losers and vice-versa.

> "A loser might sue a fraudulent winner within six months and might recover treble the amount lost. One half of the proceeds was forfeit to the loser; the other half to the Crown."[19]

All of the games prohibited in 33 Henry VIII c.9.,of course remained in effect, however, an "enlightened" attitude is apparent wherein we see civil remedies being sought as a result of fraudulent gaming.

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19. 16 Charles II (1664) c.7 Statutes of the Realm

A drastic increase in gaming prosecutions evidenced the following statement describing the period noted:

> "As a result of apathetic attitudes in the monarchy, there developed in England after the civil war era a real gaming and gambling mania. At no time in the history of England did the passion for gambling reach a greater height or spread over a larger section of society than it did during the latter half of the 17th and early 18th centuries."[20]

Enter the lottery. A lottery has been described as a "game" over the centuries, and it appears to have been an unlawful game at common law. The first statute to make or declare lotteries illegal was passed in 1693.[21]

> "The first authorized lottery - for repair of harbours - was projected in 1566 and drawn in 1569. Other early lotteries were those of 1612 for the Virginia plantations, and for the London water supply in 1627. State lotteries were held in 1694 and 1697, but were suppressed with other lotteries in 1698. They were, however, revived in 1710 and held yearly up to 1823, excepting the period 1814 to 1819. In 1823 they were formally abolished by 4 George IV, c.60, s.19, but a last lottery was held in 1826."[22]

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20. Duncan, A., The Reality of Monarchy, (Pan. London, 1956)

21. 10 & 11 William III c.23 (1698) Statutes of the Realm

22. Street, H.A., Law of Gaming (1937) Sweet & Maxwell - London

. . . 14

Lotteries can, of course, be traced back to the Roman Saturnalia and even further back to the division of Canaan among the twelve tribes. They have been known throughout the ages, however, I do not purport to enter upon an investigation of a subject which in itself commands major historical research.

The evolution of English statute-law concerning gaming reflects changing public policy and in fact it follows what appears to be a natural progression in step with social development. The sheer number of English statutes addressing gaming illustrates the importance attached to the practice. It also bears witness to the popularity and endurance of a pastime peculiar to man throughout his history.

The majority of Acts passed from 33 Henry VIII c.9. (1541) through to 12 George II, c.28 (1739), dealt with usury[23], common informers[24], limitation of action[25], frauds[26], lotteries[27], and bankruptcy[28].

Prohibited games changed with the times and the statute of Henry VIII (1541) was enlarged and improved upon, however, the sanctions against dice games and gaming houses remained intact.

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23. 13 Elizabeth c.8 (1571) Statutes of the Realm
24. 31 Elizabeth c.5 (1588) Statutes of the Realm
25. 21 James I c.16 (1623) Statutes of the Realm
26. 29 Charles II c.3 (1677) Statutes of the Realm
27. 10 & 11 William III c.23 (1698) Statutes of the Realm
28. 5 George II c.30 (1732) Statutes of the Realm

A reading of the legislation of the period (1541-1732) leaves one with the impression that attitudes toward gaming underwent a metamorphisis. Gradually, almost imperceptibly, absolute, paternalistic prohibitions shifted to the legislation of fair play in gaming. The laws were becoming more a matter of morals than of national defence as in their beginning.

By 1739, horse races were being conducted on an organized basis, albeit loosely organized, in England and betting on their outcome was legal for small stakes. Legislators were still wrestling with the concept of applying the term "game" to such events and lotteries were conducted by the state only on a once annually basis. The phrase "unlawful games called lotteries" appears in one statute and the distribution of lottery tickets brought fines of from 200 pounds to 500 pounds to the offender.[29]

In 1802 an Act was passed, the preamble to which reads as follows:

> "Whereas evil disposed Persons do frequently resort to Publick Houses and other Places, to set up certain mischievous Games or Lotteries, called Little Goes, and to induce Servants, Children, and unwary Persons to play at the said Games; and thereby most fraudently (sic) obtain great sums of Money from Servants, Children, and unwary Persons, to the great Impoverishment and utter Ruin of many Families; for remedy whereof, be it enacted .....that all such Games or Lotteries, called Little Goes.....are hereby declared common and publick Nuisances, and against Law."[30]

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29. 12 George II c.28 (1739) "An Act Fore the More Effectual Preventing of Excessive and Deceitful Gaming"

30. 42 George III, c.119 (1802) "The Gaming Act" (U.K.)

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The publishing of proposals, or sales of tickets in any lottery was forbidden by an Act of 1823[31] under penalty of a 50 pound fine and of being declared a rogue and a vagabond. Subsequent offences warranted the offender public flogging.

EFFECT OF ENGLISH GAMING LAWS ON CANADA

It is necessary at this time, in order to meld the relevancy of the English statutes with the Canadian experience, to apprise the reader of the following.

"Canada" as we now know it, was relatively unknown to civilization until John CABOT's discovery of it in 1497. Subsequent settlement of the colonies was slow in comparison to that experienced in the United States.

Indeed, the first parliaments of Canada opened some three hundred years later, in 1792. The first legislature of Upper Canada opened at NEWARK (NIAGARA) and the first legislature of Lower Canada opened at Quebec in that year.

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31. Canada Statute Annotations - Revised Statutes of Canada 1970 Ed.

The undernoted quotation affords a very brief picture of the development of our Canadian legislation, including our gaming laws.

> "The criminal law of England was introduced on settlement of the colonies which later became the common law provinces of Canada; and into Quebec by the Quebec Act, 1774 (U.K.), c.83.
>
> The basis of the movement towards the Criminal Code of Canada came with the reflection in pre-Confederation legislation, particularly that of the United Province of Upper and Lower Canada, 1841-1867, of the work in England for the statutory reform of the criminal law.
>
> The Dominion formed by the B.N.A. Act, 1867 (U.K.), c.3 exercised reform achieved by English statutes and by the Draft Code of 1880, rejected there. The Draft Code led to the first Criminal Code, 1892 c.29. This Code notes, at the end of many sections, the immediate sources in the Revised Statutes of Canada, 1886.
>
> After consolidation in the Revised Statutes of Canada, R.S.C. 1906, c.146, and 1927, c.36, the Code was revised for the first time in 1953-54, c.51.[32]

Therefore, the English statutes referred to in this chapter applied to "Canada", or more precisely, "on settlement of the Colonies". Colonial settlement was an ongoing process from 1497 through to Confederation. During that 400 years, many events transpired which collectively saw Canada develop from its historic infancy to its relatively sophisticated status in 1867.

Colonial development is lost to most of us. Since an appreciation of the development of our history is necessary to understand the evolution of our gaming laws, the following is offered, with apologies to historians.

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32. Canada Statute Annotations - Revised Statutes of Canada 1970 Ed.

. . . 18

Beginning with a perspective of the situation in the 1500's (sixteenth century) in the colonies, it is important to remember that in England, this century witnessed extremely important gaming legislation. Specifically, the statute of 33 Henry VIII was introduced.

The European interest in what is now Canada and the United States had to do with fisheries in the former and with tobacco in the latter during the sixteenth century. In 1501, Portuguese fisheries were established at Newfoundland and Labrador. Three years later, in 1504, St. John's, Newfoundland was established as the shore base of the English fisheries. In 1524, VERRAZANO, whilst in the service of France, explored the coasts of Nova Scotia and Newfoundland.

In 1534, Jacques CARTIER landed at GASPE. Seeking a Northwest passage to the East, he erected a cross on Gaspe to impress upon the Indians that the country belonged to France.

On a second voyage, in 1535, CARTIER discovered the St. Lawrence River and the gulf. He reached Montreal and the Indian village of Stadacona (Quebec City). He gave Canada its name when he mistook the Indian word KANNATA (collection of huts), for the name of the country. In 1541, CARTIER made his third voyage in the first French colonizing expedition to North America.

In 1577, Sir Martin FROBISHER, in reality a common pirate, made the first of three voyages searching for the Northwest passage. He penetrated as far as the Hudson Strait.

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In 1583, Sir Humphrey GILBERT visited Newfoundland and formally proclaimed English sovereignty over it. It was England's first overseas colony, and it was the start of the British Empire. 1588 was the year of the Spanish Armada and many Newfoundland fishermen and ships took part in the sea battle off the English coast.

The year 1604 saw the first attempt at colonization on St. Croix Island. It consisted of 79 men, 35 of whom died of scurvy the first winter. The settlement was moved to Port Royal in the spring.

Samuel de CHAMPLAIN, the first governor of French Canada, founded the first white settlement at Quebec in 1608. In 1613, although it was a time of peace between Britain and France, Port Royal (Nova Scotia) was attacked by the English. This spelled the beginnings of the classic English-French conflict in Canada.

In 1615, law courts were opened by the English at Trinity, Newfoundland, the first in the New World.

By 1666, the population of New France was a mere 3,215 souls. A few hundred English were scattered throughout the colonies. In 1665, London suffered the Great Plague, 65,000 deaths were recorded. The following year, the Great Fire destroyed over one-half of the city.

When we pause to consider the state and the priority of gaming legislation during these years, it becomes clear why the statute of Henry VIII remained essentially unchanged.

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Britain's interest in what is now Canada, in the seventeenth century, was solely the development of the fur trade through Hudson Bay in competition with the French in the St. Lawrence Waterway. This continued throughout the century.

By 1750, the Industrial Revolution had begun in Great Britain. The introduction of factory systems and the resulting urbanization completely changed social standards in Britain over the next century. It was during this time that the practice of gaming proliferated at an unprecedented rate, largely unregulated because of higher governmental priorities.

In 1756, the Seven Year's War between Britain and France was declared. In reality, hostilities in North America had continued since 1744. In 1755, 6,500 Acadians were expelled by Britain. Louisbourg, on Cape Breton Island with a population of 4,000, was traded to France by Britain for Madras, India.

The Battle of the Plains of Abraham occurred in 1759 with the defeat of the French by the British. By 1774, the Quebec Act was passed, the colony was given English Criminal Law and French Civil Law. Thus, the law of gaming in England applied to the French as well.

. . . 21

1775 saw the outbreak of the American Revolution which by 1783 caused the immigration of the United Empire Loyalists to "Canada". This involved some 35,000 to 50,000 educated, cultured and English speaking persons. Their arrival changed Canada from a French colony of Great Britain to a predominantly English speaking country.

It follows, of course, that these ex-patriot Englishmen brought the gaming expertise and customs of the old country with them. It was deemed expedient to reissue the edict declaring that the Criminal Law of England applied to Upper Canada at this juncture.[33]

The Constitutional Act of Canada, by which the old province of Quebec was divided into Upper and Lower Canada, and the provinces of Nova Scotia and New Brunswick were given colonial constitutions, was passed in 1791. A powerless legislative assembly was elected and proved to be a useless system as it was seen as irresponsible government. 1792 saw the first Legislature of Upper Canada opened.

In 1841, the ACT OF UNION combined Upper and Lower Canada under one government, with Kingston as the capital. The system of law and courts continued as before, therefore, the gaming statutes remained in force. This Act proved unsatisfactory in operation and led to political deadlock. It was not resolved until federal union in 1867.

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33. Statutes of Upper Canada, Section XI, P.8 (1764-1791)

Which brings us now to Confederation, the final chapter of England's governing gaming legislation over Canadians and the beginning of the movement toward Canada's first Criminal Code in 1892.

In a nutshell, several factors led to Confederation. Politically, coalitions involving the union of the Province of Canada, Nova Scotia and New Brunswick as the Dominion of Canada and the provinces of Ontario and Quebec being formed from Upper and Lower Canada proved to come to a standstill insofar as government was a factor. In 1864, the famous Charlottetown Conference was called to discuss a union of the Maritime provinces which produced a later meeting in the Province of Quebec. The Quebec Conference resulted in 72 resolutions which were the basis of the British North America Act passed by the British Parliament in 1867.

The need to develop the West to forestall American penetration was another influence for a federal union. The Maritime provinces, suffering the first of what has continued to be many reversals in their "sailing ship" economy, were interested in a railway link to foster trade with Canada following cancellation by the United States of the Reciprocity Treaty. Later entries to Confederation were Manitoba in 1870, B.C. in 1871, P.E.I. in 1873, Alberta and Saskatchewan in 1905 and Newfoundland in 1948.[34]

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34. NOTE: Historical material presented from annotation (33) was assembled from the following:

- Canadian Historical Documents Series Vols. I & II - Prentice-Hall, Toronto.
- A History of Canada, Vol. I, Lanctot, G., Clark, Irwin & Co. Ltd.
- Select Documents in Canadian Economic History, 1497-1783, University of Toronto Press, (1929)
- Great Canadians, A Century of Achievement, The Canadian Centennial Publishing Co., Toronto, (1965)
- The Making of the Nation, A Century of Challenge, The Canadian Centennial Publishing Co., Toronto (1965).

It is my contention, based solely on personal experience, that the law of gaming and its origins cannot be understood without some knowledge of the historical development of the nation. A straightforward presentation of the gaming statutes would be meaningless without placing them in a broader perspective. Therefore, it is hoped that the foregoing diversion will serve to "set the stage" so to speak, for the remainder of this paper.

It will be seen, as the following chapters unfold, that gaming actually did reach problematic proportions in early Canada, particularly in the mid-nineteenth century. Domestic statutes were passed during this time to complement the British legislation and to deal with the gaming situation peculiar to our nation.

Prior to that, however, and before moving to the next chapter which examines Britain's historical motivation for enacting gaming laws and an evolution of their effect, some of the English statutes after 1802 bear attention. These few statutes were particularly applicable to Canada during the eighteen hundreds and their influence is present in our modern legislation.

Before 1826 the criminal law of England was scattered through many different Acts. Between 1826 and 1828 a number of remedial and consolidating Acts were passed.

1833 saw the appointment of the first of a series of Criminal Law Commissioners, but it was not until 1878 that from the hand of Sir James STEPHEN, the ENGLISH DRAFT CODE came into being.

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It should be noted that the English Draft Code dealt only with indictable offences and that gambling sanctions were considered to be of such gravity to be so classified. STEPHEN's English Draft Code was rejected in England, primarily because of the Englishman's reverence for the Common Law and its pliability for interpretation by the Courts.

It is worthy of note that Acts passed in 1745[35] and 1752,[36] dealt with horse racing and disorderly houses, both activities which by this time were of such formidable proportions to warrant legislative sanctions.

Perhaps the most important Act to be passed since 33 Henry VIII c.9 (1541) was that of VICTORIA'S in 1845.[37] This Act dealt with both gaming and lotteries. Lotteries in particular had fallen into great disrepute in England and in North America as well. A verse written by Henry FIELDING in 1732 illustrates this:

> "A lottery is a taxation
> Upon all the fools in creation;
> And heaven be praised,
> It is easily raised,
> Credulity's always in fashion,
> For folly's a fund will never lose ground
> While fools are so rife in the nation."

35. 18 George II, c.34 (1745) "An Act to Explain, Amend and Make More Effective The Lawe in Being, To Prevent Excessive and Deceitful Gaming and To Prevent the Excessive Increases in Horse Races"

36. 25 George II, c.36 (1752) Statutes of the Realm

37. 8 & 9 Victoria c.109 (1845) "An Act to Amend the Law Concerning Gaming and Wagers"

The following is of interest as well:

> "Peterson, in his book "Gambling, Should it be Legalized?" (1951) gives a detailed history of lotteries in the United States. Legalized lotteries, he says, were commonplace there from Colonial times until they were abolished by various States, first by Massachusetts in 1833, and last by Louisiana in 1892. The notorious Louisiana Lottery was established in 1868 in the unsettled conditions following the Civil War. It drew money from all over the United States and also from Canada, and grew in wealth and arrogance until in 1890 it became the subject of a denunciatory message from the President to Congress, as a result of which a law was enacted making it a criminal offence to deposit lottery matter in the United States mail."[38]

The Act of 1845 in dealing with gaming and betting houses first introduced the concept of offering amnesty to persons found therein in exchange for their testimony against "Keepers".

> "Any person concerned in unlawful gaming who shall give evidence regarding it, if he makes true and faithful discovery to the best of his knowledge of all things as to which he shall be examined."

This section of the Act provided the basis for an identical clause in the first Canadian Criminal Code and for its continuance until 1983, when it was repealed on the basis of constitutional rights.

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38. Martin's Criminal Code, Part V, S.179(1955) Edition. P.336

The Act also addressed itself to the issues of evidence, presumptions, appeal and to offences and penalties. Obviously, gaming and betting houses were gaining popular momentum at this time. This is further evidenced by an Act passed in 1853.

The Act of 1853[39] saw the term "wager" become "bet". The preamble to the statute indicates the situation as pertains to Betting Houses in that year.

> "Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses, or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons on their behalf, on their premises to pay money on events of horse-races, and the like contingencies....."

This legislation was intended to meet the double barrelled problem of illegal race tracks and bookmaking establishments.

The Act of 1853 brings us to the last of most important English gaming statutes insofar as they influenced Canadian legislation. At this point, readers familiar with our current gaming laws will clearly see the relevance of my having chronicled the British experience. Canada's gaming laws as they exist today, evolved, I submit, from those originally defined in "The Mother of Parliaments".

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39. 16 & 17 Victoria c.119 (1853) "An Act for the Suppression of Betting Houses"

The motivational factors employed by the English in legislating gaming laws has quite naturally changed over the centuries. The overall effect of same has been variously debated as well. Both of these issues will be briefly examined in the following chapter.

CHAPTER TWO

FACTORS MOTIVATING THE PASSING OF GAMING LAWS IN ENGLAND AND THEIR EFFECT

Historically, the motive behind the banning of "idle games" is rooted in early England's dependence upon the longbow in warfare. The playing of games previously referred to was seen by the Monarchs of the preiod to be the reason for the decay in archery.

Curiously, the promotion of archery, especially during the sixteenth century, appears to be a reaction of resistance to change. Henry VIII is specifically guilty of harbouring such an attitude, and his statute 33 Henry VIII c.9 (1541) exemplifies his thinking.

Henry's preoccupation with archery skills was misguided in the time in which he lived. Continental Europe had long since replaced the bow with the gun and many Monarchs had their own standing armies.

England was slow in moving toward the status of its neighbours to the East, it's island location helped to forestall any urgent need for either sophisticated weapons or standing armies. England relied heavily upon its navy and when conflcits arose, feudal serfs were drafted into service.

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The gaming legislation actually served to prolong England's reliance on a citizen army based on bowmen. This was a reflection of the Monarch's inability and sometimes unwillingness to bear the financial burden of maintaining a standing army.[40]

Several of the Monarchs, including Henry VIII had formed Royal Bodyguards, however, when he tried to increase their number in the form of men at arms, the force collapsed after a few years under the weight of its own cost.[41]

As a result, Henry ordered his officials to enforce more efficiently the STATUTE OF WINCHESTER.[42] Passed in 1285, this Act stipulated the types of weapons and equipment that every man was compelled to keep in his home. Every male, between the ages of 15 and 60 was sworn to arms on a scale in accordance with the value of his lands and possessions. Theoretically, these people were liable to being drafted into military service when the need presented itself.

Prior to the development of the firearm, such legislative motivation was probably well-founded. Outdated as he was, Henry VIII continued this policy throughout his reign.

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40. J.J. Bagley and P.B. Rowley, A Documentary History of England, (Penguin, 1966) V.I (1066-1544)

41. Ibid

42. 13 Edward I c.7 (1285) Statute of Winchester

Successive Monarchs, until the Victorian era, added only superficial variations to Henry's Act, and most legislation was drafted on the lines of the old. The "immoral" games of cards, dice, tennis and bowls were vices to be avoided.

Reflecting the morality of the time in which it was written, Stubes[43] said:

> "but to play for gain and to desire only of his brother's substance (rather than for any other cause) it is at no hand lawful, or to be suffered.
>
> For as it is not lawful to rob, steal and purloin by deceit, or sleight, so it is not lawful to get thy brother's goods from him, by carding, dicing, tabling, bowling or any other kind of theft, for these players are not better, nay worser, than open theives, for open theft every man can be aware of, but this being a craft of politic theft, and commonly done under pretence of friendship, few, or none at all can be aware of it."

Beginning laws prohibiting the playing of such games were influenced and fostered by the Church, which was very strong up to the sixteenth century.

The unlawful games legislation has long been linked with the problems of vagrancy as well. This is yet another aspect of English law that was carried into our own statute law prior to 1892. Problems of vagrancy had been very real during the medieval period, however, in the centuries that followed into the Victorian era, they had increased by such an extent that the regulation of vagrants was a high priority.

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43. P. Stubes, The Anatomie of Abuses, (London, Jones, R.) (1583)

Idleness was considered to be a high crime against the economy of the country and vagrants were defined in terms of participation of banned games.

An Act dealing with "Public Morals and Convenience" dictated the following:

> (k) Have no peaceable profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming or crime, or by the avails of prostitution, --
> Are loose, idle or disorderly persons or vagrants, within the meaning of this section:[44]

This morality was conveyed by the vagrancy sanction contained in Canada's first Criminal Code:

> 207. Every one is a loose, idle or disorderly person or vagrant who--
>
> (j) is a keeper or inmate of a disorderly house, bawdyhouse or house of ill-fame, or house for the resort of prostitutes;
> (k) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or
> (l) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming.[45]

Henry VIII declared that vagrants caught playing unlawful games were to be sentenced to serve as rowers in the galleys of the English Navy.

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44. Revised Statutes of Canada, V.2, c.158 (1886)

45. 55-56 Victoria c.29 (1892) The Criminal Code of Canada

Motivation involved in sanctioning unlawful gaming changed gradually as time passed. From high ideals of national defence and a religious observance of avoiding the vice of gaming, the motives became less moral by degree and more mercenary. The legislation still purported to suppress "immoral" games, however, it became increasingly obvious that by selective licensing and stringent policing of unlicensed activity, government revenues could be increased.[46]

Gaming houses, tennis courts and bowling alleys were licensed in England from the time of Henry VIII on. Bales of dice were approved and sealed, and playing cards were sold--all under monopolies granted by statute. The main motives behind the granting of such licences included the rewarding of royal servants and favourites and the raising of revenue.[47]

With the escalation of gaming activity of all sorts during the 17th, 18th and 19th centuries, licences granting monopolies and protecting gaming yielded handsome returns to the licensees.[48]

The manufacture of cards and dice became an industry and the ex-chequer secured the trading profits therefrom. The London company of PLAYING CARD MARKERS obtained a monopoly to produce cards and dice, but the Crown granted this patent in return for the right to handle their goods.[49]

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46. - J.J. Bagley & P.B. Rowley, A Documentary History of England, (Penguin) 1966 V.I (1066-1544)
    - Doyle, R.J. The Royal Story, (Pan, London, 1956)

47. Ibid

48. Ibid

49. Ibid

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On the other hand, revenue was obtained by the ex-chequer from the enforcement of the prohibitive statutes. The emergence of a new morality can be seen developing here, a brand of which has endured and is with us today.

Agencies traditionally responsible for the enforcement of gaming legislation were inspired by informer's fees and/or percentages of fines levied. As English society changed and the incidence of gaming increased, justices and local law enforcement agencies could not cope effectively.

Accordingly, they were forced to rely extensively upon private citizens willingness to lay Informations in the Courts to set the law in motion. The informer usually received half of the fine levied for his pains. It was also common for a disgruntled or cheated gambler to inform on the understanding that he would receive immunity from prosecution.

The apathetic attitude toward gaming that has plagued enforcement bodies through to modern times was dealt with, on occasion, by a proclamation that officers would themselves be fined for neglecting this aspect of their duties. Such an attitude was probably fostered by enforcement's knowledge of the legislative motives and the obvious class distinction where licensing was concerned.

The following illustrates the validity of that thought:

> "The course was now to open a house, and for the owner to hold himself forth so ready to bet with all comers, contrary to the usage which had prevailed at Tattersall's -(RACETRACK) where individuals betted with each other, but no one there kept a gaming table or, in other words, held a bag against all comers. The object then of this bill was to suppress these houses without interfering with that legitimate species of betting to which he has referred. It would prohibit the opening of houses, or shops, or booths, for the purpose of betting; and inasmuch as it appeared that the mischief of the existing system seemed to arise from the advancing of money in the first instance with the expectation of receiving a larger sum on the completion of a certain event, it was proposed to prohibit the practice by distinct legislative enactment.
>
> The mischief arising from these betting shops was perfectly notorious. Servants, apprentices and workmen, induced by the temptation fo receiving a larger sum for a small one, took their few shillings to these places, and the first effect of their losing was to tempt them to go on spending their money in the hope of retrieving their losses, and for this purpose if not infrequently happened that they were driven to robbing their masters and employers."[50]

In assessing the effectiveness of the gaming legislation passed in England between 1285 and 1853, the ever-changing reasons for its maintenance must be recalled. From the year 1285 through to approximately 1500, the "maintennce of artyllaries" appears to have been reasonably accomplished, although the unlawful gaming was not eradicated.

Beginning with the sixteenth century through to the twentieth century, varying degrees of success in controlling gaming activity may be claimed by the British legislators.

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50. Hansard CXXiX, p.87, July 12, 1853 U.K.

It would appear that by a decentralization of and transmission of the gaming laws to local authorities, the new by-laws passed subsequent to the statute-law had a diluting effect. This practice, instituted in the sixteenth century, has continued throughout English gaming law and in fact, Canada's present day Section 190 of the Criminal Code attests to its principle.

It is not suggested that our society will fall into the situation in which one of Henry VIII's subjects perceived in his letter of 1538 to the Monarch, rather an exerpt is presented for the sake of interest:

> "There must be a remedy found for the decay of cities and corporate towns. The decay of coventry and all other parts of the realm is for lack of learned men to be on their councils, and administer justice, and there is no city or no good town without an abbey near it, in which the justices might sit - trade is decayed - acts are made to punish vagabonds, but it were expedient to find means to set them to work. Acts have been made to perform part of these made wares, but no man takes pain therein. Unlawful games are used, so that the artillery is decayed. Has seen ten or twelve companies going shooting, but now a man should seek through the city or he could get one company to shoot "half take pence." They should be reformed, for unlawful games make men sit at the ale house, when they have a penny to spend, and they care no what inventions they imagine."[51]

In fact, the gaming laws in Coventry were different than those in other parishes due to the local legislation. There was no uniformity of enforcement and this contributed to a general proliferation of gambling throughout England. The passion of the English for gaming and gambling has been documented and that propensity resulted in the mass of legislation passed over the years.

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51. Letters & Papers, Foreign & Domestic, of Henry VIII, V. 13, 1538 (London: Published by His Majesty's Stationery Office, 1920)

A study of STREET[52] will provide readers with an appreciation of the legislative attention paid to gaming in Britain. With the exception of a few prohibited games, virtually every activity that the legislation set out to eradicate was destined to become commonplace, albeit controlled, in the twentieth century. In that respect then, and certainly up to 1853, gaming and its development had been effectively addressed by the legislation.

The effectiveness of that legislation was muted to a great degree, by inadequate police enforcement and by a reluctance on behalf of the Courts to impose deterrant penalties. This criticism can be applied to the concept of gaming control throughout history and it is relevant even at this late date.

Henceforth, Canada began her transition from colonial status to nationhood. The history and development of our gaming legislation will be traced in the following chapters. In the beginning no change from British law will be apparent, however, as our brief history progresses, so too does the complexion of our gaming laws.

52. Street, H.A. The Law of Gaming (1937). Sweet & Maxwell, London.

CHAPTER THREE

CANADIAN GAMING LEGISLATION - THE FORMATIVE YEARS (1792 - 1892)

> Before its enactment in 1892, the Criminal Code was submitted to and carefully considered and revised by legal experts selected from and forming a Joint Committee of the two Houses of the Parliament of Canada, and was also critically examined and fully discussed in each House by a Committee of the whole. It was based upon the Draft Code, formulated by the English Royal Commissioners appointed to consider the advisability of codifying the criminal law of England,--(which draft, however, was never adopted by the Imperial Parliament),-- and also upon Stephens' Digest of the Criminal Law of England, upon Burbidge's Digest of the Criminal Law of Canada, and upon Canadian Statutes. It codified both the common and the statutory law relating to criminal matters and criminal procedure; but, while it aimed at superseding the statutory law, it did not abrogate the rules of the common law, these being retained, and left available, whenever necessary, to aid and explain the express provisions of the Code and of statutes remaining unrepealed, or to supply any possible omissions, or to meet any new combination of circumstances that may arise; so that, in this respect, all that elasticity which is claimed for the common law rules and principles of the old system is preserved for the system established by the code.[53]

The topic under discussion was included as an integral part of Canada's first Criminal Code and for the first time, criminal sanctions were placed upon certain facets of gaming in this country. Law and morality were still inextricably intertwined in 1892, the separation of which, from a historical perspective, occurred dramatically in the decades that follows.

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53. The Criminal Code of Canada - Crankshaw - 1935

CRANKSHAW's rather general, however accurate, description of the origins of the first Criminal Code offers little insight as to the conceptual reasoning behind the statute. First introduced into Parliament as Bill No. 7 by Sir John THOMPSON in 1892, the Act described as 55-56 VICTORIA REVISED STATUTES OF CANADA c.29 was the offspring of considerable debate.

> SIR JOHN THOMPSON. I stated to the House, in the second reading of this Bill, the principles upon which it was drafted, that, while we retained all the parts of our criminal law which are found in the Revised Statutes that seemed to be peculiarily applicable to Canada, we had in all the other portions of the measure followed the labours of the commission in Great Britain which was appointed to establish a criminal code, following particularly the latest revision of their work. The House having referred the matter to a special committee to confer with a committee of the Senate, I have much gratification in stating that the Bill has received very careful and very close consideration from the members of the committee, who have taken a deep interest in its provisions. The amendments made by that committee are not at all numerous, and they are principally of a verbal character, and I hope the House will expedite as far as possible the passage of the Bill.[54]

All of this appears to have been a deceptively simple process when veiwed from our modern standpoint. In reality, the Code of 1892 was a remarkable achievement when conditions preceding the document are considered as they have been in Chapter One of this paper. The twenty-five years that elapsed between Confederation and the year 1892 saw events that precipitated a real need for a Criminal Code.

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54. Debates - House of Commons (Hansard) May 17, 1892. P.2702

As the country gradually became united, notwithstanding the occasional rebellion, there became a requirement for enforcing the conceot of good government on a uniform basis. The Criminal Code, of course, had its authority entrenched in the British North America Act and its legislation was seen as a constitutional right as exercised by the federal government. The Code, then, was one assertion of many made by the government of the day toward imposing itself on a national scale.

Specifically, our original gaming legislation was drawn from those sources noted by CRANKSHAW. England's Sir James STEPHEN was heavily relied upon in this field and his influence is obviated by the udnernoted extract from his English Draft Code of 1880 as published in 1877.[55]

ARTICLE 257

> Every one who keeps a disorderly house commits a common nuisance, and is liable upon conviction thereof to be sentenced to imprisonment with (and not without) hard labour.
>
> Any person who appears, acts, or behaves as master or mistress, or as the person having the care, government or management of any disorderly house, is to be deemed and taken to be the keeper thereof, and is liable to be prosecuted and punished as such, although, in fact, he is not the real owner or keeper thereof.
>
> But the owner of a house, conducted as a disorderly house by a person to whom he lets it as a weekly tenant, is not the keeper of the house merely because he knows the use to which it is put, and does not give his tenant notice to quit.

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55. Stephens, James, A Digest of the Criminal Law (1877) Sweet & Maxwell, London.

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ARTICLE 258

DISORDERLY HOUSES

The following houses are disorderly houses, that is to say, common bawdy houses, common gaming houses, common betting houses, disorderly places of entertainment.

ARTICLE 260

COMMON GAMING HOUSES

A common gaming house is any house, room or place kept or used for the purpose of unlawful gaming therein by any considerable number of persons.

Gaming means playing at games either of chance, or of mixed chance and skill

Unlawful gaming means gaming carried on in such a manner, or for such a length of time or for such stakes (regard being had to the circumstances of the players) that it is likely to be injurious to the morals of those who game.

All gaming is unlawful in which

(i) a bank is kept by one or more of the players, exclusively of the others; or

(ii) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet.

ARTICLE 262

EVIDENCE THAT A HOUSE IS A COMMON GAMING HOUSE

The following circumstances are evidence (until the contrary is proved) that a house, room or place is a common gaming house, and that the persons found therein were unlawfully playing therein; that is to say,

(i) where any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room, or place suspected to be used as a common gaming house, and entered under a warrant or order issued under 8 & 9 V.c. 109, or about the person of any of those found therein;

(ii) where any constable or officer authorised as aforesaid to enter any house, room or place, is wilfully prevented from or obstructed, or delayed in entering the same or any part thereof, or where any external door or means of access to any such house, room, or place so authorised to be entered is found to be fitted or provided with any bolt, bar, chain, or any means or contrivance for the purpose of preventing, delaying, or obstructing the entry into the house, or any part thereof, of any constable or officer authorised as aforesaid, or for giving alarm in case of such entry; or

if any such house, room, or place is found fitted or provided with any means or contrivance for unlawful gaming, or for concealing, removing, or destroying any instruments of gaming.

ARTICLE 266

LOTTERIES

8 Every person commits a common nuisance who 9 keeps a lottery of any kind whatever without the authority of Parliament.

9 "Keeps" - "publicly or privately keep any office or place to exercise, keep open, show, or expose, to be played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any game or lottery called a little go, or any other lottery whatsoever not authorised by Parliament": 42 G.3,c.119,s.2.

ARTICLE 454

CHEATING AT PLAY

3 Every one is deemed guilty of obtaining money or a valuable thing by a false pretence with intent to cheat or defraud, and is liable to be punished accordingly.

3 8 & 9 V.c, 109, s.17. See R. v. Hudson (1860), Bell, C.C. 263, for an illustration of what does not amount to a "game". As to "winning," it has been doubted whether the money, &c., must be actually obtained, or whether winning the game by a false pretence would be within the section if the loser refused to pay the money: R.v. Moss (1856), D. & B. 104. A "bonnet" in a three-card trick does not "win" in playing under this section; he only induces other to play: R. v. Governors Brixton Prison, (1912) 3 K. B. 568.

The Canadian Statutes referred to also exhibited a remarkable similarity to later legislation and is still readily recognizable today. Of interest is the fact that this law was actually drafted in "Canada" to fit the Canadian situation.

One of our earliest Acts, passed in 1810, reflects the popularity of billiards and it also indicates a motivational control factor other than one of a moral nature. This may be the first instance of taxing gaming in our history and perhaps of licensing provisions as well.

CHAPTER VI

An Act for granting to his Majesty a duty upon billiard tables

Most Gracious Sovereign:

We, your Majesty's most dutiful and loyal subjects, the commons of the province of Upper Canada, in parliament assembled, for the uses of this province, have freely and voluntarily resolved to give and grant to your Majesty, your heirs and successors, a duty on billiard tables; therefore, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign entitled, 'An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province, '", and by the authority of same, That from and after the Twenty-ninth day of September next, there shall be raised, levied, collected and paid yearly, and every year, unto his Majesty, his heirs and successors, to and for the uses of this province,, and towards the support of the civil government thereof, of and from all and every person or persons having in his, her, or their possession, custody, or power, any billiard table, set up for hire or gain, directly or indirectly, whether such person or persons shall use or permit the same to be used or not, the sum of forty pounds.[56]

56. Statutes of Upper Canada (1791-1831) 50 Geo III c.6 (1810)

Violations of the above Act were met with fine and forfeiture. One-half of the fine being paid to the Receiver-General and the other half to the informant.

The year 1817 in Lower Canada saw the following sanctions appearing in a unique Act.[57]

> X. And whereas the pernicious vice of gaming has become extremely prevalent in public houses in this Province, to the evil example of the rising generation and the ruin of individuals:--Be it therefore further enacted, &c., that from and after the passing of this act, if any person licensed to sell spirituous liquors, by retail, or to keep a house of public entertainment within this Province, shall knowlingly suffer any gaming in any house, out-house, apartment or ground belonging to or in his or her occupation, for money, liquor, or otherwise, either with cards, dice, draughts, shuffle-board, skittles, nine-pins, or with any other implement or in any other manner of gaming, by any journeyman, apprentice, labourer or servant, and shall be convicted thereof, on the confession or by the oath of one credible witness, before one justice of the peace, if in the villages or country parishes, within fifteen days after the offence committed, or before the justices of the peace in their court of weekly sittings, if in the cities of Quebec and Montreal, or town of Three-Rivers, such person, or persons so offending shall forfeit and pay for the first offence the sum of forty shillings, current money of this Province, and for the second offence the sum of five pounds, current money of this Province, and be deprived of his, her or their licence, and also of being incapable of obtaining a licence to retail spirituous liquors or keep a house of public entertainment for the space of one year; and if any journeyman, labourer, servant or apprentice shall game in any of the places or in the manner aforesaid, and shall be convicted thereof, before any justice of the peace in the villages or country parishes, or by any justice of the peace in the villages or country parishes, or before the justices of the peace in their court of weekly sittings in the cities of Quebec or Montreal, or town of Three-Rivers, by the oath of one credible witness, or by confession, he shall forfeit and

57. An Act More Effectively to Provide for the Regulation of the Police in Quebec and Montreal and the town of Three Rivers and for Purposes Therein Mentioned. 57 GEO III (1817)

> pay for every such offence, a sum not exceeding twenty shillings, current money of this Province, and not less than five shillings, current money of this Province; and in default of payment of such fine or penalty within six days, such journeyman, labourer, servant or apprentice shall be committed to the house of correction for a space of time not exceeding eight days, in discharge of such fine or penalty as aforesaid: Provided always, that nothing in this act contained shall be construed or intended to alter or in anywise change or interfere with the provisions or clauses of an act passed in the forty-first year of His present Majesty's reign, intituled, An act for granting to His Majesty a duty on licensing billiard tables for hire and for regulating the same.

This Act was also aimed at a specific class of society, namely journeymen, laborers, servants and apprentices. The old English influence flourished obviously.

Sporadic attempts at controlling gaming appeared throughout the span of a century. An Act of 1860 [58] in Lower Canada was directed at gaming in taverns.

> 27. The keeper of every licensed inn, tavern, temperance hotel, or other house or place of public entertainment, shall keep a peaceable, decent and orderly house, and shall not knowingly suffer any person resorting to his, her or their house to play any game whatsoever at which money or any thing which can be valued in money shall be lost or won.

This Act presumes to prohibit the playing of <u>any game</u> at which money may be won or lost.

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58. 14 & 15 VICTORIA c.100, s.11 An Act Respecting Tavern Keepers and the Sale of Intoxicating Liquors.

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Curiously, gaming control appeared in extremely odd Acts based on modern experience, the following is offered as an example from the MARRIAGE AND REGISTRARS ACT, c.24 CONSOLIDATED STATUTES OF LOWER CANADA (1861).

> 14. Every local council may make By-laws to prevent parties from driving or riding faster than an ordinary trot, in the streets or public places comprised within a radius of one mile from the principal church in the local municipality;--and for preventing gambling and the keeping of gambling houses in the municipality;[59]

The colonial province of Nova Scotia also moved to control gaming within its jurisdiction. As early as 1758 an Act existed for such purposes. As previously mentioned, lotteries were abhorred for the most part, however, the following special exemption was enacted in 1819.[60]

> An ACT to raise a sum of Money, not exceeding Nine Thousand Pounds, by Lottery, for the purpose of Building a Bridge over the River Avon, at the Point of Rocks, so called, between Windsor and Falmouth, in the County of Hants.
>
> Be it enacted, by the Lieutenant-Governor, Council and Assembly, That it shall and may be lawful for the Governor, Lieutenant-Governor or Commander in Chief for the time being, with the advice and consent of His Majesty's Council, to appoint five fit and proper persons, to be Managers and Directors for framing, making, carrying on, and drawing, a Lottery, consisting of six classes, for the purpose of raising a sum of Money not exceeding Nine Thousand Pounds, upon such scheme and plan as the majority of such Managers and Directors shall think fit, which Managers, to to be appointed as aforesaid, shall and may issue tickets in, and conduct, carry on and draw, the said Lottery, in such way and manner, and by such means, as they shall think proper and convenient.

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59. Consolidated Statutes of Lower Canada (1861)

60. Nova Scotia Statutes at Large V.3 (1817-1826)

Gaming in Canada was also dealt with by way of anti-fraud statutes. Again, Nova Scotia enacted the FRAUDULENT APPROPRIATIONS provisions in 1851.[61]

> 20. Any fraud or ill practice in playing at any game or in bearing a part in the stakes, or on betting or wagering on the event, shall be deemed to be a false pretence within the meaning of section eighteen of this chapter.

Later in its history, Nova Scotia enacted provisions for offences against public morals.

OFFENCES AGAINST PUBLIC MORALS

CHAPTER 160

> 4. Any person who shall appear or act as master or mistress, or as having the care or management of any gambling house, bawdy house or other disorderly house, shall be deemed to be the keeper thereof, and shall be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.
> 5. Any person who shall keep a common gambling house, or disorderly house, shop, room or place, may be summarily tried and convicted before two justices of the peace, or, if in the City of Halifax, before the police court; and, on conviction, shall be punished by a fine, not to exceed twenty dollars, or by imprisonment in jail or bridewell, with or without hard labor, for a term not exceeding one month, or be both fined and imprisoned, as the said justice or police court may direct.
> 6. Any justice of the peace, or, if in the City of Halifax, the mayor or any alderman, may, at any time of the night or day, enter any house, shop, room or place, suspected of being a gambling or bawdy house, shop, room or place; and it shall be their duty, upon reasonable suspicion, or on evidence tendered them under oath, so to do.

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61. Revised Statutes of Nova Scotia (1851)

> 3. Any person who shall be convicted of keeping a common gambling house, bawdy house or other disorderly house, room or place, shall be imprisoned for a term not exceeding two years.
> 8. Whoever shall undertake or set up, or shall by writing or printing, publish the undertaking or setting up of any lottery or raffle for money or goods with intent to have such lottery or raffle or to give money or other valuables for any such lottery or raffle, or shall play, throw or draw at such lottery or raffle, or shall purchase any lot or ticket for any such lottery, or shall take part in any such raffle, shall forfeit a sum not exceeding forty dollars; and in default of payment shall be committed to jail for a period not exceeding thirty days.

Ontario, too, had its temperence laws which in 1877 mirrored morality.

> "If any person licensed under this Act, permits..... or suffers any gambling or any unlawful game to be carried on on his premises, he shall be liable to a penalty of not less than $10.00 and not exceeding $50.00. 47V.c.34 s.28.[63]

Ontario's public morality legislation prohibited gaming on Sunday in 1877 as well.

> "It is not lawful on that day for any person to play skittles, foot-ball, rackets, or any other noisy game or to gamble with dice, or otherwise, or to run races on foot, or on horseback, or in vehicles of any sort.[64]

It may be seen in these pages that as the country became settled and thereby civilized, the enactment of local legislation pursuant to the Imperial Statutes was enthusiastically embarked upon.

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62. Revised Statutes of Nova Scotia (Fifth Series) (1884)

63. Revised Statutes of Ontario c.194 The Liquor License Act (1877)

64. Ibid c.203

Manitoba was no exception, having joined in Confederation in 1870 she passed laws purporting to ensure "decency and good morals", as in her Act of 1880.[64]

> CCLXXXV. Also to suppress every kind of gambling and the existence of gambling houses or houses of ill-fame.
>
> CCLXXXVI. Also to prohibit circuses, theatres, or other public exhibitions from being held; to regulate and permit them to be held upon such conditions as may be deemed fit.
>
> CCLXXXVII. Also to prevent on Sundays and holidays of obligation, horse races and all other horse exercises upon any race course or place whatever.
>
> CCXCII. Also to prevent or regulate horse racing.
>
> CCXCIII. Also to prevent or regulate, and license exhibitions held or kept for hire or profit.
>
> CCXCIV. Also to suppress gambling houses, and for seizing and destroying faro banks, rouge-et-noir, roulet tables and other devices for gambling.
>
> CCLXXXVIII. Also to prevent cock fights, dog fights, and every other cruel amusement; and punish whoever takes part in or is present at them.

Manitoba's 1880 Act gives some indication of the types of games and gaming that enjoyed popularity a century ago. Here we see the licensing of exhibitions, the regulation of horse races and the suppression of gaming houses. Of particular interest is the mention of such exotic games as faro, roulette and rouge-et-noir. Cock-fights were historically prohibited not so much to suppress the betting aspect but rather to prevent cruelty to animals.

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64. The Manitoba Town Corporations Act c.10 (1880)

The undernoted quotation contains some of the principles contained in gaming legislation passed as late as 1969 in the form of Section 190 of the Criminal Code.

> 46. The officers of any Electoral Division Agricultural Society may by their rules prohibit and prevent all kinds of gambling, theatrical, circus, or mountebank performances and also regulate or prevent the huckstering or trafficking in fruits, goods, wares or merchandise, on the exhibition grounds or within five hundred yards thereof; and any person who, after due notice of such rules and regulations, violates the same shall be liable to be removed by the officers or constables of such Society, and be subject to the penalty prescribed by the next preceding section.[65]

Manitoba also prohibited gambling on games of chance in its taverns as well.[66]

British Columbia entered into Confederation in 1871 and relied primarily upon the gaming laws as described in the Revised Statutes of Canada. These parent statutes had reached a degree of sophistication by the year 1886 and they obviously served as an important source for Sir John THOMPSON.

Accordingly, they are quoted almost in their entirety. They are of great significance to a paper of this persuasion; and, for those with an appreciation of our contemporary Code, the old legislation speaks for itself.

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65. The Agriculture & Immigration Act (Manitoba)(1891)

66. The Manitoba Liquor Licensing Act s.138 (1891)

An entire Act was directed at the suppression of gaming houses.[67] Exerpts are as follows:

> 2. If the chief constable or deputy chief constable of any city or town, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or mayor of such city or town, or to the police magistrate of any town, that there are good grounds for believing, and that he does believe, that any house, room or place within the said city or town is kept or used as a common gaming house, whether admission thereto is limited to those possessed of entrance keys or otherwise, the said commissioners or commissioner, or mayor, or the said police magistrate, may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by the chief constable, deputy chief constable or other officer,--and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise,--and to take into custody all persons who are found therein, and to seize all tables and instruments of gaming found in such house or premises, and also to seize all moneys and securities for money found herein.
>
> 3. The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming are concealed, and all persons whom he finds therein, and seize all tables and instruments of gaming which he so finds.

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67. Revised Statutes of Canada (1886) c.158 "An Act Respecting Gaming Houses"

4. When any cards, dice, balls, counters, tables or other instruments of gaming, used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming house, and entered under a warrant or order issued under this Act, or about the person any of those who are found therein, it shall be evidenced until the contrary is made to appear, that such house, room or place is used as a common gaming house and that the persons found in the room or place where such tables or instruments of gaming are found were playing therein although no play was actually going on in the presence of the chief constable, deputy chief constable or other officer entering the same under a warrant or order issued under this Act, or in the presence of those persons by whom he is accompanied as aforesaid.

7. Every one who wilfully prevents any constable or other officer, authorized under any of the preceding sections to enter any house, room or place, from entering the same, or any part thereof, or who obstructs or delays any such constable or officer in so entering, and every one who, by any bolt, chain or other contrivance, secures any external or internal door of, or means of access to, any house, room or place so authorized to be entered, or uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer authorized as aforesaid, into any such house, room or place, or any part thereof, shall, for every such offence, be liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars, with costs, and to imprisonment with or without hard labor for any term not exceeding six months.

8. If any constable or officer authorized, as aforesaid, to enter any house, room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof,--or if any external or internal door of, or means of access to any such house, room or place so authorized to be entered, is found to be fitted or provided with any bolt, bar, chain or any means or contrivance for the purpose of preventing, delaying or obstructing the entry into same, or any part thereof, of any constable or officer authorized, as aforesaid, or for giving an alarm in case of such entry,--or if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing or destroying any instruments of gaming, it shall be evidence, until the contrary is made to appear, that such house, room or place is used as a common gaming house, and that the persons found therein were unlawfully playing herein.

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9. The police magistrate, mayor or justice of the peace, before whom any person is brought who has been found in any house, room or place, entered in pursuance of any warrant or order issued under this Act, may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized as aforesaid; and no person so required to be examined as a witness shall be excused from being so examined when brought before such police magistrate, mayor or justice of the peace, or from being so examined at any subsequent time by or before the police magistrate or mayor or any justice of the peace, or by or before any court, on any proceeding, or on the trial of any indictment, information, action or suit in anywise relating to such unlawful gaming, or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any such question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpoena and refusing without lawful cause or excuse to be sworn or to give evidence, may, by law, be dealt with; but nothing in this section shall render any offender, under the sixth section of this Act, liable on his trial to examination hereunder.

10. Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice of the peace, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of the matters regarding which he has been examined; but such certificate shall not be effectual for the purpose aforesaid, unless it states that such witness made a true disclosure in respect to all things as to which he was examined; and any action, indictment or proceedings pending or brought in any court against such witness, in respect of any act of gaming regarding which he was so examined shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending or any judge thereof, or any judge of any of the superior courts of any Province.

There is little more to be said about this Act, with few modifications our present gaming laws remain in the 1886 form. The foundations of Sections 179 (DEFINITIONS), Section 180 (PRESUMPTIONS), Section 181 (WARRANT), Section 183 (EXAMINATION)(REPEALED/1983), Section 185 (KEEP COMMON GAMING HOUSE) and of Section 184 (OBSTRUCTION) of today's Criminal Code are contained therein.

Another Act,[68] passed in the same year, attacked lotteries, betting and pool selling. It served as the forerunner for Section 186 and Section 189 of the present Code. Exerpts as follows:

> Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:--
>
> 1. In this Act, unless the context otherwise requires,--
>
> (a) The expression "personal property" includes every description of money, chattel and valuable security, and every kind of personal property;
>
> (b) The expression "real property" includes every description of land, and all estates and interests therein.
>
> LOTTERIES
>
> 2. Every one who makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan, for advancing, lending, giving, selling or in any way disposing of any property, either real or personal, by lots, cards, tickets, or any mode of chance whatsoever, or sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device, for advancing, lending, giving, selling or otherwise disposing of any property, real or personal, by lots, tickets or any mode of chance whatsoever, shall be liable, on summary conviction, to a penalty of twenty dollars.

68. Revised Statutes of Canada (1886) c.159 "An Act Respecting Lotteries, Betting and Pool Selling"

3. Every one who buys, barters, exchanges, takes or receives any such lot, card, ticket, or other device, shall be liable, on summary conviction, to a penalty of twenty dollars.

4. Every sale, loan, gift, barter or exchange of any real or personal property, by any lottery, ticket, card or other mode of chance whatsoever, depending upon or to be determined by chance or lot, shall be void, and all such real or personal property so sold, lent, given, bartered or exchanged, shall be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

5. No such forfeiture shall affect any right or title to such real or personal property acquired by any bonâ fide purchaser for valuable consideration, without notice.

6. The provisions of this Act shall extend to the printing or publishing, or causing to be printed, or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and to the sale, or offer for sale, of any ticket, chance or share, in any such lottery, or to the advertisement for sale of such ticket, chance or share.

7. Nothing in this Act contained, shall prevent joint tenants, or tenants in common, or persons having joint interests (droits indivis) in any real or personal property, from dividing such property by lot or chance in the same manner as if this Act had not been passed.

8. Nothing in this Act shall apply,--

(a) To raffles for prizes of small value, at any bazaar held for any charitable object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for have thereat first been offered for sale, and none of them are of a value exceeding fifty dollars.

(b) To any distribution by lot, among the members or ticket holders of any incorporated society established for the encouragement of art, of any paintings, drawings or other work of art, produced by the labor of the members of, or published by or under the direction of such incorporated society.

As can be seen, prohibitions and exemptions are adequately covered. Section 8(b) above refers to the art union phenomena which thrived at the time. The exemption in favour of art unions was eventually dropped as cash value was often substituted in place of art as a prize. The practice became so widespread as to become common.

The issue of unlawful games or prohibited games as described under Section 189(1)(g) of our present Code seems to have been skirted to some extent by Section 4 of the Act respecting gaming houses, previously mentioned. No strict prohibitions appeared until the year 1892 when "three card monte" was an issue. Later, in 1922, definite games were cited and prohibited.

The undernoted, which is a continuance of the Act, prohibits "bookmaking" as we know it today. The Section also alludes to an exemption for bona-fide, pari-mutual type horse races.

BETTING AND POOL-SELLING

9. Every one who,--

(a) Uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool,--

(b) Keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus, for the purpose of recording or registering any bet or wager or selling any pool.

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(c) Becomes the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged, or,--

(d) Records or registers any bet or wager, or sells any pool,--

Upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast,--

Is guilty of a misdemeanor, and liable to a fine not exceeding one thousand dollars, and to imprisonment for any term not exceeding one year:

2. Nothing in this section shall apply to any person by reason of his becoming the custodian or depositary of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals. 40V., c.31, ss.1 and 2.

Chapter 160 of the same series of Acts in 1886 dealt with gambling in public conveyances and it is the parent statute for our modern Section 191 of the Code. It provided for penalties to be imposed upon persons in authority on such conveyances, for failing to discharge their enforcement duties in this regard. Furthermore, persons found gambling under these circumstances were subject to larceny laws of the day.

Part of the Act[69] is presented below:

1. Every one who in any railway car, or steam-boat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property, is guilty of the misdemeanor of obtaining the same unlawfully by false pretences, and liable to imprisonment for any term less than one year.

69. Revised Statutes of Canada (1886) c.160 "An Act Respecting Gambling In Public Conveyances".

Cock-pits and the like were treated in the traditional manner, that is, under legislation dealing with cruelty to animals.[70]

> 3. Every one who builds, makes, maintains or keeps a cockpit on premises belonging to or occupied by him, or allows a cockpit to be built, made, maintained or kept on premises belonging to or occupied by him, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding fifty dollars, or to imprisonment for any term not exceeding three months, with or without hard labor, or to both:
>
> 2. All cocks found in any such cockpit, or on the premises wherein such cockpit is, shall be confiscated and sold for the benefit of the municipality in which such cockpit is situated.

70. Revised Statutes of Canada (1886) c.172 "An Act Respecting Cruelty to Animals"

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CANADIAN GAMING LEGISLATION - COMING OF AGE 1892-1983

The first Canadian Criminal Code, enacted in 1892 served to codify the existing common law on crimes, including gaming. Changes made over the years were relatively minor, however, where the gaming laws are at issue, the motivation for change became more mercenary than moral. A "new morality" emerged at a pace previously unmatched by any period in our short history.

Since people's views change almost imperceptibly as to what is sinful, it is understandable that the Criminal Law cannot always keep in step with public policy. In point of fact, because of our sluggish legislative process, the Code often lags far behind moral changes in our society.

The nine decades that have followed the gaming legislation of 1892 saw few major changes until the enactment of Section 190 of the Criminal Code in 1969. Since that time, it will be demonstrated, gaming and gambling have been gaining an unnerving momentum in the eyes of those of us whom are close to it.

The original clauses of the Criminal Code of 1892 dealing with the suppression of gaming are reproduced for the reader's convenience. The absence of any provisions for the regulation of gaming of any consequence is noteworthy.

196. A common gaming-house is--
(a) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance; or
(b) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which--
    (i) a bank is kept by one or more of the players exclusively of the others; or
    (ii) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet.

197. A common betting-house is a house, office, room or other place--
(a) opened, kept or used for the purpose of betting between persons resorting thereto and --
    (i) the owner, occupier, or keeper thereof;
    (ii) any person using the same;
    (iii) any person procured or employed by, or acting for or on behalf of any such person;
    (iv) any person having the care or management, or in any manner conducting the business thereof; or
(b) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such persons as aforesaid, as or for the consideration,
    (i) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game or sport; or
    (ii) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.

These definition sections have been refined over the years and, in fact, are now amalgamated under Section 179 of the Code. They still bear a remarkable resemblance to the 1892 form and, in turn, the wording and structure of 33 Henry VIII c.9 is evident.

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Comments as to the motivational factors involved in passing our gaming legislation over the years, or as to its effect, will be reserved until later in the paper. I propose to present the "pioneering" Criminal Code gaming sanctions and I wish to highlight developments of significance to the subject up to the present.

These developments include those of a legislative nature and they also involve a review of the parliamentary processes contributing to that end. A complete breakdown of the historical development of each section of Part V of the present Criminal Code will be recorded herein as well, beginning at the present and working back into history. This will take the form of a straightforward accounting of amendments by statute number and chapter., These statutes are contained in various locations throughout two separate libraries at the University of Alberta and the task of chronicalling them was extremely time consuming. The purpose of such material is to allow the reader to use it as an index in the event that the historical development of any particular clause is required for court purposes or for instructional purposes. Fairly comprehensive examinations of each section's development will be offered for consideration.

Furthermore, by utilizing this method, it will not be necessary to include a table of concordance. The most important changes will be discussed rather than dissected in the body of the paper.

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One last point should be mentioned about the form of this paper before returning to the 1892 Criminal Code. The case law developing from our gaming legislation is of paramount importance to its interpretation and its resulting enforcement. For the purposes of this study, however, it has been largely ignored.

The appropriate case law will be presented in a research paper subsequent to the one at hand which will be a gaming investigational guide. It will be entitled CANADIAN GAMING LAWS AND RELATED STATUTES.

Returning then to the 1892 Code, the following was the substantive clause dealing with "keeping" a "disorderly" house which included bawdy hosues, gaming houses and betting houses.

> 198. Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.
>
> 2. Any one who appears, acts, or behaves as mastar or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof.

The offence of "keeping" was indictable while being "found in" a disorderly house or obstructing peace officers from entering same was punishable on conviction by way of summary conviction procedure.

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199. Every one who plays or looks on while any other person is playing in a common gaming-house is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars and not less than twenty dollars, and in default of payment to two months' imprisonment.

200. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who--

(a) wilfully prevents any constable or other officer duly authorized to enter any disorderly house, as mentioned in section one hundred and ninety-eight, from entering the same or any part thereof; or

(b) obstructs or delays any such constable or officer in so entering; or

(c) by any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming-house so authorized to be entered; or

(d) uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof.

It should be mentioned that gaming in stocks and merchandise was also an indictable offence contrary to Section 201 of the 1892 Code. An establishment catering to persons wagering on the changes in market quotations were commonly known as "bucket shops". This provision was repealed after the turn of the century.

Gambling in a public conveyance was deemed to be an indictable offence and it remains as such today.

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203. Every one is guilty of an indictable offence and liable to one year's imprisonment who--

(a) in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or

(b) attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

2. Every conductor, master or superior officer in charge of, and every clerk or employee when authorized by the conductor os superior officer in charge of, any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, must, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit the same, and take him before a justice of the peace, and make complaint of such offence on oath, in writing.

3. Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

4. Every company or person who owns or works any such railway car or steamboat must keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

5. Every company or person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars.

Bookmaking and the beginnings of the pari-mutuel concept of legal betting exemption were addressed in the 1892 Act.

204. Every one is guilty of an indictable offence, and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who--

(a) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or

(b) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager or selling any pool; or

(c) becomes the custodian or depositary of any money, property or valuable thing staked, wagered or pledged; or

(d) records or registers any bet or wager, or sells any pool, upon the result--

(i) of any political or municipal election;

(ii) of any race;

(iii) of any contest or trial of skill or endurance of man or beast.

2. The provisions of this section shall not extend to any person by reason of his becoming the custodian or depositary of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game, or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting.

Judging by the penalties imposed by the Lotteries clause, the ancient attitudes toward the practice endured at this time.

205. Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, who--

(a) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or

(b) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever.

2. Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all such property so sold, lent, given, bartered or exchanged, is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

4. No such forfeiture shall affect any right or title to such property acquired by any bonâ fide purchaser for valuable consideration, without notice.

5. This section includes the printing or publishing, or causing to be printed or published of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share.

This section does not apply to--

(a) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (droits indivis) in any such property; or

(b) raffles for prizes of small value at any bazaar held for any charitable object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality wherein such bazaar is held and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars; or

(c) any distribution by lot among the members or ticket holders of any incorporated society established for the encouragement of art, of any paintings, drawings or other work of art produced by the labour of the members of, or published by or under the direction of, such incorporated society;

(d) the Crédit Foncier du Bas-Canada, or to the Crédit Foncier Franco-Canadien.

As the harbinger of modern Section 189 of the Code, the phenomena of chain letters was not yet in vogue and, therefore, not contemplated here. Exemptions for agricultural fairs were yet to come as was the specific prohibition of certain games, including slot machines.

Keeping a cock-pit was handled by way of summary conviction and it appears that the hapless fowl were consumed regardless of their status as exhibits.

513. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging or occupied by him.

2. All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated.

Cheating at play using "three card monte" was an offence under the fraudulent appropriations part of the Code until 1922. At this time, cheating at play was made a separate offence and "three card monte" achieved the status of a prohibited game in Canada.

There have been many vagaries in our gaming legislation since 1892, each of which will be closely scrutinized in the pages that follow.

Upon reflection, one wonders about the extent of gambling defined as being problematic in this era. Sir John THOMPSON insinuated in Parliament that "laws that seemed to be peculiarly applicable to Canada" were selected for inclusion in the first Criminal Code. It follows that gaming houses, cheating at play, illegal lotteries and gambling in public conveyances warranted attention in 1892.

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Two of the few reliable historical sources upon which I have drawn for information concerning this period are the field reports of North West Mounted Policemen CONSTANTINE and STEELE. CONSTANTINE is quoted by ATKIN [71] on the situation in 1897 at Dawson in the Yukon.

> "By the end of the summer, when Fort Herchmer was reporting a plentiful supply of 'money, whiskey, whores and gamblers' in Dawson. 'I could fill the guardrooms but cannot spare the men or rations,' he wrote."

On STEELE, ATKIN states:

> "Gambling-houses were left as he (STEELE) found them- wide open but closely watched: he realised that the life of Dawson City would be brief indeed and its like would never be seen again."[72]

Gamblers were not entirely ignored, however, as the following passage illustrates:

> "When one gambler, fined $50 by STEELE, said contemptuously, 'Fifty dollars-is that all? I've got that in my vest pocket.' STEELE added, 'And sixty days on the woodpile. Have you got that in your vest pocket?'"[73]

Most of the "professional" gamblers were Americans whom had left the defunct California goldfields for easier pickings. Many operated out of Skagway, Alaska, which the United States had only acquired from Russia in 1867. They emigrated to the Yukon which, unlike Alaska, boasted law and order, the transition must have been difficult for them.

71. ATKIN, Ronald, Maintain the Right, (1973) MacMillan, London p.321

72. Ibid

73. Ibid

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Ironically, eighty-three years later, my Mounted Police partners and I found ourselves auditing a full scale gambling casino at Dawson City which was being managed by a professional American gambler.

The gambling situation throughout Southern Canada was holding its own as indicated by the multitude of reported cases arising out of litigation. What, then, was the Canadian gaming legislative experience destined to become after 1892?

Not surprisingly, our laws developed as did England's, through contest and changing public policy. By 1900, the offence of "cheating at play" by confidence men travelling across the country "in public conveyances" was a noticeable problem. The injustice of this practice served to maintain the prohibiting laws as did the rampant prevailance of fraud in lottery schemes. These factors beg elaboration and more will be said about them later.

Fraud and theft by trick, along with Victorian morals and ethics fostered the undesirable image of gaming in Canada for many years after the Queen's death. Gambling on any scale of consequence in this country, except where it involved the "sport of kings" (horse racing), was decreed by legislators as being a "pernicious vice". This attitude prevailed throughout the first half of the twentieth century. Nevertheless, gambling proliferated and prospered here as it has elsewhere over the centuries, in spite of sanctions against it.

It is beyond comprehension that our early legislators could anticipate the potential games possessed for burgeoning into the multi-billion dollar industry it has become. Indeed, our modern gaming laws fail to meet the challenge of the futuristic gaming phenomena we find ourselves faced with now.

As my counterpart, Cpl. G. Bruce JOHNSTONE of the R.C.M. Police, "F" Division postulates in his article, ARCADES AND SLOT MACHINES[74], the invention of sophisticated video machines, which lend themselves to gambling, present enforcement problems previously unknown.

> "RECENT DEVELOPMENTS IN VIDEO MACHINES
>
> Because of the versatility of micro-circuit components used in the modern amusement games, there has appeared a whole new family of subterfuge gambling devices functioning like "one-armed bandits", but designed to pass off as "amusement games".[75]

Later in that same article, Cpl. JOHNSTONE alluded to an investigative aid contained under Section 183 of the Criminal Code (Examination of Persons Found In a Disorderly House). His paper had been drafted prior to that Section being repealed in January of 1983. The irony of the situation is that instead of legislators meeting modern gaming problems, they may be unwittingly compounding them.

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74. Johnstone, G.B.' ARCADES AND SLOT MACHINES, (R.C.M.P. Gazette, V.45, No.1, 1983) P.P. 9-14

75. Ibid. p.10

In order to facilitate an understanding of the historical progression and in the view of some - regression, of Canada's gaming laws, the following format will be used. I propose to present a Statutory documentation of same based on amendments and enactments as they appeared chronologically.

One of my primary objectives includes allowing my readers an understanding of the origins of our gaming laws as they appear in the 1983 Criminal Code. It is submitted that by reversing their chronological order of appearance and by tracing back into time, such an exercise will contribute to an ease of comprehension.

The origins of some of the clauses contained in Part V of the Code are identical and some duplication will be evident. Beginning with Section 179 then, its origins are traced as follows:

SECTION 179 "DEFINITION SECTION"

Section 179(1) "Bet" & "Common Betting House"

1983: R.S.C. 1972, c.13, c.13
1970: R.S.C. 1970, c.28 (s.1678 becomes 179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-54, c.51, s.168
1922: R.S.C. 1922, c.16, s.12
1910: R.S.C. 1910, c.10, s.1
1895: R.S.C. 1895, c.40, s.1
1892: R.S.C. 1892 - 55-56 V., c.29, s.197
1886: R.S.C. 1886 - 49.V., c.159, c.9 #
1877: R.S.C. 1877 - 40.V., c.31, ss.(1)(2) ##
1853: IMP. 1853 - 16-17 V., c.119 ###

\# "An Act Respecting Lotteries, Betting & Pool Selling" (1886)
"An Act For the Repression of Betting & Pool Selling" (1877)
"An Act For the Suppression of Betting Houses" (1853) (Imperial)
R.S.C.: Revised Statutes of Canada
IMP: Imperial Statutes (England)

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The following passage from Hansard may be of some assistance when the above noted, apparently widespread, statutes are concerned.

> The first Canadian Criminal Code, enacted in 1892, merely codified the existing common law on crimes. Changes made over the years were relatively minor and there was no general revision of the Code until the 1953-54 session of parliament at which time the revision was more remarkable for its rearrangement and consolidation of existing law than for its innovation. It is not exaggeration to say that the omnibus bill would, if passed, effect the most important change in the criminal law since it came into effect in the form of a Code in 1892.

With the exception of the year 1922, 1953-54 and 1968-69 were the only periods of significance for the purposes of this study. In particular, the "omnibus bill" of 1968-69 was profound in its effect on gaming in Canada. Each period will receive significant coverage herein.

The definition of "bet" was introduced in its present form in the 1953-54 revision, it was drawn from former statutes as listed above. The definition was incorporated into its own from previous references to gaming houses, betting houses and race-track provisions.

The definition of "betting house" was also new in 1953-4 having been drawn from Section 197 of the Code of 1892 and from the 1853 statute of Victoria cited. It must be remembered that until 1953, the substantive charge used against "keeping" gaming, betting and bawdy houses involved keeping Disorderly Houses. The former were merely definition sections unto themselves.

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SECTION 179(1) (Continued)

"COMMON GAMING HOUSE"

1983: R.S.C. 1972, c.13, s.13
1970: R.S.C. 1970, c.38 (s.168 becomes s.179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-54, c.51, s.168
1938: R.S.C. 1938, c.44, s.12
1918: R.S.C. 1918, c.16, s.2
1895: R.S.C. 1895 58-59 V., c.40, s.1.
(IMP) 9-10, EDW. VII c.10 #
1854: (IMP) 1854 16 & 17 V., c.119 ##
1845: (IMP) 1845 8 & 9 V., c.109 ###

"Gaming Houses Act"

"An Act for the Suppression of Betting Houses"

"An Act to Amend the Law Concerning Gaming & Wagers"

The history of gaming houses is, of course, long and the subject has been addressed by legislation since the sixteenth century. The definition of same comes from Section 196 of the 1892 Code and from the Imperial statute of 1845 prior to that. More will be said about gaming houses when Section 185 is reviewed.

SECTION 179(1) (Continued)

"DISORDERLY HOUSE" (BAWDY, BETTING, GAMING)

1983: R.S.C. 1972, c.13, s.13

1970: R.S.C. 1970, c.38 (s.168 becomes s.179)

1968-69: R.S.C. 1968-69, c.38, s.9

1953-54: R.S.C. 1953-54, c.51, s.168

NOTE: Prior to the 1953-54 revision "Disorderly House" (Keeper & Found In - S.228 & S.229) was the substantive charge - Bawdy, Gaming & Betting were merely definition sections.

1948: R.S.C. 1948, c.39, s.(1)

1923: R.S.C. 1923, c.41, s.2.

1915: R.S.C. 1915, c.12, ss.(5)(6)

1913: R.S.C. 1913, c.13, ss.(10)(11)

1909: R.S.C. 1909, c.9, s.2

1906: R.S.C. 1906, c.146, s.228

1892: R.S.C. 1892, 55-56 V., c.29, s.198

1751: IMP 1751 25. GEO. II, c.36 #

"Disorderly Houses Act"

The term "disorderly house" has degenerated over the years to the point where it is now used as a general term to describe the houses noted. It is interesting to note that our present Code definition relies on a 1751 statute.

The term has recently come into prominence with the repealing of Section 183 of the Criminal Code (EXAMINATION OF PERSONS ARRESTED IN DISORDERLY HOUSES). This action has the potential of undermining the foundation upon which the special gaming warrant under Section 181 of the Code rests. More will be said about this under the headings "WARRANT" and "EXAMINATION".

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SECTION 179(1) (Continued)

"GAME"

1983: R.S.C. 1972, c.13, s.13
1970: R.S.C. 1970, c.38 (s.168 becomes s.179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-54, c.51, s.168

(New Form of Definition in 53-54 Origin "OLD" 226 & 985)
OLD S. 226 - "Common Gaming House Defined"
OLD S. 985 - "Gaming Instruments Defined & Prohibited"
(Cards, Dice, Balls, Counters, Tables)

SECTION 985

1918: R.S.C. 1918 8-9 Geo. V, c.167, s.4
1906: R.S.C. 1906, c.146, s.985
1900: R.S.C. 1900, 63-64 V., c.46, s.3
1892: R.S.C. 1892, 55-56 V., c.29, s.702
1845: (IMP) 1845, 8 & 9 V., c.109 ##

SECTION 226

1918: R.S.C. 1918, 8-9 Geo V, c.16, s.2
1906: R.S.C. 1906, c.146, s.226
1895: R.S.C. 1895, 58-59 V., c.40, s.1
1892: R.S.C. 1892, 55-56 V., c.29, s.196
(IMP) 9 & 10, Edw. VII, c.10
1854: (IMP) 1854, 16 & 17 V., c.119 #
1845: (IMP) 1845, 8 & 9 V., c.109 ##

"An Act for the Suppression of Betting Houses"

"An Act to Amend the Law Concerning Gaming and Wagers"

The import upon which the definition of the word "game" has been placed in recent years could not have been perceived when it too was included as a new addition to the 1953-54 Code.

Coupled with the provisions contained in the 1968-69 revision pertaining to "Permitted Lotteries", specifically Section 190(5), casino events as we know them now were spawned.

Fortunately, the police have experienced little difficulty with the rather straightforward definition. This is mainly attributed to a Supreme Court of Canada decision. [76]

The first rule to be observed in construing any statute was that, unless there was ambiguity, it was to be applied literally. Applying this rule to Section 179(1), it seemed clear that Parliament sought to avoid the uncertainties involved in trying to ascertain the predominent factor in mixed games of chance and skill by enacting that they would be treated in the same way as games of pure chance. Taken by themselves, the words used in that section to define "game" were not ambiguous and applied to any game of chance only or of mixed chance and skill regardless of the respective proportions of the two elements.

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76. Ross, Banks & Dyson v The Queen (1968) 4 C.R.N.S. 233 S.C.C.

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Another "new" addition to the Code in 1953-4 was the specific definition of the term "gaming equipment".

SECTION 179(1) (Continued) Also See S.180 & S.181 1980 C.C.

"GAMING EQUIPMENT" (PRESUMPTIONS) (SEARCH)

1983: R.S.C. 1972, c.13, s.13
1970: R.S.C. 1970, 3.38 (c.168 c.179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-4, c.51, s.168

(S.179 - 1982)

NOTE: 1953-4 C.C. was S.168(1)(g) which is complimentary to S. 169 & 171 of that Code and must be read with them.

(S.169) PRESUMPTION - S.169 combines the former ss.985 & 986(1)(2) & (3) which came from ss. 702 & 703 of the 1892 Code. ss. 702 origin Gaming Act 1845 (IMP)/S.703 origin Gaming Houses Act 1854.

(S.171) SEARCH - Of the 53-54 C.C. (Now S.181) came from the former S.641. It was S. 575 in 1892 Code which with amendments relating to lotteries came from R.S.C. 1886 c.158. This in turn consolidated 38 V., c.41, s.1, "An Act Respecting Gaming Houses" & 40 V., c.33, s.1.

S.179 S.169 S.985 (PRESUMPTION FROM GAMING EQUIPMENT)

1918: R.S.C. 1918, 8-9 Geo V., c.16, s.4
1906: R.S.C. 1906, c.146, s.985
1900: R.S.C. 1900, 63-64 V., c.46, s.3.
1892: R.S.C. 1892, 55-56 V., c.29, s.702
1845: (IMP) 1845, 8 & 9 V., c.109 #

"An Act to Amend The Law Concerning Gaming & Wagers"

S.179 S.169 S.986(1)(2)&(3) (EVIDENCE OF A DISORDERLY HOUSE

1925: R.S.C. 1925, c.38, s.24
1924: R.S.C. 1924, c.35, s.1
1921: R.S.C. 1921, c.25, s.17
1918: R.S.C. 1918, c.16, s.5
1913: R.S.C. 1913, c.13, s.29
1906: R.S.C. 1906, c.146, s.986
1900: R.S.C. 1900, c.46, s.3
1892: R.S.C. 1892, 55-56 V., c.29, s.703
1854: (IMP) 1854, 16 & 17 V., c.119 #

"An Act for the Suppression of Betting Houses"

S.181 S.171 S.641 (SEARCH IN GAMING HOUSES)

1927: R.S.C. 1927, c.42, s.641
1925: R.S.C. 1925, c.38, s.17
1913: R.S.C. 1913, c.13, s.21
1906: R.S.C. 1906, c.146, s.641
1895: R.S.C. 1895, c.40, s.1
1894: R.S.C. 1894, c.57, s.1
1892: R.S.C. 1892, 55-56 V., c.29, s.575
1886: R.S.C. 1886, 49 V., c.158 #
1877: R.S.C. 1877, 40 V., c.33, s.1 ##
1875: R.S.C. 1875, 38 V., c.41, s.1 ###

"An Act Respecting Lotteries, Betting & Pool Selling"
"An Act for the Repression of Betting & Pool Selling"
"An Act Respecting Gaming Houses"

As can be seen, this definition draws upon a wide range of statutes. This is somewhat amusing when the Code is consulted and one is met with an extremely short and simple explanation of the term.

The undernoted definition was reduced to the general section from separate status in 1953-54 as well. Its origins can be seen in the statute of 1751.

SECTION 179(1) "KEEPER"

1983: R.S.C. 1982, c.13, s.13
1970: R.S.C. 1970, c.38 (s.168 179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-54, c.51, s.168

(New Form of Definition in 53-54 - Origin "Old" 229)
OLD S.229 "Keeping a Disorderly House"

1923: R.S.C. 1923, 13-14 Geo. V, c.41, s.2
1915: R.S.C. 1915, 5-6 Geo V., c.12, ss. (5)(6)
1913: R.S.C. 1913, 3-4 Geo. V., c.13, ss. (10)
1909: R.S.C. 1909, c.9, s.2
1906: R.S.C. 1906, c.146, s.228
1892: R.S.C. 1892, 55-6 V., c.29, s.198
1751: (IMP) 1751, 25 Geo II, c.36 #

"Disorderly Houses Act"

Again, my comments for the most part will fall under the review of Gaming Houses under the substantive Section 185 of the Code.

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SECTION 179(1) "PLACE"

1983: R.S.C. 1972, c.13, s.13
1970: R.S.C. 1970, c.38 (s.168 179)
1968-69: R.S.C. 1968-69, c.38, s.9
1953-54: R.S.C. 1953-54, c.51, s.168
1943: R.S.C. 1943, c.23, s.7
1936: R.S.C. 1936, c.29, s.7
1922: R.S.C. 1922, 12-13 Geo.V, c.16, s.12
1910: R.S.C. 1910, 9-10, EDW VII, c.10, s.1
1906: R.S.C. 1906, c.146, s.227
1892: R.S.C. 1892, 55-56V., c.29, s.197
1886: R.S.C. 1886, 49V., c.159, s.9 #
1877: R.S.C. 1877, 40V., c.31, ss.(1)(2) ##
1853: (IMP) 1853, 16-17V., c.119 ###
1845: (IMP) 1845, 8-9V., c.109 ####
1751: (IMP) 1751, 25 G.II, c.36 #####

\# "An Act Respecting Lotteries, Betting and Pool Selling"
"An Act for the Repression of Betting & Pool Selling"
"An Act for the Suppression of Betting Houses"
"An Act to Amend the Law Concerning Gaming & Wagers"
"The Disorderly Houses Act"

The definition of "place" was actually contained under the 1910 statute much as it appears now. The 1910 Section defined "Common Betting House".

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"GAMING HOUSES"

"EXCEPTION FOR"

SECTION 179(2) "BONA FIDE SOCIAL CLUB"

1970: R.S.C. 1970, c.38 (s.168 179)
1968-69: R.S.C. 1968-9, c.38, s.9 (new)

NOTE: Provinces given licensing authority for social clubs and fee structure removed.

1953-54: R.S.C. 1953-54, c.51, s.168(2)(a)(b)
1938: R.S.C. 1938, c.44, s.12

SECTION 179(3) "ONUS"

1970: R.S.C. 1970, c.38 (s.168 179)
1968-69: R.S.C. 1968-9, c.38, s.9
1953-54: R.S.C. 1953-4, c.51, s.168(3)

ORIGIN: R. vs. HELLENIC COLONIZATION ASSN (1942)

The issue of "Bona Fide Social Clubs" has emerged as a recurring problem in jurisdictions which issue licenses permitting their existence. The tendency is for such clubs to become proprietory in nature is strong. The problem lies not so much with the law as with the failure of licensing authorities to follow up on their permits.

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The licensing of such clubs was the brainchild of Henry VIII and as such, the practice as continued today has its roots in sixteenth century legislation. It has been prohibited and permitted intermittently over the decades.

My comments under "Gaming Houses" will include a discussion of this phenomena, including the inevitable fate of "REVERSE ONUS".

SECTION 179(4) "GAMING HOUSE - PART OF GAME ELSEWHERE"

1970: R.C.S. 1970, c.38 (s.168 179)
1968-69: R.S.C. 1968-9, c.38, s.9
1953-54: R.S.C. 1953-4, c.51, s.168
1918: R.S.C. 1918, c.16, s.2
1910: R.S.C. 1910, 9-10, EDW VII, c.10
1906: R.S.C. 1906, c.146, s.226
1895: R.S.C. 1895, c.40, s.1
1892: R.S.C. 1892, 55-6V., c.29, s.196
1853: (IMP) 1853, 16-17V., c.119
1845: (IMP) 1845, 8-9V., c.109

Although a great deal of literature is not available as regards this subsection, it appears to have been added to the old gaming house definition clause shortly after the turn of the century. The advent of either "floating" games or tournament play and perhaps illegal lotteries may have precipitated its introduction.

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It should be mentioned at this point that I must resist the temptation to divert from a purely historical presentation. My inclination is, of course, to pause and discuss matters of an investigational, judicial and constitutional ilk. All in good time. These are arguments more suited to the paper which follows and accordingly I must refer my readers to that document if that is where their interest lies. If I may reiterate, this paper is concerned with the historical evolution of Canada's gaming legislation. What developed from that on an empirical plane is another subject altogether, albeit all of the processes are parts contributing to the whole.

"Presumptions" are peculiar to gaming legislation on a scale greater than other areas of our criminal law. They are extremely topical from a constitutional point of view in 1983. They are included obviously to aid the enforcement bodies in policing what the legislators have perceived as being a deviation which is very adaptable to eluding the law by becoming clandestine. Presently contained under Section 180 of the Code, the legislation developed as follows.

SECTION 180 "PRESUMPTIONS"

1974/75/76:	R.S.C. 1974/5/6, c.93, s.10
1968-69:	R.S.C. 1968-9, c.38, s.92
1953-54:	R.S.C. 1953-4, c.51, ss.169-170
1938:	R.S.C. 1938, c.44, s.46
1925:	R.S.C. 1925, c.38, s.24
1924:	R.S.C. 1924, c.35, s.1
1921:	R.S.C. 1921, c.25, s.17
1918:	R.S.C. 1918, c.16, ss.(4)(5)
1913:	R.S.C. 1913, c.13, s.29
1906:	R.S.C. 1906, c.146, ss. 985 & 986
1900:	R.S.C. 1900, c.46, s.3
1892:	R.S.C. 1892, c.29, ss. 703 & 702
1854:	(IMP) 1854, c.119
1845:	(IMP) 1845, c.109

Prior to the revision of the Code in 1968-69, the presumptions arising from obstruction and slot machines were independent clauses. In fact, the two are different presumptions altogether. They are presumptions of law, which are rebuttable, as contained under Section 80(1) of the 1983 Code and presumptions of fact as found in Section 180(2).

The presumption under Section 180(1) concerning law involves the concept of "reverse onus" which shifts the burden of proof from the Crown to the accused. Prior to the inception of the Charter of Rights as enacted in 1981, this fact was a non-issue. I believe we are now faced with such a concept now becoming a constitutional matter.

The modern provisions contained in Sections 180(1)(b)(c) and (d) may be in similar jeopardy because of the new constitutional rights of the individual. This and the following comment on Section 180(2) of the Code are history in the making and are cause for great interest in my opinion.

It is of paramount significance that the provision contained under Section 180(2) of the Code regarding slot machines is the ONLY CONCLUSIVE PRESUMPTION contained in the Criminal Code. It is a presumption of fact and as such, it is irrebuttable. This section is tied to Section 185 of the Code and to Section 181. It would appear that this provision is in even greater jeopardy that its preceding clause, for the same reasons. Historically, its fate will be of great legislative interest as well.

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The cases turning on these provisions are voluminous and, in fact, most were argued on constitutional grounds under the B.N.A. Act. On a positive note, from the Crown's perspective at least, is the fact that throughout our brief legislative history, the slot machine issue has evolved around property rights, rather than personal rights. The new Charter of Rights does not guarantee property rights and, therefore, such arguments may be abandoned. However, I am digressing.

Another area of great import to any discussion of Canadian gaming legislation is that surrounding our special warrant under Section 181 of Part V of the 1983 Code. Its history can be traced as far back as 1875 and it, too, is steeped in controversy today.

SECTION 181 "WARRANT TO SEARCH" SEIZURE-ARREST-FORFEITURE

1968-69:	R.S.C. 1968-9, c.38, s.10
1968-69:	R.S.C. 1968-9, c.37, s.1
1953-54:	R.S.C. 1953-4, c.51, s.171
1950:	R.S.C. 1950, c.11, c.8
1927:	R.S.C. 1927, c.42, s.641
1925:	R.S.C. 1925, c.38, s.17
1913:	R.S.C. 1913, c.13, s.21
1906:	R.S.C. 1906, c.146, s.641
1895:	R.S.C. 1895, c.40, s.1
1894:	R.S.C. 1894, c.57, s.1
1892:	R.S.C. 1892, c.29, ss.575
1888:	R.S.C. 1888, c.42, s.1 #
1886:	R.S.C. 1886, c.158 (Which Consolidated)
1877:	R.S.C. 1877, 40V, c.33, s.1 ##
1875:	R.S.C. 1875, 38V, c.41, s.1 ###

\# "An Act Respecting Gaming in Stocks & Merchandise
"An Act for the Repression of Betting & Pool Selling"
"An Act Respecting Gaming Houses"

The origins of the special warrant can be found in the 1892 Code (S.575) which, with amendments relating to lotteries, came from the Act of 1886, this in turn consolidated the Acts of 1877 and 1875. The seizures of telephone equipment was an issue as long ago as 1888 when the Act against bucket shops, 51 V.c.42 was under discussion (HANSARD, 1888, p.1405). It continued until 1950 when, as a result of R. v. BELL TELEPHONE CO. (1947) 89 C.C.C. 196, the section was amended to its present stature.

Again, the Constitution Act of 1981 will come to bear upon this provision with arguments settling around the police "report in writing " and the absence of a time limit on the life of the warrant. This, coupled with its previous application under Section 183 (Repealed), has always caused the warrant to be viewed with a jaundiced eye by the courts.

The following passage illustrates my point, it is of even greater relevance that PAIKIN made his statement prior to the 1981 Constitution Act.

> "A justice presented with a report in writing under subsection 181(1) should have in mind not only the derogation from privacy rights which warrants effect generally, but also the infringement on the individual's protection against self-incrimination which might flow from the issuance of this special warrant." [77]

77. Law Reform Commission of Canada, Criminal Law Series, The Issuance of Search Warrants, (1980) Minister of Supply & Services Canada, p.66

The repealing of Section 183 of the present Code bears close watching by those pondering the legislative path of Part V. It has the potential of creating a domino effect within the Part, and it is interesting to indulge in informed speculation.

SECTION 183 C.C. "EXAMINATION OF PERSONS ARRESTED IN DISORDERLY HOUSES

1983: Repealed
1968-69: R.S.C. 1968-9, c.38, s.183
1953-54: R.S.C. 1953-4, c.51, s.174
1909: R.S.C. 1909, c.9, s.2
1906: R.S.C. 1906, c.146, s.642
(WHICH CONSOLIDATED)
1886: R.S.C. 1886, c.158, ss.9 & 10, N.B. #
1875: R.S.C. 1875, c.41, s.1 ##
1854: (IMP) 1854, c.119 ###

\# "An Act Respecting Lotteries Betting & Pool Selling"
"An Act Respecting Gaming Houses"
"An Act for the Suppression of Betting Houses"

The reasoning behind the repealment of Section 183 is summarized by the following from HANSARD.[78]

> **"The provisions that deal with the bawdy house laws which violate the principles that have been enunciated by the Law Reform Commission of 1978, have no part whatsoever to play in the twentieth century Criminal Code."**

78. H. of C. Debates, V.124, #395, 82.8.4, P.20045

The problem which arose under this provision (S.183-1983) concerned the use to be made of the examination under ss.(1) of a person found in a disorderly house. Under the former subsection (642-(2)) the judge, justice or magistrate might give to such person on his examination a certificate stating that he has made a full disclosure in respect of all things regarding which he was examined, and this certificate was a bar to any proceedings against himself in respect of the matters disclosed. This applied only to gaming.

The new Code altered this by providing that his answers shall not be used against him except in cases of perjury, whether or not he claims protection, but otherwise puts him in the same position as any witness.

The provisions now being considered were not in the Code of 1892. They were brought in by the consolidation in 1906 of ss. 9 & 10 of the R.S.C. 1886, c.158, An Act for the Suppression of Gaming Houses. The power of examination was contained in the Gaming Act, 1854s5 (IMP). The original Canadian Act was c.41 of 1875, the relevant portion of which was explained in the House of Commons (Debates 1875, p.805), as follows:

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"The Act provided that persons arrested in the house would be required to give evidence as to what was going on, and should not be allowed to protect himself (SIC) by the statement that his evidence would be incriminating. At the same time, if he made a fair and full disclosure to the satisfaction of the Court, he would receive a certificate that would prevent any of the facts being used to his injury. This vice might not be so prevalent in our country as in some other countries, but it was assuming proportions in this country, especially in some of the frontier towns and villages, where it was customary for persons to come from the other side to carry out gambling with impunity within our borders, because the arm of the law was too weak to reach them here. He hoped that this law would pass and it would have the effect of preventing them from continuing such practises."[78]

The following quotation of MARTIN is noteworthy in this respect:

"THE QUESTION THEN IS THIS: Is the suppression of disorderly houses an end so desirable as to justify the use in criminal proceedings of statements made under compulsion of statute, as was done most notably in R. v. SCOTT & WALKER v. R? Admittedly, this is a question on which there may be sincere differences of opinion.....From the practical side, there is ample evidence of the difficulties encountered by the police in their efforts to cope with the subterfuges and shifting "setups" of professional gamblers."[79]

78. H. of C. Debates (1875) p.805

79. Martin's Criminal Code (1955) P. 321-322

We are entering a new era obviously. The rights of the individual as regards self incrimination are taking precedence in gaming matters. What is of significance, once again, is the imputed effect on the remainder of Part V.

Along with the special warrant provisions under Part V is complementing legislation regarding the obstruction of peace officers in executing same. This, too, has been with us for some time, in fact, since 1875.

SECTION 184 C.C. "OBSTRUCTION"

1968-69: R.S.C. 1968-9, c.38, s.184
1953-54: R.S.C. 1953-4, c.51, s.175
1910: R.S.C. 1910, c.10, s.2
1906: R.S.C. 1906, c.146, s.230
1892: R.S.C. 1892, c.29, s.200
1886: R.S.C. 1886, c.158
1877: R.S.C. 1877, c.33, s.1
1875: R.S.C. 1875, c.41, s.1

This is the former Section 230 (1906) in more general terms but without change in effect. As is the case constitutionally with its sister sections, so it is with Section 184.

Section 185 of the present Criminal Code is the substantive clause used in charges of "Keeping Gaming or Betting Houses". My abbreviated comments below serve as an overview of the history of this section.

SECTION 185 "KEEPING GAMING OR BETTING HOUSE"

1968-69: R.S.C. 1968-9, c.38, s.185
1953-54: R.S.C. 1953-4, c.51, s.176

The above combines former ss.228 & 229(1) in so far as they related to gaming and betting houses, but omits the additional penalties for second or subsequent offences. The penalty for keeping a disorderly house was in s.198 of the Code of 1892, which was described as new. S.199 of the 1892 Code took from R.S.C. 1886, c.158 a provision making it an offence to "play or look on whilst any other person is playing in a common gaming house", and this was altered by 1913, c.13, s.12 to the offence of being "FOUND IN" any disorderly house.

1938:	R.S.C. 1938, c.44, s.12	
1922:	R.S.C. 1922, c.16, s.12	
1918:	R.S.C. 1918, c.16, s.2	
1913:	R.S.C. 1913, c.13, s.12	
1910:	R.S.C. 1910, c.10, s.1	
1895:	R.S.C. 1895, c.40, s.1	
1892:	R.S.C. 1892, c.29, s.198	#
1888:	R.S.C. 1888, c.42, s.1	##
1886:	R.S.C. 1886, c.159, s.9	###
1877:	R.S.C. 1877, c.31, ss(1)&(2)	####
1853:	(IMP) 1853, c.119	#####
1845:	(IMP) 1845, c.109	######
1751:	(IMP) 1751, c.36	#######

"An Act Respecting Gaming in Stocks & Merchandise"
"An Act Respecting Lotteries, Betting & Pool Selling"
"An Act for the Repression of Betting & Pool Selling"
"An Act for the Suppression of Betting Houses"
"An Act to Amend the Law Concerning Gaming & Wages"
####### "The Disorderly Houses Act"

The history of the legislation surrounding gaming houses is contained in Chapter One of this paper and little more can be said about it. The bulk of material available on the subject arises out of judicial precedent, as the passage below attests:

> "In Russell on Crime, 10th ed., vol. 2, pp. 1744-5, the learned author says: ''Common gaming-houses are a public nuisance at common law, being detrimental to the public, as they promote cheating and other corrupt practices; and incite to idleness and avaricious ways of gaining property persons whose time might otherwise be employed for the good of the community.''
>
> The keeping of such a gaming-house was held indictable at common law (R. v. Rogier (1823), 1 B.&C.272, 107 E.R. 102). When the Criminal Code was first enacted in Canada by c.29 of the Statues of 1892, s.198 declared that any person who kept, inter alia, a common gaming-house was guilty of an indictable offence. By s.703 it was provided that it should be prima facie evidence in any prosecution for keeping a common gaming-house under s.198 that the place was so used and that the persons found thereupon were unlawfully playing therein if, inter alia, such place was found fitted or provided with any means or contrivance for unlawful gaming. It was now, however, until the amendment of 1924 that the Code was amended to include the provision above quoted regarding automatic machines deemed to be a contrivance for playing a game of chance."[80]

Much more can be said about the application of this section than about its history. It has, in fact, changed very little over the years.

The police are now faced with a more difficult task of enforcement than in the past. The loss of Section 183 of the Code will be a contributing factor to be sure.

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80. Johnson v. A.G. of Alberta (1954) S.C.C., C.C.C. V.108, p.27

In order to enforce the gaming house provisions, it is becoming increasingly incumbent upon law enforcement to mount undercover operations in order to secure evidence historically provided by launching Section 183 of the Code.

With the increased complexity of securing evidence and a dearth of expertise in this area of investigation, the prohibition against gaming houses may join other gambling sanctions in the "benign" category. In other words, history may repeat itself.

Section 186 of the 1983 Code deals with betting, pool selling and bookmaking. Some of the early Canadian history has been mentioned, especially where the advent of horse-racing is in question.

Bookmaking and its included offences has emerged as one of the most challenging gaming enforcement enigmas ever to be met. The people involved in the practice are typically a breed apart from the average gambler. Consequently, it has been as a direct result of their cunning intellect and innovation that the law in question has developed. Its legislative history is as follows:

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SECTION 186 "BETTING-POOL SELLING-BOOKMAKING"

1968-69: R.S.C. 1968-9, c.38, s.186

1974-75-76: R.S.C. 1974-5-6, c.93, s.11

1959: R.S.C. 1959, c.41, s.14

1953-54: R.S.C. 1953-4, c.51, s.177.

1923: R.S.C. 1923, c.41, ss.(3)(4)(6) amended by adding the words "or any result or contingency of or relating to any contest" and by adding the words "inports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, book-making, pool selling or betting upon a horse race, fight, game or sport and where ;this paragraph applies, it is immaterial."

1922: R.S.C. 1922, c.16, ss.12,13

1920: R.S.C. 1920, c.43, s.6

1913: R.S.C. 1913, c.13, s.13 amended by adding the words "imports, makes, buys, sells, rents, leases, hires or"

1910: R.S.C. 1910, c.10, s.3

1906: R.S.C. 1906, c.146, s.235

1892: R.S.C. 1892, c.29, s.204, contained matter presently in 1983 C.C., s.186(a)-(d).

1886: R.S.C. 1886, c.159

1888: R.S.C. 1888, c.42

1886: R.S.C. 1886, c.159

1877: R.S.C. 1877, c.31

1853: (IMP) 1853, c.119

1845: (IMP) 1845, c.109

1751: (IMP) 1751, c.36

In order to carry on the business of bookmaking in a successful manner, an extremely well disciplined and connected organiztional structure is required. The history of bookmaking as a criminal activity, involves the history of organized crime in Canada and the United States. Again, any further elaboration on activity as opposed to history will detract from the parameters of this paper. I wish to refer my readers to a third research paper which will deal specifically with organized crime and corruption as regards gaming in Canada.

Furthermore, this is an area of our law rich in jurisprudence and as such, it will also receive attention in my second paper.

Section 187 of the present Code was new in 1969. It was designed to prohibit off-track betting establishments that appeared in Ontario at the time. It was the subject of enormous debate by powerful lobbyists and remains as a high profile issue today. Enabling legislation in the form of Section 188.1 (1982) may foresee the imminent advent of O.T.B.

SECTION 187 C.C. "PLACING BETS ON BEHALF OF OTHERS"

1974-75-76: R.S.C. c.93, s.11
1968-69: R.S.C. c.37, s.1

"This section, which was first introduced following the decision of the ONT.C.A. in R.v. GRUHL & BRENNAN (1970) 1 CCC 104, 4 D.L.R. 3(d) 583, has been amended from time to time and liability extended as various off track betting schemes have come before the courts."

"Thus, cases such as R. v. WILLIAMS & ADAMS (1970), 2 C.C.C.(2d)476 (1971) 1 WWR 722 (Alta. S.C. App. Div.) affd. 3 CCC 2(d) 91n, (1971) S.C.R. vi (5:0) and R.v. BENWELL et al (1972) 9 CCC 2(d) 158 (1972) 3 O.R. 906(2:1) (C.A.) affd. 10 CCC 2(d) 503 (1973) S.C.R. vi (9:0) decided before the enactment of ss.(b) and (c) must be read with care.

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Many and varied schools of thought have arisen out of the federal-provincial conflict over the regulation of the pari-mutuel system of betting. For my purposes, the historical development of its controlling legislation has received prompt parliamentary consideration over the years. It has been an area largely ignored by police forces due to its apparent adequate supervision by Agriculture Canada.

Recent situations have arisen which point to a decidedly effective criminal conspiracy to fix races at controlled tracks, however active investigations are underway to purge the problem. The very presence of such criminal activity may suggest that increased controls are desirable.

This section has had a long and disturbed legislative history. Most amendments have been of an administrative nature, in that their general effect has been to place the pari-mutual betting system on trotting, pacing and running races, under the control of the Minister of Agriculture.

Illegal lotteries are addressed by Section 189 of the present Criminal Code. The gamut of lotteries, chain letters, carnival games, pyramid schemes and prohibited games is covered in this section, even though it may not be readily apparent. The section also contains a very important exemption clause for agricultural fairs and exhibitions.

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The following is offered for perusal prior to further comment:

SECTION 189 "ILLEGAL LOTTERIES - GAMES OF CHANCE"

1968-69: R.S.C. 1968-69, c.38, s.12

1953-54: R.S.C. 1953-54, c.51, s.179

1943-44: R.S.C. 1943-44, c.23, s.8 (Re: S.189(1)(e)-1982 C.C.)
"The references to valuable security were added to the paragraph apparently to forestall such 'snowball' schemes as were before the British Courts."

1935: R.S.C. 1935, c.56, s.3 (Re: S.189(1)(e)-1982 C.C.)
"Pyramid section added for the purpose of checking 'as far as possible', these gambling devices found in stores and places where the public resort, in regard to which the law is a little undecided at the present time".

1934: R.S.C. 1934, c.47, s.7 (Re: S.189(5)-1982 C.C.)
"The effect of this was to do away with the former provision under which a lottery winner was liable to forfeit his prize "to any person who sues for the same by action or information in any court of competent jurisdiction".

1931: R.S.C. 1932, c.8, s.1 (Re: S.189(1)(c) - 1982 C.C.)
"In order to evade the prohibitions contained in THE POST OFFICE ACT, persons concerned in such schemes as described were resorting to modes of transmission other than the mail".

1925: R.S.C. 1925, c.38, s.4 (Re: S.189(3)-(8)(c) & (d))
"Exemptions for Agricultural Fairs & Exhibitions as well as for division by lot of joint tennants in common added."

1922: R.S.C. 1922, c.16, s.11 (S.189(d) & (e) - 1982)
Dice Game, Shell Game, punchboard, coin table, wheel of fortune - PROHIBITED.

1921: R.S.C. 1921, c.25, s.7, "Cheating at play using 'Three Card Monte' was a separate offence.

1906: R.S.C. 1906, c.146, s.442, "Refers to the 'ART UNIONS PROBLEM'" SEE P. 337, 1955 C.C. Provision deleted in 1906 as it was obsolete in Canada.

1901: R.S.C. 1901, c.42, s.2, "Cut out the exemption of the CREDIT FONCIER du BAS-CANADA".

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SECTION 189 C.C. (Continued)

1900: R.S.C. 1900, c.46, s.2, SEE: ART UNIONS - 1906
"incorporated society for the encouragement of art" replaced by "charitable or religious object".

1895: R.S.C. 1895, c.40, s.1 (S.189(1)(d) - 1982 .C.C.)
"Identical terms used today".

1892: R.S.C. 1892, c.29. NOTE: "A comparison of the 1892 code with the present section 189 will show that ss. (1)(a) & (b), (4)(6) and 8(a) have continued unchanged."

The history of lotteries is perhaps the most interesting of all gaming activities and a rather comprehensive dissertation on the subject was offered by THOMAS in 1903. [81] It is offered at this juncture as it has some relevancy to the modern motivation behind both Section 189 and 190.

> "This chapter will embrace a historical sketch of lotteries in the United States and Europe together with the Anti Lottery Laws of Congress now in force.
> Section 1. The lottery, as a method of gambling, has prevailed from the remotest antiquity. It is not intended, however, at this time, to give even a general history of the lottery, but it will be sufficient for the purpose in view in this work to note, briefly, the evolution of the law of lotteries in modern times. Prior to the last decade of the Seventeenth Century, lotteries, public or private, were, it seems, not condemned by law anywhere and the people operated them at pleasure, without let or hindrance, unless it was, in some countries, to obtain a license therefore.

81. Thomas, John L., Lotteries, Frauds & Obscenity in the Mails (1903) Stephens, Columbia, Missouri

Sec.2. The first lottery, authorized by law in England, was established in 1567 and in 1569 there were only three lottery offices in the kingdom. A lottery to aid in the colonization of Virginia was authorized in 1612 in the reign of James I. Nothing probably shows the advance in public opinion on this method of gambling in the last three hundred years more than the fact that the first lottery, sanctioned by law in England, was drawn at the west door of St. Paul's Cathedral in London. But opposition to lottery gambling at last came in some degree and the Statute of 10 and 11 William III, C. 17, reciting that persons had fraudulently obtained large sums of money from the unwary by color of patents or grants under the Great Seal, licensing lotteries, provided that all lotteries should thereafter be held as common nuisances and all patents and grants for the same should be void and denounced penalties upon those who set up or operated lottery schemes. The effect of this Statute was however, simply to deprive the king of the right to issue letters patent for lotteries, but the parliament, of course, possessed the power to authorize lotteries, either public or private.

Genoa was the first of the nations to introduce the lottery as a source of revenue. France resorted to it for that purpose about the year 1580. An English Chancellor proposed the lottery for a long series of years as a justifiable measure of finance, on the principle of its being a voluntary tax, assumed by the adventurers. Ex-President Jefferson, in his memorial to the Virginia Legislature in 1826, stated that money, invested in a lottery, was a voluntary tax and Chancellor Kent, in 1839, thought the lottery was "a fair way to reach the pocketes of misers and persons disposed to dissipate their funds". England, from 1709 to 1824, following the theory of her Chancellor of the Exchequar, alluded to above, established and maintained lotteries by law to raise revenue and, from 1793 to 1824, the government realized an average yearly profit of 346,765 pounds by this method. The tickets were sold to contractors, who resold them at retail by "Morocco men" who traveled through the country. These state lotteries, conducted often fraudulently by the contractors, operated perniciously upon the morality of society and public opinion soon revolted against them. In 1808, the House of Commons appointed a committee to examine into the subject. While the report of this committee conclusively showed that lottery gambling was very extensive and very pernicious, the revenue obtained by the government was too great a temptation to be long resisted and the State lottery was continued. In 1819, the question arose again and through the efforts of Lyttleton, Buxton, Wilberforce, Canning and Castlereagh, measures were adopted to suppress the state lottery, the last drawing in which occurred in October, 1926. By a

blunder in legislation, however, authority was given by the Act 1 and 2, Will. IV, Ch. 8, to hold a lottery for the improvement of the city of Glasgow, but these "Glasgow Lotteries," as they were called, were abolished by the Act 4 and 5, Will IV, Ch. 37.

But owing to the supposed good effects of encouraging art, what were known as "Art Unions" were exempted from penalties by 9 and 10 Vic. C. 48, and in consequence of these exemptions the evil of lottery gambling has been renewed in another form and gift concerts, Art Unions, etc., still exert a baleful influence on public morals in England. (In 1903).

"In the Italian republics of the 16th Century, the lottery principle was applied to encourage the sale of merchandise." Charles Knight, in his history of England, says that in 1710 the newspapers were "full of the most curious advertisements. The projectors of schemes to make all men suddenly rich--the managers of fraudulent insurances--the sellers of state jewelry by lottery--all these and many others, who traficed in human credulity, were exceptions to the general spirit of the English Tradesman."

Francis I granted the first letters patent for a lottery in France, and in 1656, Tonti (the originator of Tontines) opened a lottery for the building of a bridge between the Louvre and the Foubourg St. Germain. It was said France raised enough money by lotteries to defray the expenses of the war of the Spanish Succession. Lotteries were established in France, also, for the benefit of religious communities and for charity purposes. All these were practically merged in the Lotterie Royale by the famous decree of 1776, which suppressed private lotteries. These lotteries had a demoralizing influence on French society, and in 1836, France enacted a general law prohibiting all lotteries. The other countries of continental Europe also suppressed private lotteries, but in Germany, Austria, Spain, Holland, Italy and Denmark, the State lottery still appears as a powerful and reliable means of revenue."

Certain aspects of this mentality were in fact carried into modern times and the arguments pro and con continue in spite of Section 190.

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Any amendments to the gambling legislation were the direct result of a local situation and were often hastily passed. A specific example of this surrouding the introduction in 1922 of what now appears as Section 189(1)(g) (Minister of Justice and Attorney General), "punchboards" and "coin tables", along with "wheels of fortune" became prohibited.

Section 189(1)(g) C.C., in its present form has long been a source of consternation to those involved in gambling enforcement. The Criminal Code does not define any of the prohibited games and thorough examination of Hansard gives only minor relief as to the intent of parliament.

P.448: "On Section 14 - disposal of goods by games, etc."

Hon. Mr. DANDURAND:....."Yesterday, we suspended the study of this clause, which seeks to amend subsection 1 of section 236 of the Act. The reason for this amendment is to be found in the following facts. It is now common and extensive practice to use dice, slot machines, punch boards, etc., in the sale of tobacco, cigars, confections and even certain groceries. The punch board consists of a board with a number of holes in it, each hold containing a number. Men and boys pay ten cents for the privilege of punching or choosing the hole in the hope of selecting a lucky number which entitles them to the chocolates or other goods offered. The dealer has a sure thing for large profits, the customer has one chance in many. The Court of Appeal has held that this practice is not now covered by the Code, hence the widespread desire and strongly felt need for this amendment."

"I may say, honourable gentlemen, that people have come, mostly from the United States, to play those games in Montreal and have fleeced some men of hundreds of dollars, and, as they could not be reached by the Criminal Law, some way was found to treat them as vagrants and by perhaps stretchng a point, to get rid of a formidable evil which was developing."

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It can be seen how some of our more puzzling laws came into being from the above. To illustrate the source of our confusion, the following prophetic passages are quoted:

> Rt. Hon. Sir George E. FOSTER ..... "Every one of us knows that at this particular juncture of circumstances, there seems to be a combination and employment of all kinds of malevolent, malicious, and ingenious schemes to make money without the sweat or toil of the body or the effort of the mind, but by the wit, and these are engineered by men who make a trade or business of it. These people are the worst class of society. They are organized gangs and bodies who go about from city to city to carry on their games."
>
> "Dice game, shell game, punch board, coin table, are well defined and well known".
>
> Hon. Mr. PROUDFOOT ..... "That is just the difficulty with enacting legislation in this way - we are likely to have it so complicated that when the courts come to construe it, they will probably arrive at a conclusion entirely different from what we intended."
>
> Hon. Mr. LYNCH-STAUNTON ..... "Will the honourable gentleman tell us what a shell game is?"
>
> Hon. Mr. DANDURAND ..... "No, I will confess I am not absolutely au fait." [82]

From this, it is clear that the legislators of the day were at the distinct disadvantage in that most were totally unfamiliar with the technical aspects of gambling devices let alone gambling as a sub-culture. Mr. DANDURAND was the member introducing this particular amendment and even he had no knowledge of a shell game.

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82. Debates of The Senate, June 21, 1922

The reference to "organized gangs and bodies" is repeated several times throughout the debate and is of significance. Obviously, there must have existed a major problem with organized criminals perpetrating a gambling scam to warrant legislative action.

The definition of "Coin Table" remains a mystery to me. I have exhausted all parliamentary sources available without success.

At the risk of being repetitious, the paper following will expand upon problems of enforcement associated with this section and case law will be studied.

The brief legislative history of Section 190 of today's Code belies its impetus insofar as gaming in Canada is an industry built upon its provisions.

SECTION 190 C.C. "PERMITTED LOTTERIES"

1974-75-76: R.S.C. 1974-75-76, c.93, s.12(1)
1974-75-76: R.S.C. 1974-75-76, c.93, s.12(2)
1968-69: R.S.C. 1968-69, c.38, s.13 (New)

The legislation was introduced as part of an omnibus bill by then Minister of Justice, Mr. John TURNER. Debate on this issue and others was, to say the least, considerable. In addition to the voluminous debates recorded by Hansard, the transcripts from the House of Commons Standing Committee of Justice and Legal Affairs Proceedings are somewhat enlightening. This committee invited and received consultation from the provinces from 1968-69-70 on law reform on a scale unprecedented in the history of the Code. The following quotations are reproduced:

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Once again, the absence of clear definitions of such terms employed in Section 190, such as "charitable or religious organization" and "lottery scheme" has caused much consternation over the past thirteen years on behalf of some provincial licensing authorities.

The explosive proliferation of casinos and breakopen tickets in the West is due to the provisions contained in Section 190. The question of federal vs. provincial control over such licensed activities was not clear when the legislation was passed, however, time has remedied that situation for the most part.

Interpretation of Section 190 has commanded a great deal of my time as a gaming specialist and accordingly, much will be said about it in my investigational study which follows this paper.

Historically speaking, I submit that this clause will be judged as a milestone in Canadian gaming legislation. In one fell swoop, it reversed almost every philosophy held by Canadian legislators heretofore.

It may very well mark a transitional period in our gaming history in that it opens the door to complete provincial control of licensed gambling and its control.

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SECTION 191 # "GAMBLING IN PUBLIC CONVEYANCES"

1968-69: R.S.C. 1968-69, c.38, s.13
1953-54: R.S.C. 1953-54, c.51, s.180
1906: R.S.C. 1906, c.146, s.234
1892: R.S.C. 1892, c.29, s.203
1886: R.S.C. 1886, c.160, ss.(1)(3)(6)

Goes back to Imperial Statutes

In the code of 1892, ss.(2) read "must arrest", and in the code of 1906, the wording was "shall arrest". This has been changed to "may arrest".

Gambling in public conveyances has been commented upon earlier and it has as its roots, legislation concerned with "fraud" and "public order". Curiously, it remains as a criminal sanction today, even though from the lack of reported cases in recent history, its provisions have not been enforced. It serves as an example of the stagnation of some of the prohibitions contained in this Part.

SECTION 192 "CHEATING AT PLAY"

1968-69: R.S.C. 1968-69, c.38, s.13
1953-54: R.S.C. 1953-54, c.51, s.181
1921: R.S.C. 1921, c.25, s.7
1906: R.S.C. 1906, c.146, s.442
1892: R.S.C. 1892, c.29, s.395
1886: R.S.C. 1886, c.164, s.80
1845: (IMP) 1845, c.109, s.17

This section will always be contemporary for obvious reasons. As aforementioned, the offence of cheating at play in the early decades of the twentieth century was tied to the old shell game known as "three card monte", now included in Section 189(1)(g) of the Code.

CHAPTER FOUR

FACTORS MOTIVATING THE PASSING OF GAMING LAWS IN CANADA AND THEIR EFFECT

The previous chapter bears witness to the frequent and often hurried amendments applied to Canada's gaming legislation. Until recently, much of it came into force as a result of uninformed responses to increases in gambling activities which were deemed to be contrary to the morals and ethics of the society of the day. Not infrequently, legislators expressed alarm about their endeavors in this area of the law. A member of the Senate stated his concerns during debate on the 1922 gaming amendments which consolidated prohibited games as we know them today.

> "I doubt very much whether there is a man in this House who knows exactly what the Bill means. I am free to confess that I do not. I doubt if any honourable gentleman in this House could give us a synopsis of the amendments which have been made.
>
> While I am on my feet, I should like to say that in the amendments of the Criminal Code that come here from the Commons we find some of the most remarkable things the mind of man could devise. I have no objection whatsoever to proper amendments to the Criminal Code; but very often the great trouble with the amendments coming to this House from the House of Commons is that they do not tend in the least to minimize the evils they are intended to minimize, but only make confusion worse confounded, with the result that the evils become very much worse than they were supposed to be. I think we ought to treat amendments to the Criminal Code sanely, and should give each one of them the consideration which it deserves. To do as we have done to-night, put through amendments holus bolus without realizing what they mean, is not, I think, doing justice either to the Code or to ourselves; I think we should thoroughly understand them before they are put in force."[85]

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85. Debates of the Senate (Hansard) 1922, June 22, P. 546

The temperence attitudes of the Victorian era doggedly lingered on throughout these early decades with gambling retaining its stigma as being sinful and a "pernicious vice". Few significant amendments were made to the Code until the year 1922. That gaming did not receive a high legislative or enforcement priority is understandable in light of this nation's commitment to World War I and its critical aftermath. Post war unemployment and widespread civil disobedience culminating in major events such as the Winnipeg strike eclipsed the need for law reform in this area and, indeed, law enforcement was at a low ebb for the same reasons.

This country has developed in an era unequalled in history by technological and sociological change. Its gaming laws, like all other laws, struggled hopelessly to reflect contemporary attitudes. The rapidity of the changes in public policy toward gambling as a "victimless crime" reflect the reasons for lagging legislation.

The "new morality" under development, coupled with Canada's post-Confederation history served to detract from the perception of gambling as a cause for serious or urgent consideration. This was especially true until the 1950's, at which time gaming was seen to involve organized crime.

Provincial and Territorial jurisdictions made sporadic, and at times, laudible efforts to deal with regional situations, however, local legislation ultimately failed as it was declared ultra vires to the Criminal Code.

Gaming legislation in Canada received its first real contemporary motivational attention during the roaring 20's. Organized crime in North America was the offspring of the VOLSTEAD ACT (PROHIBITION) in the United States, and its effects spilled into this country. The emergence of major gambling racketeers, particularly in Toronto and Montreal, demanded immediate legislative action. SALERNO's comments are relevent here:

> "What do we know about organized crime that we might respond to? We know that it was formed during the Prohibition era, when great numbers of citizens freely chose to ignore the Eighteenth Amendment and the enforcement provisions of the Volstead Act. Criminals learned that huge sums of money could be made by providing illegal goods and services and, today, these are still the commodities sold by the syndicates. The current picture of illegal gambling is a direct parallel.[86]

At best, the resulting Canadian legislation was a "band-aid" solution. Its broad terms and lack of definitive content have remained as an enigma to law enforcement to this day. That notwithstanding, much of its provisions are now obsolete.

The 1929 stock market crises and the great depression that followed in the nineteen thirties allowed only piecemeal amendments to the federal legislation. This neglect caused the majority of the Provincial Legislatures to supplement the Code prohibition against "automatic machines" with SLOT MACHINE ACTS, the history of which will be outlined herein.

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86. Salerno, Ralph, Organized Crime, (Crime and Delinquency, July, 1969) New York, N.Y.

The Parliamentary "motivation" behind gaming legislation stemmed from the temperence ethic and amendments were largely in response to "crisis" situations and as a reaction to various Court decisions. The decade of 1920-1930 exemplifies this as noted in the previous chapter. Horse racing and the pari-mutuel provisions received prompt attention by Parliament and, in this context, such a priority was a marked departure from the norm.

A study of Hansard again is illuminating. Parliamentary reports reveal that the "sport of kings", and its regulation was seen as being most urgent by the powerful and influential Honourable Members serving the populous constituencies of Ontario. The largest of tracks were located in what is now known as the "golden horseshoe" area of that Province and, accordingly, a strong lobbying force existed then as it does now. As this industry grew, it demanded, and received, executive attention. This does not infer undue influence, rather it involves Canada's political system which is based on demographics.

For the most part then, Parliament harboured a complacent attitude in favour of leaving the original gaming laws much as they appeared in the Code of 1892. Until the nineteen fifties and later, there existed no widespread demand for law reform. Certainly the Provinces made no representation for reformation other than in their ill-fated SLOT MACHINE ACTS. Lotteries were not viewed as a bona-fide method of fund raising and foreign schemes, such as the Irish Sweepstakes, were disdained and prosecuted. Gaming houses retained their status as "dens of iniquity", and the remaining sanctions slowly but surely descended into the category of "permissive crimes" or "benign prohibitions".

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Legislators continued to allow that gaming and gambling was an evil practice and that it was tantamount to idleness and outright vagrancy. It was condemned as being detrimental to the work ethic as it exacted "something for nothing". However, the technology of the fifties would prove to deal the first crippling blow to this moralistic ideology. Previously unparalleled socioeconomic change would also sound the beginning of the end of massive adherence to the concept of organized religion.

To the South, Nevada's licensed casinos proved to be irresistable to droves of Canadians with new found leisure time and ready cash. For the first time in decades, we had money in savings and courtesy of reformed labour legislation, the time to spend it.

The nineteen fifties, due to new technology and peace, marked a notable turning point in public morality and, correspondingly, in public policy toward the ancient social pastime - gambling. In 1953, the government of the day perceived that these changing social values would precipitate problems involving the application of regulatory sanctions, drafted in a bygone era, to the "new society". A commission of inquiry into lotteries was formed with curiously indifferent reactions from provincial authorities and law enforcement in general. More about which will be said later.

It seems appropriate, from my view, to comment on Canada's legislative motivation and its effects in two parts. The first encompassing the period 1892-1950 and the latter from that juncture to the present.

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As regards gaming legislation, there remains a key issue which I find intriguing for a number of reasons. It concerns the SLOT MACHINE ACTS passed by no less than eight provinces between 1924 and 1952.

The first specific reference to "automatic machines" appeared in the Criminal Code in 1924. These provisions were modified in 1930 and again in 1938 when, for the first time, the expression "slot machine" appeared in the Act.

The Legislature of Alberta enacted the Slot Machine Act in 1924, coinciding with the "automatic machine" reference in the Code. The Alberta Act afforded a definition of "slot machine" as follows:

> "any automatically or mechanically operated contrivance or device which delivers or purports to deliver to any person upon or subsequently to the insertion therein of any money or any substance representing money, any premium, prize or reward consisting either of money or money's worth or anything which is intended to be exchanged for money or money's worth, and whether such contrivance or device also delivers or causes to be delivered any goods to, or performs or causes to be performed any service for any person or not."

Alberta repealed its Act in 1935, replacing its definition section with one declaring slot machines to mean any machine which under the provisions of the Code was deemed to be a means or contrivance for playing a game of chance. A further provision in the Alberta Act proved to be fatal to it, however. The Legislature substituted its own penalty declaring that such machines should not be capable of ownership and might be seized and declared forfeited in the manner provided. In JOHNSON v. A.G. OF ALBERTA 1954, S.C.C., LOCKE J. stated, "I think it would be difficult to find a more direct encroachment upon the exclusive jurisdiction of Parliament than this".

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Furthermore, in 1935 the Provinces of Manitoba and Saskatchewan enacted SLOT MACHINE ACTS and in 1936 the Provinces of Nova Scotia, Prince Edward Island and New Brunswick dealt with the subject by legislation.

The statutes adopted by these six Provinces differed somewhat in defining slot machines, and in their penalty sections, however, they all had one provision in common, namely that such machines were declared incapable of ownership or of giving rise to property rights. Apparently, the Provinces acted in concert in response to a collective adverse opinion of the Criminal Code provisions.

The Province of Ontario enacted a SLOT MACHINE ACT in 1944 and the Province of Quebec in 1946.

All this appears to be a conflict between the two jurisdictions with the senior government maintaining and guarding jurisdiction. It is interesting to note the present provisions of Section 190 of the Code which reflects an inverse attitude on behalf of the federal government as regards the control of gaming activity.

Of further interest is the fact that the majority of our gaming cases have been attacked on constitutional grounds involving civil rights. In this case, however, property rights were at issue. The constitutional question is of special relevence today and recent events indicate that the Charter of Rights (1981) will challenge our gaming laws in a manner unprecedented heretofore.

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The Provincial motivation behind the SLOT MACHINE ACTS emanated from the constitutional right and responsibility to "safeguard public morality". The "moral majority" syndrome prevailed or so it would seem.

Whatever can be said about the effectiveness of our gaming legislation up until the nineteen fifties applies to the following period and to the present as well. However, the main difference between pre and post nineteen fifty lies in public policy toward gambling. In the first instance, there existed no pressure or special interest groups to speak of to exert a demand for change, save for race-track organizations. The major events previously referred to overshadowed gaming as a priority for government and this was correspondingly mirrored in law enforcement attitudes. In general, gambling was seen as a religious or moral transgression punishable as a last resort by the state.

As in England, gambling was suppressed and controlled, or at least driven underground, by enforcement of the legislation. Enforcement was by no means uniform. This was due to a relative lack of communication between large municipal police departments in this regard.

Again, the practice was largely perceived as being a nuisance and gaming enforcement was often used as an ulterior measure to gain ground against more overt crimes. Only the largest of police forces "specialized" in gaming, rather enforcement responsibility was included in the policing of vice, including prostitution.

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The majority of our early gaming cases which were judicially reported took place in Toronto, Montreal and to a lesser degree, in Winnipeg. Lotteries prosecutions were pursued along with gaming house and bookmaking infractions. As the enforcement of gambling offences is a Provincial responsibility, the municipal police departments developed the sole expertise in its investigation. This situation remains true in certain aspects today, however, the situation is deteriorating in certain locales. This bears further discussion in the post nineteen fifties section of this paper.

The lack of specialists in gambling investigation, the assignment of a low priority to it and the ensuing apathetic law enforcement attitude toward same contributed to the ineffectiveness of the legislation. Grossly inappropriate and inadequate court sentences served to demoralize the few policemen who saw fit to take action in this regard. The effort required for a competent investigation and the resulting adjudications were, and are, most often inversely proportional.

One final note about the effectiveness of the legislation involves the use and abuse of the special warrant and subsequent examination of persons found in a disorderly house provisions, the latter now repealed. These clauses enjoyed considerable use by enforcement as evidenced by the tumultuous legal arguments resulting from their exercise. My point is covered in detail under the heading of "Section 183" in the previous chapter. Suffice to say that the vigorous employment of these once sweeping authorities contributed to a great deal of success in gaming

and betting house prosecutions. However, this was an age when legal and civil rights had not yet reached prominence as they did in the years that followed.

In summary, prior to 1950, our gaming legislation succeeded only where enforcement expertise existed. Even then, it merely offered a measure of temporary control. Gambling as controlled by the organized criminal element was not exposed, if it existed, in Canada up to this time. Organized crime involvement first appeared in Montreal in the early fifties, and it was identified as an arm of the New York Italian mafia. In short, the Canadian police community was ill equipped to deal with sophisticated criminal organizations, the racketeers, until much later in our history. One need only recall my comments outlining the new legislation passed in the nineteen twenties outlining slot machines and prohibiting the inducement to play punchboards, coin tables and so on, to illustrate a point. This legislation was passed as a direct result of the appearance of "organized gangs of men from the United States" operating gaming schemes and gambling devices on the streets of Montreal. In actual fact, at this time, the devices described fell under the exclusive control of well known American mobsters "Lucky" LUCIANO, Meyer LANSKY and Frank COSTELLO. Their domain included upstate New York, a scant distance form Montreal across an open border, the rest can be left to the imagination. The subjects of organized crime in gambling and corruption will be addressed in a paper devoted solely to those issues.

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References will be made to organized crime herein, however, on a limited basis. I have used the term "racketeer" on occasion, and the following is offered by way of explanation. The late Senator Robert F. KENNEDY wrote:

> "The racketeer is not someone dressed in a black shirt, white tie, and diamond stick pin, whose activities affect ony a remote underworld circle. He is more likely to be outfitted in a gray flannel suit and his influence is more likely to be as far reaching as that of an important industrialist. The American public may not see him, but that makes the racketeer's power for evil in our society even greater. Lacking the direct confrontation with the racketeer, the citizen fails to see the reason for alarm. The reason, decidedly exists. The financial cost of organized crime is not limited to the vast illicit profits of gambling or narcotics.....In short, organized crime affects everyone. It cannot be the concern only of law enforcement officers. It must be the active concern of every citizen."

One of the underlying reasons for flourishing criminality insofar as illegal gambling is concerned, is a lack of knowledge and interest on the part of the general public. No one can see the harm done to the economy, for example, and they care less about who provides the illicit service, as long as it is there when they want it.

In 1950, in the United States, Senator Estes KEFAUVER headed up the "SPECIAL SENATE COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE". For the first time, income tax files were made available to an investigative body and the information proved to be invaluable. By far, the majority of the KEFAUVER Committee focused on political corruption as a direct result of gambling.

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The KEFAUVER Committee, with its astounding revelations passed into history in the shadow of McCarthyism. It was easier for many to vent their wrath on the Communist threat to American lives than to become upset over someone booking bets at a local candy store.

The Committee, above all else, exposed the mammoth potential of illicit gambling to generate funds in the millions of dollars. It pointed to the popularity and extent of the practice, and it marvelled at the apathy toward it. Apathy, the Senators concluded, was bought and paid for in the form of political and police corruption.

How did all of this affect Canada at a time when three well known Montreal gamblers disappeared? In Parliament, the Honourable Mr. E.D. FULTON asked the then Minister of Justice, the Honourable Mr. Stuart S. GARSON, whether Canada would parallel the KEFAUVER Committee. Mr. GARSON replied:

> "My answer to that question is that no consideration has been given to such a proposal."[87]

Other than the Quebec Police Commission Inquiry into Organized Crime, Canada has never seen such an investigation.

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87. House of Commons Debates, 1951, V.II & IV, P.3264-65

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We may have ignored, or to be more precise, been incapable of such an exercise due to the relatively primitive state of a Canadian criminal intelligence network. In the era of the fifties, we may have met SALERNO's criteria as described below:

> The bookie's customer doesn't go to the police to identify the bookie; the drug addict doesn't demand the arrest of his supplier. If organized crime were measured by the number of citizen complaints of victimization, it would be found not to exist. And this is precisely the conclusion formulated in many jurisdictions. "Nobody has complained. We have no organized crime problem here." [88]

I draw my conclusions, especially where the question of the extent of gaming in Canada was an issue in 1953-54, from a study of the "JOINT COMMITTEE OF THE HOUSE OF COMMONS AND SENATE ON CAPITAL PUNISHMENT, CORPORAL PUNISHMENT AND LOTTERIES 1953-56".

Ouring the major revision of the Criminal Code in 1953-4, debate surrounding gambling issues in the House of Commons and in the Senate was constantly and repeatedly avoided with the comment that "the issue is presently under review by the Joint Committee."

In actual fact, the majority of the Joint Committee's attention centered upon the capital punishment issue and only lip service was given lotteries.

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88. Ibid. Footnote 86

Certain interested persons appeared before the Committee which, from all indications, made a bona fide effort to seek out persons knowledgeable in gambling. Unfortunately, those persons appearing had self-serving interests, were temperance or church delegations or they were unqualified policemen.

Most objections to the expansion of lotteries which, it must be remembered, covers carnivals, prohibited games, pyramid schemes, ad infinitum, were based upon moral rather than informed issues.

Police Chiefs from across Canada appeared before the Committee and from the transcript of their presentations, it is respectfully submitted that most were not well versed in gambling investigation. They had no grasp of lottery schemes and they were devoid of any working knowledge of carnival games. Not one could describe "three card monte" to the Committee. Many offered tales of policemen babysitting children until their parents returned from the bingo hall and so on.

The R.C.M.P. Commissioner appeared before the Committee, and his contribution to their task only frustrated some of its members.

Furthermore, the committee had mailed questionnaires to provincial Attorneys General asking for specific recommendations in amending the gambling legislation. The questionnaires also asked for information outlining difficulties encountered in enforcing the law as it stood.

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The replies received were reproduced in the transcript, and they were so inadequate that they were embarrassing. The provinces were collectively apathetic toward the issue and that attitude contributed to the retention or "rubber stamping" of our antiquated gambling laws.

The evidence of one witness is as follows:

> WITNESS: Mr. W.B. COMMON, Q.C., Director Public Prosecutions, A.G. Department, Province of Ontario.
>
> QUESTION: "What action may be taken by the police to ascertain the honesty of midway games?"
>
> ANSWER: "I might say this, that the two large concessionaires at the Toronto Exhibition are BEASLEY and CONKLIN Shows, both of whom have enviable reputations for conducting business on a very high level. There has never been any complaint about their games. They police their own business very effectively ...."[89]

Our experience with Royal American Shows and several other carnivals has shown the folly of profound statements such as that noted above. Yet who is to blame? Certainly his police force was in no position to advise him of the situation, no gaming section existed.

Such attitudes were fairly general across the board and during the following two decades, the status-quo remained legislatively undisturbed, save for minor issues. Developing case law was also relatively unremarkable as well.

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89. Joint Committee of the House of Commons and Senate on Capital Punishment, Corporal Punishment and Lotteries, P.312 (1953-56)

In the final analysis, the most significant legislative attention has been paid Canadian gaming laws within the span of the past fifteen years. Events including law reform accomplished by the 1968-69 STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS of the Parliament of Canada and the CHARTER OF RIGHTS of 1981, with its constitutional implications, altered the spirit and intent of our gaming laws. Indeed, a complete reversal in historic philosophy toward legalized forms of gambling and its control has occurred.

It bears repeating at this point that between 1892 and 1970, the Criminal Code disallowed anything but pari-mutual racetrack betting and games of chance whose regularity was to be determined by each Province. Some exceptions were made for agricultural fairs. Although this is a rather hasty generalization of the true situation, it serves to sum up for my purposes here.

In 1968-69, Canada was thrust into a new era of legalized public gambling at the hands of the Honourable Mr. John TURNER, then Minister of Justice. Highlights of the new legislation included the introduction of Section 190 of the Criminal Code which describes permitted lotteries and handed licensing authority to the Provinces and, of secondary importance, an exception was made for gaming houses under the "bona fide social club" clause. This clause, Section 179, also handed licensing authority to the Provinces in this regard.

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In consequence of certain Provinces exercising their prerogatives, gambling, in the forms of Nevada style casinos, true lotteries, Nevada breakopen ticket schemes, raffles and bingos, has burgeoned into a multi-million dollar industry.

The single most important concern created for law enforcement, as a result, has been prolific governmental licensing without proper follow-up control by the licensing authority. In some Provinces there are no controls whatsoever with a complete absence of terms and conditions pursuant to the licenses. Nor are the delinquent Provincial authorities concerned in the least about the situation which openly invites criminal abuse. Other jurisdictions are paying little more than lip service to the issues, establishing inadequate policies and controlling agencies in the face of a tidal onslaught of gaming. These authorities remain content to leave the control of licensed gaming to the police, the misguidance of which will be discussed.

Without question, the four Western Provinces and the Yukon Territories have emerged as the leaders insofar as legislative controls are an issue. The Province of Alberta is "light years" ahead of all other jurisdictions in gaming control. Its second will be the Province of Manitoba with Saskatchewan and British Columbia in succession. The Yukon is unique, and regardless of its meager population, gaming control pales that of the Eastern giants.

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In view of the fact that I have submitted that Section 190 of the Criminal Code, as introduced in 1968-69, is the reason for the propulsion of Nevada style gaming in Canada, I offer the following personal interpretation of the clause. Bear in mind the general licensing latitude involved and the invisible requirement for license control. I will deal firstly with the licensing of casinos.

It is my opinion, and I stress that point, that the casino games of blackjack, roulette, poker under defined schematics and other games of chance, excluding dice games, three card monte, coin tables and punchboards as described under Section 189(1)(g) C.C., may be properly licensed by Provincial (Territorial) authorities.

The issues of "charitable or religious" organizations and "lottery schemes and games" are at the heart of this rather ambiguous situation.

Most provinces issue licenses to "charitable or religious organizations" to conduct and manage "lottery schemes" in their respective jurisdictions. The operative clauses, in most instances, are Section 190(1)(c), (d) and (e). The interpretation of "lottery scheme" is derived from Section 190(5) which states that a "lottery scheme" includes a "game".

a. Dealing with the three primary issues of contention, namely, "charitable or religious" organizations, "lottery scheme-game" and with the issue arising from a reading of Section 190(1)(c)(i) and (ii), let me first refer to the issue of "lottery scheme-game."

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Most provinces have decreed that the converse interpretation of Section 190(5) C.C. logically implies that a "game" is a "lottery scheme". Although "lottery scheme" is not described under Section 179, "game" is described as a game of chance or mixed chance and skill. The casino games mentioned above meet that definition. Therefore, such games are licensed as "lottery schmes".

My research has shown that Section 190 of the Criminal Code was proclaimed 1968-69 Revised Statutes of Canada, Chapter 38, Section 13, and it came into force on January 01, 1970. The legislation was introduced as part of an omnibus bill by then Minister of Justice, Mr. John TURNER.

From Mr. TURNER's comments respecting "lottery schemes", as quoted on Page 104 of this paper, it would appear that provincial interpretations, to date, are valid where Section 190(5) is an issue. Further, Mr. TURNER made the following statement in the House of Commons in Janaury of 1969.

> "I now want to turn briefly to the question of lotteries. I may say that I am dealing now with those clauses of the bill that have provoked the most public response and comment. The proposed amendments concerning lotteries - and when I use the word "lotteries" I mean games of chance generally - incorporate a fundamentally new approach in the sense that the amount and nature of gaming which will be permitted will depend to a considerable extent on the policy of provincial authorities in issuing the licences to which I will refer in a moment. The attitude toward lotteries in Canada varies in various parts of the country. The proposed amendments will provide, to an appreciable degree, for recognition of that fact. The nature of the proposed amendments might be described as local option within prescribed limits set in the Code. The amendments also clarify an important obscurity in the present law in relation to the conduct of lotteries by religious and charitable organizations."

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Dealing with the issue of "charitable organization", the following will apply. It should be noted that later, during debate by the Standing Committee, the issue of what a charitable organization was exactly was raised. Mr. TURNER's reply was to the effect that any scheme conducted by a group that was to result in the public good, generally, would be permissible in his opinion. He reiterated that the provinces had the final discretion in this regard.

When pressed further for a definition governing "charitable", Mr. TURNER alluded to a definition used by Revenue Canada which was, in turn, devleoped from a S.C.C. decision in the late 1940s. Mr. TURNER used such terms as "generally", "wide lattitude" and "wide open" when answering queries in this regard.

For the sake of argument, allow me to presume that I have satisfied the issues of "charitable organization" and "lottery scheme-game". We are now faced with dissecting Section 190(1)(c) of the Criminal Code. For convenience, it is quoted as follows:

PERMITTED LOTTERIES:

190.(1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(c) for a charitable or religious organization, under the authority of a licence issued by the Lieutenant Governor in Council of a province or by such other person or authroity in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province and for that purpose for any person under the authority of such licence to do any thing described in any of paragraphs 189(1)(a) to (g) or subsection 189(4), otherwise than in relation to a dice game, three-card monte, punch board or coin table, if

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(i) the proceeds from the lottery scheme are used for a charitable or religious object or purpose, and

(ii) in the case of a lottery scheme conducted by a charitable or religious organization at a bazaar,

(A) the amount or value of each prize awarded does not exceed one hundred dollars, and

(B) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents."

Also relevant to my submission is the following exerpt from Part V of the Code:

"OFFENCE IN RELATION TO LOTTERIES AND GAMES OF CHANCE - "Three-card monte" - Exemption of agricultural fairs - Offence - Lottery sale void - Bona fide purchase - Foreign lottery included - Saving.

189.(1) Every one is guilty of an indictable offence and is liable to imprisonment for two years who

(d) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of;"

Section 190(1)(c) states:

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.....to do anything described in any of paragraphs 189(1)(a) to (g) ....."

Referring to Section 189(1)(d) C.C., which is the substantive section utilized in laying charges against persons conducting illegal "lottery schemes" and reading it as follows:

> **(d) conducts or manages any scheme.....of any kind .....for the purpose of determining who.....are the winners of any property.....etc.**

The operative words appear to be "any scheme" "of any kind" and "any property" which I submit includes cash.

Therefore, using casino blackjack as an example, and using my reasoning, it qualifies as a "lottery scheme", it falls within the parameters of Section 189(1)(a) to (g) and specifically (d), and accordingly, it can be played for a money prize.

Section 190(1)(c)(i) C.C. must, of course, be complied with in accordance with, I submit, any proportion or term or condition as specified by the licensing authority.

Section 190(1)(c)(ii) C.C., which mentions "fifty cents" and "one hundred dollars", DOES NOT APPLY TO CASINOS. This sub-section refers to lottery schemes conducted "AT A BAZAAR".

I dwell on this point as the argument has been advanced that:

(a) "blackjack" does not fall within Section 189(1)(a) to (g) C.C.
(b) None of the games of chance or mixed chance and skill mentioned in Section 189(1)(f) and (g) can be played for a cash prize.

For the reasons given in the preceding pragraphs, I must disagree with this argument.

Curiously, when the issue of "cash prize" is a factor, Section 190(1)(c)(ii)(A) refers to:

> "the amount or value of each prize awarded does not exceed one hundred dollars, and"

Obviously, the "lottery scheme" referred to here is subject to falling within Section 189(1)(a) to (g) as stipulated in Section 190(1)(c) C.C. Therefore, applying logic, cash prizes are sanctioned.

Further to that reasoning, an examination of the first line of Section 190(1) C.C. provides further relief insofar as betting limits are an issue. It reads:

> "190(1) Notwithstanding any of the provisions of the Part relating to gaming and betting, it is lawful"

This simply adds further impetus to the subsections that follows.

Dealing briefly with Section 190(1)(e) C.C., an examination of same reveals obvious differences from subsection (c). This clause deals with "public place of amusement", and it limits the amount and value of prizes as well as the amount of the fee to play the game.

An argument advanced by Mr. Kingsley WIJESINHA, Co-author of the book "AIDS TO CRIMINAL INVESTIGATION", PANJU CANADA LTD., Scarborough, Ontario, implies that Section 190(2) C.C. allows the licensing authority to raise the amounts of cash prizes and fees as they see fit.

If one were to adopt WIJESINHA's interpretation, then Section 190(1)(e) C.C. could be applied to casino operations.

On the question of entry fees paid by persons entering a gaming premises, I am unsure as to the strict legality of this practice. In the cases I have observed personally, the entry fee is ostensibly for on-site entertainment and not for the privilege of gaming. The fact remains that the customer is denied entry if the fee is unpaid. In any event, when one examines the sweeping authority that the licensing authorities have pursuant to Section 190 C.C., it may be possible to accommodate such a practice.

Adherence to this line of reasoning has fostered the appearance of "Nevada breakopen ticket" lottery schemes, commercial scale bingo halls and the formation of Provincial and Interprovincial true lotteries.

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Certain of these schemes are rather complicated and as such, they demand sophisticated management which will serve to ensure the integrity for the gaming in question. Casinos in Western Canada exemplify this, many of them offer a greater number of games than do some Nevada casinos. These operations are, in fact, an industry, generating millions in revenue for the licensees.

The requirement for games management expertise is now met by various professional corporations, the officers of which are gaming experts and some of whom possess degrees in business administration. Casinos are a cash based industry and, as such, they possess the potential for theft, fraud and conspiracies on a grand scale.

In 1981, for example, the Western Provinces and the Yukon combined generated in excess of ninety millions in gross revenue from casinos alone. The seemingly innocuous Nevada ticket produced over thirty millions in Manitoba and over sixty-eight millions in Alberta. Not universally licensed, my Atlantic counterpart, Sgt. L.F. PREGITZER, provides an estimate of fifty millions produced by Nevadas in the Province of Newfoundland.

Sgt. PREGITZER also advises that bingo events vastly exceeded the earnings of casinos, which have not yet reached a level of popularity approaching that in the West. "Bingo" in the Maritimes earned in excess of eighty millions in 1981. Similar figures were matched by Alberta and Ontario in this regard.

Events involving casinos, pull-tickets, raffles and bingos are licensed on an individual basis by the various Provincial authorities, pursuant to Section 190 of the Code. Some jurisdictions have met the challenge of controlling their licensed gaming, others are acting to do so, while still others remain to be remiss.

Suffice to say that if all Provincial jurisdictions, having due regard to population, approximated or patterned their licensing and control mechanisms after that of the Province of Alberta, the integrity of gaming in this country would be in responsible hands. With total gross revenues from licensed gaming exceeding 200 million in 1982 alone, it is little wonder that the Albertans maintain and exercise a vigilance over it second to none in this country.

In particular, the megalopolitan areas of Ontario and Quebec would, in my opinion, better serve themselves by following the example set by the Western leaders. With the exception of Nova Scotia, the Maritimes are only now beginning to appreciate the need for gaming controls and are addressing the issue. Nova Scotia has had lottery commission since 1974, Newfoundland established one in 1983 and New Brunswick in 1981. Prince Edward Island remains sans regulatory controls.

Ontario, with a population of eight million, and Quebec with six million, employ no more licensing personnel than does Manitoba with a population of only one million. Manitoba has long since surpassed its Eastern neighbours in gaming control. Saskatchewan remains static as does British Columbia with barely adequate licensing controls. The Northwest Territories is reviewing its legislation as is the Yukon Territorial Government.

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Some Provinces have decentralized licensing authority and municipalities have been given the power to authorize certain forms of lottery schemes. This has resulted in a breakdown of control on an even greater plane and uniformity is non-existent. The potential for abuse is enhanced by employing such a fragmented system, as well.

Delinquent jurisdictions have had ample time to formulate adequate licensing policies and control agencies, their lack of foresight has opened the door to unscrupulous private operators in gaming. Such operators are now firmly entrenched and operate with impunity.

This situation is an anomaly when the cooperation and organization is considered as concerns the Interprovincial Lottery Corporation. Consider the background of the Western Canada Lottery Foundation and its Eastern partners.

The Western Canada Lottery Foundation is incorporated under Part II of the Canada Corporations Act. Its members are the governments of the four Western Provinces, with each province having a Minister responsible for the Foundation. In turn, each province appoints two persons who sit as representatives of their respective provinces on the Board of Directors. The Yukon and Northwest Territories are associate members, with no members on the Board and no voting rights. The Head Office of the Corporation is in Winnipeg.

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The Western Canada Lottery Foundation is the Western Regional organization of the umbrella corporation called the Interprovincial Lottery Corporation, which is a joint undertaking of the ten provinces.

In the West, each province has licenced a provincial marketing agency to assist in the marketing of lottery tickets.

The Western Canada Lottery Foundation operated three lotteries in Western Canada in 1981.

(a) WESTERN EXPRESS or WINSDAY at $1.00 per ticket is run in the 4 Western provinces, the Yukon and the Northwest Territories. It sells approximately 2,000,000 tickets per week throughout the West and North.

(b) THE PROVINCIAL at $5.00 per ticket is operated by the Interprovincial Lottery Corporation (Western Region). These tickets are sold in the 4 western provinces, the Yukon and Northwest Territories. In addition, they are also sold by Ontario Lotteries Corporation in Ontario, Loto Quebec in Quebec and Atlantic Lotteries Corporation in the East. The Provincial sells approximately 300,000 tickets per week in the West.

(c) THE SUPER LOTO tickets are sold $10.00 per tickets by Interprovincial Lottery Corporation and has the same distribution as mentioend for The Provincial. Super Loto sells approximately 700,000 tickets per month in the West.

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Tickets for the Express Lottery are printed in Winnipeg by the Winnipeg Bank Note Co., a subsidiary of British American Bank Note Co. Ltd. The Provincial and Super Loto tickets are printed in Toronto.

Sales of the Western Canada Lottery Foundation for fiscal 1980/81 amounted to $200 million, making it one of the ten largest corporations in sales in Western Canada.

With the addition of Loto 6/49 and increased patronage, the $200 million figure may continue into infinity. If the threat of infiltration of the gaming industry by organized crime and racketeers is insufficient motivation for regulation, the taxation base should prove to be attractive enough to supplement the shortfall in the former.

Is this threat real or imagined? The multitude of senate committees on organized crime investigations in the United States have shown that gambling enterprises are second only to drug operations as a source of revenue for organized crime in that country. Evidence given there has, on occasion, pointed to Canadian involvement. Due to Canada's dearth of such inquiries, which may be directly attributable to our libel laws and to our Constitutional Act, public exposure has been minimal. Canadians learned more about the subject from the C.B.C. documentary series "CONNECTIONS", than ever before. The reaction at the time (1978) was one of shock and outrage, both of which mellowed into acceptance of fact.

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Canadian police criminal intelligence reports are now publically known to contain references to organized crime involvement in gaming as a result of the series. American agencies acting in accordance with the United States freedom of information laws, disseminated the contents of same to Canadian reporters and the result if history. More will be said about this issue in an upcoming paper to be prepared by myself.

As to the effectiveness of post 1950 Canadian gaming legislation, its enforcement has been hindered and nullified by a number of occurrences. Police priorities, court reaction and public policy are all contributing factors in the demise of the laws in question.

Two areas must now be considered in assessing the legislation. Since 1969, legalized gaming has imposed itself as being problematic for law enforcement in certain jurisdictions. Furthermore, the level of illegal gaming has increased proportionately. Where licensed gaming has warranted police attention, it has been as a result of inadequate or totally absent follow-up controls by the licensing authority. Illegal gaming has been ignored in many cases until it reaches a "crisis" point, at which time it is invariably investigated in a perfunctory manner which results in shoddy prosecutions and more often than not, court dismissal of the charges.

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How has the law enforcement community allowed such a situation to develop in the face of criminal sanctions against some forms of gaming? Are we contributing to the "permissive crime" syndrome? Are the courts, through inappropriate sentencing, placing the gambling laws into the "benign prohibition" category? The legislation existed, until recently, to guide the criminal justice syustem in a path aimed at controlling this activity. Are the law makers now signalling a change in that direction?

The reason for all of this comes full circle to that of priorities. Violent crime, drugs and major theft have eclipsed gambling enforcement to the point that a select few police officers, in various Departments scattered across the country, are now left to deal with it.

Accordingly, the investigation of gaming has been at best ad hoc since 1950 and in real terms, it appears to be in danger of becoming a lost art. The gradual extinction of effectively trained personnel, coupled with the erosion of the provisions contained in Part V of the Criminal Code sound an ominous note for those of us concerned.

It is, of course, difficult to refute the reasoning behind the predominantly apathetic attitude and the resulting assignment of low priorities toward gaming enforcement. Gambling cannot claim the debiliating effect of drug abuse to justify its prohibition in the eyes of many. Few deaths result from illegal gambling other than from extraneous

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variables such as robbery or loansharking. Drug abuse is still a relative flirtation with our society, whereas gambling has been a marriage for decades. There is no great stigma as with drugs, gaming involves all walks of society. For the gambling subculture and its sympathizers, the laws are regarded as little more than a nuisance. As expert oddsmakers, the chance of being "busted" are placed at being a long shot. The underlying issue is that police and prosecutors feel that they do not have a great public mandate to vigorously pursue gambling.

They are probably right in that assumption. Despite the formation of Criminal Intelligence Services Canada, with its member agencies and its designation of gambling as a lucrative field subject to penetration by organized crime, little more than lip service has been paid the issue. Again, priorities must be acknowledged. Intelligence is gathered and subjected to analysis, problem areas are identified by C.I.S.C. and that body's function is fulfilled. It then falls to the jurisdiction concerned to deal with the criminal investigation. Once again, the "circle" often completes itself and priorities triumph to the advantage of the gambler.

Police forces take their cue from their federal, provincial or municipal employers and enforcement policy in gambling have had a history of political involvement. There have been occasions, and not infrequent occasions, when law enforcement has experienced difficulty in proceeding with gambling investigations due to a lack of support from Crown Prosecutors. Some vintage police officers justifiably lament the gradual onslaught of the "District Attorney" concept in this regard.

The contention is that organized crime infiltrates and seeks to control both legal and illegal gambling. The proceeds from this venture and its related activities are ostensibly channelled into its other legitimate and illegitimate enterprises. The revenue generating capabilities of gambling has already been illustrated and Canadians saw it first hand with the 1975 Royal American Shows carnival investigation. Ergo, the reasoning behind law enforcement's efforts against it is explained. The problem rests in assigning any real sense of urgency to its investigation for all of the reasons aforementioned.

If the effectiveness of our gaming legislation can be gauged by its enforcement, we are then faced with a problem. We know that it has been ineffective to date, especially when dealing with organized crime involvement. However, what does the future realistically hold for this form of criminality as defined by statute?

When relating enforcement to the anticipated effectiveness of the law, it is useful to examine the strength directed against the prohibitions. In general, larger municipal police forces employ small numbers of personnel on morality or vice squads. My counterparts stationed at Halifax and Vancouver verify this observation, and I have personal knowledge of this situation as it exists in central Canada.

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These units are charged with enforcing the laws dealing with gambling and morality, with the emphasis on the latter. Prostitution has long demanded police attention due to its high profile and the corresponding public outcry against it. Many Departments have sent candidates to the Canadian Police College for specialized training in gambling investigation only to deploy them on unrelated duties upon their return. This occurs with the R.C.M. Police and with the Provincial Police Forces, as well. While on the subject of priorities and training, due to budget restraints, one of the first C.P.C. courses to be eliminated from the curriculum in 1983 was the Gambling Investigational Techniques Course.

The municipal police forces are of paramount importance in this discussion as the bulk of serious organized gambling occurs within their jurisdiction. Expert investigators have emerged from these agencies, especially in the area of bookmaking. Here, the courts become a determining factor in the level of enforcement. Sgt. D.D. WAKELAM, R.C.M. Police Pacific Region Gaming Specialist, is also an expert in this field, and he maintains that because of the fantastic pecuniary gain realized by bookmakers, court sentences have little effect. WAKELAM illustrates his point by relating the story of the Vancouver bookie who handled in excess of $300,000.00 "action" in two days of which approximately $30,000.00 was his "juice" or profit. The bookie was arrested and eventually delivered to court where he was ordered to pay a fine of $14,000.00, one day's wages. Bookmakers have been arrested for the same offence twice in one day, having carried on after appearing in court in the morning.

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Illegal gaming houses will be more difficult to combat in the future with the repealing of Section 183 of the Criminal Code. The implications for law enforcement are that costly undercover operations will now almost certainly be a necessity in order to gather sufficient evidence.

The investigation of pyramid schemes and illegal lotteries in general is becoming decentralized in many jurisdictions with fraud units replacing gaming sections in this regard.

The carnival industry is a billion dollar business in Canada and midway games are almost totally unregulated due to the exemption described under Section 189(3) of the Code. Typically, the carnival moves quickly from one jurisdiction to another, staying for a few days annually. The local police force is hard pressed for investigators with any experience in midway game monitoring for that reason.

Again, the Royal American Shows investigation, and others, illustrate the propensity of some operators toward fraud, theft and conspiracy to evade income tax. Carnivals are a subculture in our society and this is part of their attraction. They have their own vernacular which differs from that of others of the gambling fraternity, and their hierarchy is unique. Novels have been written about carnival people and movies about them have been made. Only years of association with and close study of the participants in this fascinating industry will allow sufficient insight as how to approach it with the view of policing it.

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The vigilance exercised in this regard by my predecessors in the R.C.M. Police and especially by policemen in key Western Canadian cities has contributed to a noteworthy change in the industry today as compared to the 1964-65 era when I was employed by Royal American. The owner-managers are approaching the business with a new attitude as well. They foster the image of legitimate businessmen and indeed, some of them definitely are.

All gaming ventures should be monitored and controlled by regulatory agencies from a practical point of view. Gambling is an indirect form of taxation and, as such, legislative motivation is coming of age. Controlling gaming as an industry, as opposed to controlling it by prohibition, makes sense. The activity has been legitimized for the most part by Section 190 of the Code and with proper administration pursuant to licensing on a Provincial basis, it can be governed.

Increased Provincial authority over gaming is the direction which will be followed in the future. This is as invevitable as it is desirable in my view. It can be deduced from the statements made by the Minister of Justice in 1969 which have been quoted herein, that the Federal government foresaw and intended to provide for such developments.

Criminal sanctions are a difficult and, at times, inappropriate way to deal with people's vices. As long as public policy remains as it is toward gambling prohbitions, the law will be defied. The extent of the defiance is and always has been beyond the scope of effective policing.

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Those of us charged with full time gaming enforcement are few in the face of many. Morality units are understaffed to say the least. Recently, the Ontario Provincial Police disbanded its anti-gambling section entirely and Quebec maintains a skeleton squad.

The R.C.M. Police National Gaming Section consists of four members. Two are based at Edmonton with one each in Halifax and Vancouver. The Province of Alberta maintains a one man R.C.M.P. Gambling and Morality Section while Manitoba and Saskatchewan employ one R.C.M.P. member each on a part time gambling enforcement basis.

Due to our widespread geographic locations, it is difficult and, at times, simply impossible to collaborate on enforcement policies or to act in concert effectively on investigations. Therefore, largely because of our numbers, we are straining to meet our mandate. Often times our level of service is stretched to the point of transparency. Obviously, we are not the answer to the question of effectiveness through meeting enforcement requirements. Monitoring the progress of organized crime is one thing, motivating another jurisdiction to act against illegal gaming, with all of the superceding priorities, is quite another undertaking. Only a massive commitment of manpower and the corresponding development of enforcement expertise by all concerned will serve to remedy the situation.

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The timing for such a move has never been more appropriate in the history of gaming in Canada. Our gambling complexion has changed more during the past fourteen years than in the first century of our nationhood. Our laws will continue to experience metamorphisis and, as law enforcment agencies, it is incumbent upon us to plan to meet the upcoming changes.

The need for planning is even more crucial when our current manpower status is considered. By planning, we may be able to predict undesirable traits and thereby act to prevent their occurrence. Harbouring a "wait and see" attitude is fatalistic and is no more valid than living one day at a time. Without specific objectives of sufficient import, motivation will disappear. Therefore, we must develop a new philosophy toward gaming enforcement in order to meet the needs of law enforcement in the future and to assist those who follow.

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