A Review of the Gambling Literature In Public Policy Domain:

Government and Legal Policy Documents

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Government Policy Paper: Federal

Sport in Canada: Leadership, Partnership, and Accountability

House of Commons, Canada, November 1998. Standing Committee on Canadian Heritage, Sub-Committee on the Study of Sport in Canada. The purpose of this Committee is, among other things, to measure the economic impact of sport on a national and regional basis and to facilitate the Federal role in promoting sport.

Summary:

The criminalization of betting on sporting events forces such activities underground, to the detriment of participants. The legalization of sport wagering could generate significant revenue to support amateur and recreational sport in Canada. Canadian law puts race-horse owners and operators at a disadvantage to Americans and others, as Canadians attempt to circumvent Canadian taxes by betting directly with U.S. tracks. Canadian tax law should be amended to address this and other matters pertaining to race horses.

Horse Racing Concerns:

1. Canadian horse racing has been affected by 'new and expanded gaming initiatives including casinos, slot machines, lotteries, and bingos.' When Canadians win on a bet placed in Canada on a U.S. pool they are subject to tax-withholding. This results in Canadians circumventing taxation by directly wagering with U.S. racetracks. This affects the Canadian horse racing industry because revenue is not generated for the Canadian industry.

2. Horse owners who are not full time farmers have tax deductions to a maximum of $8500. This places Canadian owners at a disadvantage globally. 3. New technologies permit foreign competitors to promote and operate betting means not available to Canadian race tracks, i.e. via the Internet or digital satellite TV. The *Criminal Code* permits only telephone account wagering.

Recommendations:

1. The Ministry of Finance should negotiate changes to the tax treaty between Canada and the U.S. so that Canadians betting in Canada on U.S. races will only be subject to Canadian tax laws.

2. The Minister of Finance could amend the Income Tax Act to allow horse breeders and owners to receive the same tax rules concerning losses as other businesses. 3. The Minister of Justice could amend the Criminal Code s.204(1)(c) by adding the words 'or any other telecommunication devices' after the words 'telephone calls'

to allow the horse racing industry to take advantage of emerging technology for betting pools.

Sports Wagering Concerns:

Sports wagering is illegal. Because it is illegal it creates an underground wagering industry, which does not protect bettors nor does it generate revenue.

Recommendations:

The Minister of Justice could investigate the economic and social effects of sport wagering, and study the effect of legalizing it. Legalized sport wagering could generate more revenue.

Government Policy Papers: Alberta

I: New Directions for Lotteries and Gaming

Report and Recommendations of the Alberta Lotteries Review Committee,
August 31, 1995, following 22 public meetings in 14 locations; attendance of 2200, 462 oral presentations; 18,500 written submissions.

Summary:

Issue 1: what should lottery funds be used for?

Question 1: What should the purpose be for lottery funding? Should we keep a broad, general purpose or should we narrow the focus to a more specific purpose for lottery funding?

Question 2: should lottery funds remain as separate, earmarked funds or should they be considered the same as all other revenues of the province and allocated as part of the regular budget process?

Question 3: should a portion of lottery revenues continue to go to the general revenues of the province to pay for basic government programs and services?

Question 4: should lottery funds be used to fund essential programs or should those programs be funded completely out of regular government budgets? If programs such as libraries are considered 'essential', what other programs currently funded by lotteries funding might also be considered 'essential'?

Question 5: Should lottery funds be used for: agriculture; culture; recreation; tourism; education; health and wellness; science and the environment; new facilities in communities; reducing the deficit; reducing the debt; other?

Recommendations:

Albertans support a broad, general purpose lottery fund; priorities should be the arts and culture, health, recreation, education, facilities for communities, reducing the debt and the environment; lottery funds should not be used as general revenue, to meet ongoing commitments of government: i.e. multicultural programs are a core government responsibility and should not be dependent on lottery funds, the Environmental Research Trust is a core government responsibility. Lottery funding should be an enhancement to health and education in communities.

Gaming revenue, therefore, should be used to support statutorily mandated activities, and should not be used as general revenue. 'Core government activities' should not be reliant on gaming revenue.

Issue 2: are there better ways of allocating lottery revenues?

Question 1: what principles should guide decisions about the allocation of lottery funds?

Question 2: should a community-based lottery council be set up? What role should it play? To advise government? To establish principles and guidelines? To play a more direct role in recommending allocation of lottery revenues?

Question 3: If a community-based lottery council was established, should it seek input from: municipalities on funding policies? On decisions about distribution of funds? Community groups on funding policies? On decisions about distribution of funds?

Question 4: what role should non-profit foundations play in determining the use and allocation of lottery funds? Should these foundations continue to have a major role in distributing lottery funds?

Question 5: what kind of mechanisms should be in place to ensure that lottery funding does not duplicate regular funding from government departments?

Question 6: what kind of mechanisms should be put in place to reduce overlap among the various foundations?

Question 7: should the province deregulate licensing of small raffles under $5000? If so, who should take over licensing responsibility? Private registry agents? Municipalities? Others?

The inefficient use of government resources should be eliminated by centralizing all gaming oversight under one Minister and Ministry. Municipalities should have more authority over the use of gaming revenues within their jurisdiction to promote local priorities. 'Minor' lotteries should be deregulated.

Recommendations:

Improvements can be made to reduce overlap and duplication. Communities should have more say to direct funds to community priorities. A lottery foundation should be established with overall control over lotteries, under the Minister responsible, and replace existing foundations; local lottery boards should be established with authority to allocate revenues to community priorities: revenue allocation would be per capita to communities of the overall net revenue. raffles under $10 000 should be deregulated and raffles under $500 should not require a licence;

Issue 3: How can we improve accountability?

Question 1: would the establishment of a community-based lottery council improve accountability for the use of lottery funds? Would it make the process more open and visible to Albertans?

Question 2: keeping in mind the need to keep rules and regulations simple and easy to accommodate, what mechanisms could be put in place to improve the accountability of local groups which receive lottery funding?

Question 3: what other steps should be taken to improve overall accountability for the use of lottery funds?

In order to reduce inefficiency and increase accountability in the application process, the procedures for applying for funding should be standardized and centralized. Recipients of public gaming revenue must be subject to audit and annual reporting. The application process should be made transparent and public.

Recommendations:

Applications for funding should be made centrally with standard forms and procedures for applications and simple, easy-to-follow rules and procedures. There should be annual reporting by granting agencies. Recipients are subject to a full accounting of use of funds. Overall, there will be full disclosure of applications and procedure.

Issue 4: what is the impact of VLTs on community organizations?

Question 1: if volunteer organizations find that their revenues are declining as a result of the introduction of VLTs in the community, should lottery funds be used to offset those declining revenues? If so, on what basis?

Question 2: should money be transferred to municipalities for distribution within the community?

Question 3: If money should be transferred to municipalities, who should provide input to the municipality on priorities for distribution? How would this relate to the role of the community-based lottery council?

Question 4: should the provincial government have any role in determining community priorities for distributing lottery dollars?

The Government must maintain control over VLT licensing, regulation, and enforcement. VLTs should only be accessible in limited numbers and locations, and problem gaming needs to be addressed. Municipalities should have the option to ban VLT use in their jurisdiction, with a concurrent loss of their share in provincial gaming revenue.

Recommendations:

Deregulating VLTs is not a viable option, for reasons of enforcement. Police services advise that maintaining controls is essential for enforcement. VLTs should be accessible mainly in casinos, and the surplus removed from bars and lounges, thereby creating a cap on the number of VLTs (at 6000). To address problem gambling, computer chips in

VLTs should be programmed to slow down the rate of play, as addicted gamblers especially enjoy the high speed of VLTs. Communities should share in VLT revenue. Communities should be allowed to prohibit VLTs in their municipalities by plebiscite, but would lose any claim to VLT revenue. One licence per facility. Regulations should be tightened to prevent staff from using VLTs while on duty;

Issue 5: how should casinos operate?

Question 1: should the number of casino licenses issued in major cities in Calgary and Edmonton be increased to allow for more than one casino per year?

Question 2: should the provinces license large-scale, privately-owned casinos? If so, where? In tourist areas? Urban convention centers?

More casino licences for Edmonton and Calgary are recommended. Casino operating hours should be extended. A share of revenue should be devoted to non-profit organizations. Alberta casinos should maintain their present character, and maintain government regulation and their non-profit status.

Recommendations:

The number of licences issued in Calgary and Edmonton should be increased. No new licences should be created outside of these cities. Current operating hours should be extended to allow for 13 consecutive hours of operation, opening no earlier than 11 am, closing no later than 2 am. A share of casino VLT revenues should be set for non-profit organizations. Large-scale, Vegas-style casinos should not be established in Alberta. Alberta casinos should maintain their government regulation and non-profit status.

Issue 6: how do we address problem gambling?

Question 1: should the Alberta government continue to expand the video lottery program? Will limiting the number of VLTs help solve problem gambling?

Question 2: what other measures, beyond current programs through the Alberta Alcohol and Drug Abuse Commission (AADAC), should we consider to address problem gambling?

Recommendations:

Government should continue to fund programs. Funding should be channeled through AADAC or approved community agencies. Funding should be a ‘first-draw’ from lottery revenues.

Issue 7: should lottery funding go to support professional sports teams?

Gaming revenue should not be used to support professional sports teams, unless it is in the provision of community infrastructure that is available for public use.

Recommendations:

No portion of net lottery revenues should be used to support the operational costs of any professional sports teams. The feasibility of a Sports Prize Bond should be studied. Decisions on the support for facilities are primarily the responsibility of municipalities. If lottery funds are involved in infrastructure/facility construction/operation, funding would be through the Local Lottery Board, but the facility would have to be available for community amateur sports teams.

Other General Recommendations:

Regulations should be amended to permit the use of evolving technology. Community standards need be publicly stated and clear.

Bingo: expanded use of technology should be implemented. The Commission should review its regulations surrounding bingos. Charitable groups running bingos should be guaranteed 20% of gross revenues.

Community Standards: individual communities may choose to define what community standards will be, in relation to granting lottery funding. Defined community standards should be clearly communicated to all groups and individuals who apply or consider applying for funding.

II: Native Gaming

Native Gaming Committee Report and Recommendations on Native Gaming, Government of Alberta, April 1996

Gaming is an area of provincial legislative competence. First Nations gaming is subject to provincial law. The First Nations are to benefit from gaming revenue as equal citizens of the province.

Recommendations:

1. regulation and enforcement of all gaming should remain the responsibility of the province;

2. all native gaming initiatives should be subject to the same rules, regulations, and legislation of other charitable gaming initiatives;

3. enforcement is a provincial responsibility: full access to facilities and disclosure of gaming operations must be provided to the Alberta Gaming and Liquor Commission;

4. all casinos in the province must be government regulated and retain their non-profit, charitable status;

5. First Nations Gaming Casinos will continue to be allowed in Alberta, but under the current charitable gaming model; a maximum of three, two-day casino licences would be available per week at a First Nations facility;

6. to ensure viability of casinos as a source of revenue for non-profit organizations, a maximum of four facility licences to be issued on or contiguous to reserves;

7. all First Nations in the province should realize some benefit from revenues; 50% to the casino operator/management company, 40% to the charity; 10% to a First Nations trust fund to be pooled and shared by all First Nations in Alberta;

8. First Nations Gaming Casinos should have community support and address the effect on adjacent and surrounding communities, such as roadways, policing, etc;

9. negotiation of agreements to permit ownership of the casino by individual First Nations (except for VLTs/CGTs);

10. number of VLTs/CGTs per First Nation should be allocated on a sliding scale related to geographic location, to a maximum of 50 terminals;

11. guidelines to be established to share First Nations casino VLT/CGT revenues with non-profit native organizations;

12. under the Lotteries Review Committee's recommendation to establish an umbrella Foundation to distribute lottery revenues be applied to First Nations communities as well, so that First Nations could share in the net provincial lottery revenue;

13. lottery funding for First Nations should continue through established programs currently providing funding to First Nations projects;

14. problem gambling should continue to be a priority for government: research and treatment via AADAC funding and approval; funding should be a 'first draw' priority;

15. the Commission should work closely with the First Nations to ensure their charity casino schemes are viable and successful; maintain an open dialogue with all First Nations in Alberta;

III: Developments in Alberta Gaming Policy

CanWest Foundation. Summary: 2 pgs, unpublished

- Gaming Ministry created May 1999 with a mandate to oversee the Alberta Gaming and Liquor Commission, the Community Lottery Board Secretariat and the Gaming Institute. Hon. Murray Smith was appointed Minister. (Government News Release)

- In April 1999, the Minister responsible for gaming, Pat Nelson, introduced the Gaming and Liquor Amendment Act in the legislature. The amendment received royal assent in May, 1999. A key goal of the proposed legislation is to close a legal loophole blocking the government from removing VLTs from seven Alberta communities whose residents had already voted them out. The Act will also alter the organization of the AGLC to separate the quasi-judicial Board from the operational arm of the Commission. (Government News Release)

AGLC set up a bingo review committee that begins hearings in January 1999. The nine-member panel headed by Sam Lieberman traveled to Edmonton, Calgary, Lethbridge, Red Deer, and Grande Prairie to listen to stakeholder concerns. The committee will also read up to 500 written submissions and hand in a report in July 1999. (Edmonton Journal and Alberta Report)

Alberta Gaming and Liquor Commission announced changes to bingo regulations on December 15, 1998. The AGLC said the changes will make access to bingo funds fairer. Groups which depend on bingos were unhappy with the new regulations which would:

i. Let the Commission limit how many bingos a charity can hold.

ii. Force bingo associations to award the same number of bingos to each group, regardless of seniority, size or need and to divide up afternoon and evening bingos evenly.

iii. End a widespread practice of rewarding volunteer bingo workers with such credits as lower club fees.

- In January 1999, the Alberta Gaming and Liquor Commission withdrew the regulations on allocating bingo events and credit payments to volunteers. The Commission said it was responding to concerns from the bingo-review steering committee. (Edmonton Journal)

- Casino Gaming Terminal activities, principally slot machines, were expanded to 1680 in 1997/98 from 765 in 1996/97. (AGLC 1997 and 1998 Annual Reports)

- In May 1998, the Alberta Liquor and Gaming Commission (AGLC) announced it would conduct field tests to assess the impact of increasing payout percentage and

slowing down video lottery terminal (VLT) speed of play, in response to Motion 505, passed by the Legislative Assembly in March, which urged the government to make modifications to VLTs. (Government press release)

- Alberta Lotteries and Gaming Summit was held in Medicine Hat on April 23 to [25], 1998. A wide cross section of the public took part in this summit, exploring both the costs and benefits of gaming in Alberta as well as numerous activities related to VLTs. On July 21, 1998, a full report was released and all eight recommendations were accepted by the Alberta Government.

- Premier Ralph Klein announced in February 1998 that if Church and community groups give back lottery grants, the money will go into the province's general revenue fund. (Edmonton Journal)

- The government announced a new program in 1997 in which ninety community lottery boards will oversee the distribution of an extra $50 million in lottery funds throughout the province in 1998-99. The 90 lottery boards will consist of 14 urban boards, 72 rural boards, three First Nations Treaty Council boards and one Metis Settlements board.

IV: Alberta Bingo Industry Review

Findings and Recommendations of the Bingo Review Committee, Government of Alberta, September 1999

The bingo licensing system needs to be improved in order to equitably distribute the bingo revenue amongst charitable, non-profit organizations. Enforcement of regulations and licence criteria is essential. Evolving technology should be permitted. The AGLC needs better communication with stakeholders.

- **74 recommendations**

- **this report was the first review of bingo gaming in 20 years**

- **objective: to determine whether the bingo industry is fulfilling the intent of the legislation, policies, and objectives of charitable gaming**

- **general conclusion: the industry is fulfilling this general intent**

- **the regulatory foundation responsible is experiencing difficulties due to demands and expectations of it**

- **recommendations summarized:**

- **the basic structure of bingo should remain unchanged, with improvements and refinements: more cooperation and better communication among stakeholders and the AGLC**
- **improved access to bingo by charitable organizations**
- **new criteria for granting bingo licences**
- **consistent enforcement**
- **the elimination of 'credits' should not be implemented because of anticipated negative effects on charitable programs: credits should be permitted**
- **bingo halls should have more latitude in the type of games they offer, including use of new technology**
- **the AGLC should ensure consistent enforcement for the purpose of obliging licencees to understand requirements and to carry them out**
- **investigate the effects of privatization of bingo operators;**
- **considered but did not address problem gambling, as it was outside the scope of their inquiry**

V: Alberta Lotteries and Gaming Summit 1998 Report

Author: Ministry of Community Development

Summary:

Problem gaming needs more study and policy consideration, and greater resources should be devoted to public education and the treatment of gaming addiction. All gaming revenue should be devoted to public, non-profit organizations and purposes. Gaming revenue should not be directed to the General Revenue Fund. Gaming should be more transparent and publicly accountable. Only adults should be legally permitted to gamble.

Eight Recommendations:

1. **That the provincial government dedicate more resources to gaming research, such as in the areas of the prevention and treatment of problem gambling, the social impacts of lotteries and gaming, native gaming issues, and emerging gaming activities.**

2. **That gambling in all forms be restricted to people 18 years of age or older.**

3. **That the charitable model for operating casinos and bingos be maintained.**

4. **That gaming and lottery profits not be directed to the province's General Revenue Fund.**

5. **That all gaming and lottery profits collected by the province be directed to supporting charitable or non-profit community initiatives.**

6. **That the amount and public visibility of gambling addiction prevention and treatment programs be increased.**

7. **That lottery and gaming regulators and the provincial government improve accountability and disclosure of gaming activity in the province. This would include keeping citizens in Alberta better informed of the amount, type, cost (social and financial), and benefits of gaming in the province.**

8. **That the Guiding Principles for lotteries and gaming in Alberta adopted by the provincial government be updated, upgraded, accepted, and adhered to.**

Government Policy Papers: British Columbia

I: Report on Gaming Legislation and Regulation in British Columbia

January 1999, Ministry of Employment and Investment, Government of British Columbia.

Summary:

This is a comprehensive report. The recommendations are extensive and sweeping, suggesting that the authors are highly critical of the present state of the regulatory scheme for gaming in the province.

Recommendations:

- Gaming legislation and policy should be restructured
- Legislation should clearly define roles, jurisdiction and responsibilities of the key public agencies and offices involved in any gaming activity, including: the Minister responsible, the Attorney General, the B.C. Lottery Corporation, the B.C. Gaming Commission, and the Gaming Audit and Investigation Office
- A new Lottery and Casino Corporation should be created with responsibility for all gaming under s.207(1)(a) of the Criminal Code
- The Corporation should cease all activities in bingo gaming
- The Commission should take over responsibility for bingo gaming
- Bingo should be a wholly charitable (revenue-generating) gaming activity
- Charitable bingo should include new technologies where consistent with the Criminal Code
- The Gaming Commission should continue its current regulatory and enforcement programs, reorganize and supplement resources for dealing with increased authority over bingo gaming, and conduct a review into its current programs and resources for evaluating and conducting audits of charitable revenue use
- The Corporation should review its security procedures given its growing role in casino gambling

- The Gaming Control Act should be amended to guarantee 1/3 of ongoing government net casino gaming revenue to charities

- Bingo associations should be replaced by charitable associations for the conduct and management of charity bingo

- Review the terms of contracts with licenced bingo operators to ensure compliance with the Criminal Code

- Casino management companies that provide facilities and/or gaming services should be classified by legislation as Crown agents in respect of any ‘conduct and management’ activities performed

- The Gaming Audit and Investigation Office should be established by statute to confirm its jurisdiction, mandate, and funding; have clear enforcement jurisdiction over all gaming activities; and, review current written disclosure consents from applicants for registration to ensure proper wording

- Registration appeal procedures should be reviewed

- Law enforcement roles and responsibilities should be reviewed

- Disclosure consents must be sufficiently explicitly written to facilitate background and criminal record checks

- Regulations under the Gaming Control Act should be amended to ensure that video surveillance system requirements are prescribed, and that warning signs must be conspicuously posted within casinos to inform the public

- Provincial agencies involved in gaming should enter into memoranda of understanding with relevant law enforcement agencies with respect to the collection, use and disclosure of enforcement information

- The Gaming Control Act should be amended to require the Commission and Corporation to submit comprehensive annual reports, to be submitted to the legislature

- The Commission’s annual report should include an overview of policy, licensing and enforcement activities and detail all payments made to individual charities and all funds paid by charitable

associations to individual charity groups; full disclosure of all payments made from charitable gaming revenues

- The Act should require that the Commission's annual report include details of other forms of approved and licenced gaming events

- Government should: a) approve a special police and prosecutorial program dedicated to the investigation and prosecution of illegal gaming, b) ensure enforcement officials give high priority to combating illegal gaming, c) fund the program with gaming revenue, and d) structure the program in E division of the RCMP, as a special unit

- Government should fund with gaming revenue programs to combat problem gaming, including education and treatment

- The Gaming Control Act should provide broad inspection and enforcement powers and establish significant sanctions, penalties, and fines

- The Gaming Control Act should clarify the ongoing dispute of municipal vs. provincial jurisdictional issues, by extending government policy over destination gaming and local government approval of all new gaming applications; gaming venues should be exempt from municipal jurisdiction

- Special status should be established for existing community casinos

- Revenue sharing: local governments (municipal) should receive a greater share of gaming activities conducted within the borders of the local government

- The Gaming Control Act should be amended to permit local governments to licence small-scale charitable gaming

- The Minister responsible should have clear authority to approve gaming expansion and types of gaming under the Act

- The Gaming Control Act should regulate all aspects and activities associated with the sale of lottery tickets in or by British Columbia

- Government should consult with law enforcement agencies and prosecutors how to best structure statutory provisions to prohibit lottery ticket resale

- The Minister should direct agencies under their authority to develop proper action plans to deal with emerging gaming issues, especially Internet gaming

II: Gaming Review Committee Findings

Authors: Margaret Lord, MLA; Dennis Streifel, MLA. Province of British Columbia. Gaming Review Committee. Jan 1993.

Six topics were addressed by the Committee:

1. The current level of legalized gaming in the Province, and the appropriate level in the future.

2. Potential effect on charitable gaming of expanded electronic bingo or the introduction of video lottery terminals.

3. Effect of teletheatre betting on current gaming activities.

4. Appropriate sharing of gaming proceeds by the government and charitable/religious organizations.

5. Possible alternatives to the current regulatory regime.

6. Compulsive gambling (addiction).

Summary:

The report recommends the status quo or the expansion of gaming. Groups with vested interests were prominent and their biases predictable. This report illustrated the fact that gaming creates so much revenue for so many (public) interests that it has become entrenched as a public policy instrument.

Those groups involved in gaming, such as the gaming industry, and charitable and religious organizations, want the status and level of gaming to remain as it is or to expand. Revenues from charitable gaming, it was submitted, are essential for the provision of not-for-profit services which greatly benefit their communities. The majority of individuals who made submissions were opposed to legalized gaming and any expansion. A number of religious groups were opposed to legalized gaming and its expansion, on the grounds that it is related to problems of compulsive gaming and is a regressive form of voluntary tax. Expansions in gaming excited concern from

beneficiaries of charitable gaming revenue that their revenue might be affected. Charitable and religious organizations want to maintain or expand their share of revenue.

If VLTs are introduced, the gaming industry wants a share in their management, operation, and profits; charitable beneficiaries want to ensure their current level of funding or to increase it. The Gaming Commission is concerned that VLTs be introduced into age-restricted locations only, if at all. An appropriate regulatory scheme would be required before VLTs are introduced. The B.C. Lottery Corporation promotes the introduction of Player Operated Sales Terminals in bars and pubs, to be operated by the Corp. and with all revenues going to government. Charities would be compensated for any revenue losses by guarantees of continued current levels of funding for a period of years. Beneficiaries of charitable gaming want their share of revenue to remain where it is or increase. The competition for licences between charitable organizations was an issue in submissions, with concerns that licences are not necessarily equitably distributed and that organizations offering health or social services should have priority.

The B.C. Lottery Corporation recommends that all revenues accrue to government and then allocated based on social and economic priorities determined by government. The present system precludes effective government control in allocating revenue according to government priorities.

Changes to the regulatory regime in the province elicited three main responses from charitable/religious organizations: a) an entrenched right for not-for-profit organizations to benefit from public gaming schemes to be enacted by statute, b) that all gaming activities be consolidated under the jurisdiction of the Attorney General, and c) the establishment of a community advisory board, composed of groups with a stake in gaming, to participate in the drafting of a new Act, with an ongoing role in monitoring and reviewing the Act and gaming in general. The public sector recommended a regulatory scheme with responsibility under one ministry, with a secretariat composed of representatives of appropriate ministries, and chairs of the Lottery Corp, Racing and Gaming Commissions, the Lottery Corp, Racing and Gaming Commissions would be retained as separate entities within the responsible ministry and an advisory council to be established. The B.C. Lottery Corp expressed concern with the resale of lottery tickets outside of B.C. The Corp suggests the prohibition of resale because of unsound business practices and it is a contravention of policies adopted by an international lotteries association. Compulsive gambling was addressed by relatively few submissions. There was concern that there is a lack of research in the area, which needs to be addressed and indicated that educational materials are necessary. Gaming revenues should be devoted to these pursuits.

General conclusions: Continued revenues from charitable gaming are important to charitable and religious organizations. They want to ensure that new forms of gaming do not threaten their level of funding by reason of competition or that revenues from new forms of gaming be diverted to charities to offset losses. There are concerns that legalized gaming has detrimental moral effects, specifically compulsive gaming and as an

inequitable tax. The gaming industry desires an expansion of gaming, with increased hours, facilities and forms.

The Gaming Commission supports a moderate expansion of gaming, concurrent with adequate regulatory frameworks and proportionate demand. The B.C. Lottery Corporation supports expansion of gaming in the form of VLTs to be operated by the Corp.

III: Relocation of and Changes to Existing Gaming Facilities in British Columbia ("The Meekison Report")

Report to the Honourable Joan Smallwood, Minister of Labour. Author: J. Peter Meekison, O.C.

Summary:

The report recommends that legislation is the key to restoring public confidence in provincially operated gaming schemes. The author states that government responsibility for policy, and the advantages that accrues to government from gaming and its expansion, is chiefly responsible for a decline in public confidence. A legislative and regulatory scheme would concretely establish government policy and give the scheme greater legitimacy.

IV: Bingo Review: Options for a Revitalized Bingo Gaming Sector

Gaming Policy Secretariat, Ministry of Employment and Investment, Government of British Columbia, January 1999.

Summary:

This report establishes options for the future direction of B.C.'s bingo gaming regulatory framework. Options range from the current regime to one with more private ownership and concurrent deregulation. The expansion of bingo is addressed.

The bingo industry in B.C. faces challenges in the areas of:

- The need for a simplified regulatory and operational framework he need for legal stability
- The need for new products to be available including, where possible, technological advancements
- The need for a revenue model that encourages new investment in bingo facilities
- The need to attract new players
- The need to recognize and accommodate stakeholder interests

The Review provides four options for the future of bingo gaming:

1. status quo: paper bingos licenced to charities; electronic and linked bingo to be offered in Lottery Corp. facilities; continued facility-level guarantee (funding)

2. consolidation of bingo in government operations: all forms of bingo would be conducted by the Lottery Corporation; charities would cease to be licenced

3. modified interim regime: division between self-managed and commercial bingo halls: self-managed halls would be charitable operations, commercial halls would be government operations; facility-level guarantees would cease; gaming revenue would be distributed via direct access

4. segmentation of gaming activities: all forms of bingo that do not amount to electronic gaming would be consolidated under s. 207(1)(b) of the Criminal Code; individual charities would be assigned a share of revenues; the Lottery Corporation would cease to have a role in bingo; the facility-level guarantee would cease

The position of stakeholders would be addressed regardless of option choice. A period of transition would be provided for to ensure a planned and coordinated transition.

Government Policy Papers: Nova Scotia

I: Video Gambling and Gaming Policies in Nova Scotia

The Interim Report of the Standing Committee on Community Services, Government of Nova Scotia, April 1993

Summary:

Gaming statutes should be consolidated into one statute. Gaming activities should not have publicly funded advertising. Gaming schemes should only be authorized with a clear public mandate. Government gaming activities should be transparent and publicly accountable. This report implies serious loss of public confidence in the government's administration and operation of gaming schemes in Nova Scotia.

Recommendations:

- The current government of the province initiated an expansion of institutionalized gambling without public consultation and the government has not publicly issued its policies and intentions in this area.
- As the Nova Scotia Lottery Commission has a special mandate to promote gambling, it is not suited to an objective or impartial assessment with respect to gaming policies generally or specific gaming issues.
- The Committee recommends a 'thorough investigation [and issue a public report].
- New forms of gambling appear to have been introduced without transparency from government. No regulatory controls are apparent.
- A report on VLTs commissioned prior to their introduction by the Lottery Commission has been withheld by the government. It is incumbent on the government to publicize this report.
- The licencing of VLTs is being conducted without transparency. The government should publicly release figures on the numbers of licenced VLTs and their annual real and projected revenues.
- It is not in the public interest for the uncertain legality of government action concerning VLTs to continue.

- The issue of problem gambling must be addressed.
- The government must clarify the regulation of gambling, before stakeholders become dependent on revenues.
- The government should not be promoting and expanding VLT use without a clear mandate from the electorate. Currently, there is no mandate for the introduction of VLTs, casinos, or sport betting.
- All gambling activities should be governed by legislation.
- Expansion of gambling should only occur if government tables specific legislation, subject to public exposure, debate, and public input
- VLTs appear particularly addictive
- A broadened regime of gambling in the province is not desirable nor in the public interest, as it will create extensive social damage
- The role of the Lottery Commission, its legislative mandate, relationship to government and the Atlantic Lottery Corporation, and its entire regulatory regime should be reviewed to ensure proper public safeguards
- The Minister of Finance should not be the Minister responsible for the Lottery Corporation
- The Atlantic Lottery Corporation should be subject to a complete audit
- There should be an immediate moratorium on all government sanctioned VLTs
- All unlicenced VLTs should be immediately banned by Federal and Provincial law
- All advertisement for the Atlantic Lottery Corporation's products should be banned
- No new gaming activities should be sanctioned, permitted, or promoted until there is a clear public mandate
- A new provincial gambling act should be tabled to clarify the statutory and regulatory regime for gaming in the province

II: Gaming in Nova Scotia

An Initial Report and Recommendations to the Government of Nova Scotia from the Nova Scotia Lottery Commission, June 28, 1993

Recommends that changes to the regulatory scheme surrounding all aspects of gambling are necessary.

III: Annual Gaming Report 1998 - 1999; Volume 1: Alcohol and Gaming Authority

Author: Government of Nova Scotia

Chapter 6. Recommendations: (changes to the Gaming Control Act or regulations 'to correct any defect, abuse, illegality or criminal activity in relation to casinos and other lottery schemes):

1. Problem gaming can be addressed, in terms of VLTs by adding messages to display screens, interactive time and money announcements, and how and where VLTs can be played.

2. The government should endorse amendments to the VLT regulations as prepared by the Alcohol and Gaming Authority, specifically that: a) all new VLTs display actual money spent/played instead of, or in addition to, credits, b) all new VLTs be equipped for use of a tracking device that allows voluntary use of equipment capable of alerting a player of the time and money spent during play, c) all VLT retailers adapt their premises to discourage problem or inappropriate gaming practices by creating a specific gaming area, keeping that area well lit, and placing a prominently displayed clock.

3. Gaming advertising should address the probabilities of winning prominently, and be subject to minimum standards.

4. The Authority should develop and the province adopt standards for the control of advertising and marketing of government-operated gaming activities, to better publicize the odds/probabilities of winning, require minimum standards regarding publication of information on problem gambling, and forbid the targeting of youth.

5. Municipalities that opt out of VLT gaming waive rights to provincial gaming revenue.

6. Regulations under the Gaming Control Act affecting the Voluntary Self Exclusion Program be amended to include: a time limit on the exclusion and the elimination of the appeal process, and provisions that all persons engaging in the process

waive rights to any prize winnings should they breach their undertaking and place wagers while excluded, and the Authority recommends that the potential for introducing a voluntary self exclusion program for other gaming activities be fully explored. The province needs to address problem gaming more forcefully.

7. To better address the issue of problem gambling, the Province should: a) provide annual publication of a full accounting for revenues and expenditures related to problem gambling from treatment and research, b) develop and implement an awareness/education campaign to make consumers aware of the common myths and misconceptions for all gambling activities, c) develop standards and measures to test the efficacy, availability and outcome of problem gambling treatment providers, and d) encourage manufacturers and suppliers of all gaming-related materials to provide evidence of their development of, and attempts to incorporate, policies that preclude problem gambling.

8. Research projects should be coordinated between the Authority and all other departments and agencies of government.

9. First Nations Bands should be encouraged to publish and release audited financial statements annually.

10. Internet gaming needs to be considered within the scope of legislation and how legislation should be amended or enacted to deal with it.

The Province of Nova Scotia should consider the introduction of measures aimed at better regulating Internet gaming within its borders.

Government Policy Papers: Ontario

I: Annual Reports: Ontario Lottery Corporation: 1975 – 1999

II: Annual Reports: Ontario Casino Corporation: 1994 – 1999

III: Annual Reports: Ontario Gaming Control Commission: 1994 – 1999
[these are essentially financial statements]

IV: Casino Gambling and Impact on Pathological or Problem Gambling, Final Report to the Ministry of Consumer and Commercial Relations

Author: Ernst and Young, June 1993

Summary:

The extent and seriousness of the matter of problem gaming is not well known. Therefore, it requires continued research and study. Recommendation of an 'integrated policy' suggests that the mandate for the Ministry (Ministries) responsible could be expanded.

- Recommends that Ontario needs to adopt 'an integrated policy' on gambling, in general, and problem gambling in particular. This program should go beyond economic considerations and consider the 'consequences of such issues as problem gambling and related social impacts.'

- Research is necessary to determine the prevalence and scope of problem gambling in Ontario and Windsor, in particular.

- Social workers should monitor their case files to track any change in frequency of problem gambling. The provision of services for problem gambling should be proportionate to its prevalence.

- New programs or services should be pilot-tested in Windsor.

V: One Year Review of Casino Windsor

Author: KPMG, prepared for Ontario Casino Corporation, Government of Ontario, November 1995

Summary:

- The casino is an economic success, and boosted the net economy of the municipality of Windsor significantly.

- The casino contributed: $752 million in G.D.P.; 7200 person years of employment; and $440 million in revenues to 3 levels of government. Construction added: 2000 person years of employment; $148 million in value added.

- The majority of visitors are Americans (82%).

- The effect of the casino on problem gambling has not been evaluated.

No government policy was established in this report. However, the apparent success of the Windsor Casino in the period subject to review likely had an influence on the provincial government's decision to permit more casinos to be opened (e.g. Ottawa, Casino-Rama, etc.)

Constitution Act, 1867

Hogg, Peter. Constitutional Law of Canada. Student Edition, 1999, and Fourth Edition, 1997.
Gambling is a double aspect matter with both a competent Federal jurisdiction, in regards the criminal law [s.91(27)], and a Provincial jurisdiction, in regards property and civil rights in the Province [s.92(13)]. (Federal legislation is *intra vires* the Constitution where it is valid criminal law; Provincial legislation is *intra vires* the Constitution insofar as it relates to property and civil rights, or any other valid Provincial head of power.)

Finkelstein, Neil. Laskin's Canadian Constitutional Law. Vol. 2. 5th Ed. Toronto: Carswell, 1986 at 847.
In reference to the *Russell* case, *Russell* v. *R.* (1882), 7 App. Cas. 829 (P.C.), the Federal government is competent to enact criminal law that affects the use of property, despite s.92(13), preserving property and civil rights as an exclusive Provincial head of power. Nonetheless, in its pith and substance, the prohibition must be criminal law, promoting and protecting public order and safety, and preventing or punishing harm to society.

Magnet, Joseph. Constitutional Law of Canada. Vol. 1. 7th Ed. Edmonton: Juriliber, 1998.
The Federal government may enact criminal law so long as it is a *bona fide* exercise of its criminal law power, and not used as a disguised or colourable attempt to intrude on an area of provincial jurisdiction.

2. — Definitions **Good summary of national definitions of the gaming regulatory scheme.**

§5 “Gaming” is defined as the practice of playing some game which involves losing or winning money, money's worth or stakes, particularly any game of chance or mixed chance and skill.[1] “Gaming” and “gambling” are synonymous terms.[2] It has also been stated that “gaming” involves the act of wagering.[3] The Criminal Code defines “game” as “a game of chance or mixed skill and chance”.[4]

1. De Pietro v. R., [1986] 1 S.C.R. 250 at 256, per Lamer J. (S.C.C.) [Ont.]; R. v. Roberts, [1931] S.C.R. 417 (S.C.C.) [Man.]; R. v. Wilkes (1930), 66 O.L.R. 319 at 324, per Masten J.A. (Ont. C.A.).
2. Bailey v. McDuffee (1878), 18 N.B.R. 26 at 29, per Allen C.J.N.B. (N.B. S.C.).
3. Tote Investors Ltd. v. Smoker, [1967] 3 All E.R. 242 at 245, per Lord Denning M.R. (U.K. C.A.) (agreement whereby plaintiff placing bets for defendant not constituting contract of gaming or wagering, and being enforceable); Osorio v. Cardona (1984), 59 B.C.L.R. 29 at 35, per McLachlin J. (B.C. S.C.) (agreement to pool bets and divide any winnings not being gaming contract, because both parties could have lost).
4. Criminal Code, s. 197(1) “game”; R. v. Quiz It Trivia Inc. (1989), 4 C.R. (4th) 234 (Ont. Prov. Ct.), affirmed (1991), 4 C.R. (4th) 234 at 234 (Ont. C.A.) (game involving purchase of cards for $1 and answering very simple trivia questions; player standing small chance of winning up to $1,000; winnings unascertainable at time of answering questions; game being at best one of mixed skill and chance).

§6 “Wagering” is defined as a contract by which two parties professing to hold opposite views touching the issue of a pre-fixed event or contingency, and with no other interest in the contract than a sum of money or stake, mutually agree that, depending upon the determination of that event, one shall win from the other and that other shall pay a sum of money or stake.[1] That one party wins and the other party loses has been said to be the essential characteristic of a wager.[2]

1. Carlill v. Carbolic Smoke Ball Co., [1892] 2 Q.B. 484 (U.K.), affirmed [1893] 1 Q.B. 256, per Hawkins J. (U.K. C.A.).
2. Osorio v. Cardona, (1984), 59 B.C.L.R. 29 at 35–36, per McLachlin J. (B.C. S.C.); see also Lyman v. Kuzik (1965), 57 W.W.R. 110 at 112, per Porter J.A. (Alta. C.A.) (agreement between co-winners of bingo game to divide prize and not play off not being gaming contract; no party standing chance of losing under agreement).

§7 “Betting” is considered to be the same activity as wagering.[1] What purports to be a contract of insurance will be considered to be a bet for a stake on the occurrence of a future uncertain event if there is no insurable interest under the contract.[2] For a “future contract” to be more than a mere bet or wager on the future rise or decline in price of a stock or a commodity, it must contemplate and contain an enforceable obligation for the actual delivery of the stock or commodity in question.[3]

1. Bank of Toronto v. McDougall (1878), 28 U.C.C.P. 345 at 350–51 (Ont. C.A.) (definitions of “wager” and “bet”).
2. Evans v. Robert (1910), 13 W.L.R. 380 at 383, per Stuart J. (Alta. T.D.).

3. Forget v. Ostigny, [1895] A.C. 318 (Que. P.C.); Prudential Exchange Co. v. Edwards (1938), [1939] S.C.R. 135 (S.C.C.) [Sask.].

A “lottery” is any activity involving the sale of tickets[1] and distribution of prizes by lot or chance.[2]

1. De Jardin v. Roy (1910), 12 W.L.R. 704 (Sask. Dist. Ct.) (drawing of lots between two parties constituting bet rather than lottery; no sale of tickets).
2. Taylor v. Smetten (1883), 11 Q.B.D. 207 at 210, per Hawkins J.

Common Law

Even where a contract would have been illegal if made pursuant to the law of the jurisdiction in which action is commenced (i.e., the forum), if it is valid according to its proper law and is not to be performed in the forum, it will be enforced in the forum[1] except to the extent that enforcement involves enforcing a foreign state's public laws[2] and unless the contract is considered immoral or grossly offensive to the public policy of the forum.[3] However, a contract made outside the forum but to be performed within it will not be enforced in the forum if it is illegal by the law of the forum.

A gaming debt by way of contract can be enforced in a jurisdiction which does not permit its enforcement if it was a legal contract where the contract was made.

1 Boardwalk Regency Corp. v. Maalouf (1992), 6 O.R. (3d) 737, per Carthy J.A.; supplemented 6 O.R. (3d) 737 at 758 (C.A.) (New Jersey casino gambling debt enforceable in Ontario despite Gaming Act, R.S.O. 1980, c. 183, in view of current wider Canadian tolerance of gambling); Toponce v. Martin, ante (agreement made in Utah to forbear from bringing criminal prosecution for crime committed in Utah); Viktor Overseas Ltd. v. Deiulemar Compagnia Di Navigazione S.p.A. (1997), 143 F.T.R. 298 (Fed. T.D.) (6 per cent per month interest not illegal under Croatian contract); see also National Surety Co. v. Larsen, [1929] 3 W.W.R. 299 (B.C.C.A.); Harold Meyers Travel Service v. Magid, ante at 214, per Fraser J. (Ontario Gaming Act, R.S.O. 1970, c. 187, inapplicable to lawful Bahamian gambling debt); Block Brothers Realty Ltd. v. Mollard (1981), 27 B.C.L.R. 17 (C.A.) (listing of British Columbia real estate with Alberta realtor for sale to Alberta purchaser); Greenshields Inc. v. Johnston (1981), 119 D.L.R. (3d) 714; affirmed 131 D.L.R. (3d) 234 at 235 (Alta. C.A.) (contract made in Alberta containing Ontario choice of law clause; contract invalid by Alberta law but valid by Ontario law; contract enforceable in Alberta courts in accordance with Ontario law); but see Kaufman v. Gerson, [1904] 1 K.B. 591 (C.A.) (agreement made in France to stifle French prosecution denied enforcement in England as contravening essential principles of justice).

2 Reid v. Deibel (1909), 14 O.W.R. 77 at 79-80 (revenue law); but see Regazzoni v. K.C. Sethia Ltd., [1958] A.C. 301 (H.L.).

3 Block Brothers Realty Ltd. v. Mollard, ante (listing of British Columbia real estate with Alberta realtor for sale to Alberta purchaser); National Surety Co. v. Larsen, ante (mortgage indemnification of bail bondsman in Washington valid under Washington law and not considered immoral or contrary to natural justice).

4 MacMahon v. Taugher (1914), 32 O.L.R. 494 at 516-17 (C.A.) (contingent fee contract made in California by California resident and California lawyer with regard to share in Ontario estate); M. & R. Investment Co. v. Marsden (1987), 63 O.R. (2d) 509 (Dist. Ct.) (cheques drawn on Ontario bank governed by laws of Ontario; agreement to repay money lent by cheque for gambling in Nevada illegal and unenforceable).

An illegal contract is not enforceable by either party, [1] either directly[2] or even indirectly by reason of a tortious breach of an implied obligation to exercise due care; [3] however, if one's right of recovery arises independently of the illegal contract[4] or can be framed without relying on it, [5] the contract will be no impediment to relief. If the measure of damages for breach of a contract requires proof of the carrying out of an illegal scheme, recovery is precluded by reason of illegality being at the root of the cause of action.[6] An accounting for profits is also unavailable in the case of an illegal undertaking.[7] But if an illegal collateral benefit is secured during the performance of an otherwise valid contract, the contract itself is enforceable subject to a deduction for the value of the illegal benefit.[8] A contract entered into without compliance with a statutory prerequisite is, however, simply unenforceable, and when fully executed cannot be treated as having been void or a nullity.[9]

An illegal contract is unenforceable. If illegality is the root of the contract, it is unenforceable. An illegal element to a contract does not make the contract as a whole unenforceable if other aspects are not illegal.

1 Bedford Insurance Co. v. Institatio de Ressaguros do Brasil, [1983] 11 C.L. 398f (Eng. C.A.).

2 Canadian National Railway v. F. Kovinsky & Sons, [1932] O.R. 529 (C.A.) (railway unable to recover difference between quoted rate paid and prescribed rate); Bellamy v. Timbers (1914), 31 O.L.R. 613 (C.A.) (plaintiff unable to recover more than statutorily permissible maximum interest rate); Menard v. Genereux (1982), 39 O.R. (2d) 55 (H.C.) (promissory note unenforceable); Rogers v. Leonard (1973), 1 O.R. (2d) 57 (Div. Ct.); Neville v. Steckle (1931), 40 O.W.N. 487 (H.C.) (plaintiff unable to recover on promissory notes given in payment for bees purchased); Tucker Estate v. Gillis (1988), 90 N.B.R. (2d) 391; reversing in part 70 N.B.R. (2d) 78 (C.A.) (estate unable to rebut presumption of advancement by adducing illegal scheme; estate unable to recover amount due on mortgage as mortgage part of illegal scheme); Chechik v. Bronfman, [1924] 3 D.L.R. 1065 (Sask. C.A.) (sale of liquor with illegal objective); Baldwin v. Snook (1918), 40 D.L.R. 333 (Man. C.A.) (price not recoverable on sale of infected animal); Johnson v. Musselman (1917), 37 D.L.R. 162 (Alta. C.A.) (no recovery on promissory note given to stifle prosecution); L.A. Wilson Co. v. Mayflower Bottling Co. (1913), 14 D.L.R. 711 (N.S.C.A.) (sale of liquor for illegal purpose); Dean v. McLean (1909), 7 E.L.R. 557 (N.S.C.A.) (action on note allegedly given in payment for illegal stock-jobbing); Bakewell v. Mackenzie (1905), 1 W.L.R. 68, per Harvey J. (N.W.T.S.C.) (action for declaration that land held in trust for prostitute); Doran v. Chambers (1887), 20 N.S.R. 309 (C.A.) (action against stakeholder of prize for winner of illegal race); Blake v. Stewart (1870), 8 N.S.R. 70 (S.C.) (plaintiff unable to recover money given in trust to defendant to defeat plaintiff's creditors).

3 Major v. Canadian Pacific Railway (1922), 64 S.C.R. 367 (illegal liquor shipment stolen from carrier); Rogers v. Leonard, ante at 71 (owner recovering land but not occupation rent under Sunday sale contract); see also Vita Food Products Ltd. v. Unus Shipping Co., [1939] A.C. 277 (P.C.) (dictum that holder of illegal bill of lading containing exemption clause unable to recover in tort for damages to goods).

4 Coplan v. Coplan, [1958] O.R. 551 at 558-59 (C.A) (holder of share certificates endorsed in blank by registered owner pursuant to tax evasion scheme unable to obtain registration as owner as against issuing company); Menard v. Genereux, ante at 70-71 (H.C.) (recovery for value of equipment removed from premises by purchaser of business); Clelland v. Clelland, [1944] 4 D.L.R. 703 at 710; affirmed [1945] 3 D.L.R. 664 (B.C.C.A.) (recovery of property conveyed to woman with whom transferor going through illegal marriage ceremony).

5 Elford v. Elford (1922), 64 S.C.R. 125 at 130 [Sask.] (wife recovering properties obtained by husband by fraud on his power of attorney even though wife originally getting title by conveyance in fraud of husband's creditors); Rogers v. Leonard, ante at 71; One Hundred Simcoe Street Ltd. v. Frank Burger Contractors Ltd. (1967), 66 D.L.R. (2d) 602; varied 60 D.L.R. (2d) 10; which was affirmed 2 D.L.R. (3d) 735n (sub nom. Dominion Insurance Corp. v. One Hundred Simcoe Street Ltd.) (S.C.C.) [Ont.] (recovery on construction performance bond as no need to rely on allegedly illegal construction contract); Harwood v. Wilkinson, [1930] 2 D.L.R. 199 at 206, per Masten J.A.; affirmed [1931] 2 D.L.R. 479 (S.C.C.) [Ont.] (recovery on mortgage loans as no need to rely on subsequent related illegal contract); Rose v. Donaldson, [1931] 3 W.W.R. 480 at 487 (Alta. S.C.) (vendor, unable to enforce contracts for sale of premises for purpose of prostitution, regaining possession).

6 Mazerolle v. Day & Ross Inc. (1986), 70 N.B.R. (2d) 119 (Q.B.) (action against carrier for cost and loss of profit on cigarettes purchased and shipped as part of scheme to evade tax payments).

7 Maksymetz v. Kostyk, [1992] 2 W.W.R. 354 (Man. Q.B.).

8 Insco Sarnia Ltd. v. Polysar Ltd. (1990), 49 B.L.R. 122 at 135 (Ont. Gen. Div.) (paying bribe during course of maintenance contract).

9 Pimvicska v. Pimvicska, [1974] 6 W.W.R. 512 at 518 (Alta. S.C.) (sale of and full payment for bee hives sold without statutorily requisite written permission of agricultural fieldman).

A security interest obtained under an illegal contract cannot be enforced against the property affected thereby, [1] and will be set aside[2] provided it was procured by oppressive conduct; [3] but it may be possible to recover under a lien registered pursuant to legislation creating such a right independent of contract, [4] provided at least that the illegality of the contract for the doing of the work giving rise to the lien is a matter of form rather than substance.[5]

An interest received from an illegal contract is unenforceable.

1 Tessis v. Scherer (1982), 39 O.R. (2d) 149 at 153, per MacKinnon A.C.J.O.; leave to appeal to S.C.C. refused 39 O.R. (2d) 616n (power of sale unenforceable because mortgage given without compliance with s. 29 of Planning Act, R.S.O. 1970, c. 349, so as not to convey an interest in land); Williams v. Fleetwood Holdings Ltd. (1973), 41 D.L.R. (3d) 636 at 639 (Sask. C.A.) (foreclosure unavailable under mortgage given for illegal purpose).

2 Milani v. Banks (1992), 98 D.L.R. (4th) 104 at 108-109, per Hayes J. (Ont. Gen. Div.), reversed (1997), 32 O.R. (3d) 557 (promissory note and third mortgage granted at

interest rate contrary to s. 347 of Criminal Code, R.S.C. 1985, c. C-46); Wood v. Bonnell (1992), 100 Nfld. & P.E.I.R. 79 at 82; affirmed 105 Nfld. & P.E.I.R. 243 (P.E.I.C.A.) (mortgage invalid because given to secure home from potential creditors); Steinberg v. Cohen (1929), 64 O.L.R. 545 at 558-59 (C.A.).

3 Milani v. Banks, ante at 108-109, reversed (1997), 32 O.R. (3d) 557; Williams v. Fleetwood Holdings Ltd., ante (mortgage placed for illegal purpose not removed from title); see also Steinberg v. Cohen, ante at 556-57 (chattel mortgage unenforceable because procured by oppressive conduct); Fairweather v. McCullough (1918), 43 O.L.R. 299 (C.A.) (chattel mortgage not set aside in absence of proof of duress or pressure).

4 Farrell v. Sawitski, [1929] 4 D.L.R. 289 at 293-94 (Sask. Dist. Ct.) (mechanic's lien for work done on Sunday).

2 See also Farrell v. Sawitski, ante; Miller v. Moore (1911), 17 W.L.R. 548 (Alta. C.A.) (mechanic's lien for building addition to bawdy house unenforceable).

Since the act of gambling is not inherently illegal in Canada, a loan to cover gambling debts may be enforceable.[1]

A loan to cover (legal?) gambling debts is a legal contract, and enforceable.

1 Boardwalk Regency Corp. v. Maalouf (1992), 6 O.R. (3d) 737, per Carthy J.A.; supplemented 6 O.R. (3d) 737 at 758 (C.A.) (plaintiff lending defendant money to cover gambling debt at plaintiff's casino in Atlantic City; defendant failing to repay loan and dishonouring cheque for $43,000; plaintiff obtaining default judgment in New Jersey, where casino gambling licensed and legal; New Jersey law governing contract; Gaming Act, R.S.O. 1980, c. 183, not applying to foreign contract or expressing moral or public policy preventing enforcement; Criminal Code, R.S.C. 1985, c. C-46, now largely permitting government-licensed lotteries and gambling in Canada); Velensky v. Hache (1981), 121 D.L.R. (3d) 747 (N.B.Q.B.); see also Gaming.

Gaming
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Gaming, horse racing and wagering were legal under the common law unless the activity had a tendency to injure the interests or feelings of another individual not party to the arrangement, was contrary to morality or decency, or was otherwise against public policy or prohibited by statute.[1]

Under the common law gambling is legal, except insofar as it is prohibited by statute. [Legislation, both Federal and Provincial, covers the field of gaming activities.]

1. Bank of Toronto v. McDougall (1878), 28 U.C.C.P. 345 (Ont. C.A.).

In the four western provinces, by virtue of the Gaming Acts of 1710 and 1845,[1] all gaming or wagering contracts, whether oral or in writing, are deemed to be null and void and given for illegal consideration.[2] Therefore, a wager, bet or gaming agreement is binding in honour only, and is not enforceable in a court of law.[3]

A gaming contract is illegal and unenforceable in Western Canada.

1. Gaming Act, 1710 (9 Anne, c. 19) (numbered as c. 14 in some editions); Gaming Act, 1845 (8 & 9 Vict., c. 109); Red River Forest Products Inc. v. Ferguson (1990), [1991] 1 W.W.R. 749 (Man. Q.B.), additional reasons at [1992] 3 W.W.R. 235 (Man. Q.B.), affirmed [1993] 2 W.W.R. 1 (Man. C.A.), leave to appeal refused [1993] 3 W.W.R. lxxi (S.C.C.) (s. 23 of Manitoba Act, not applying retrospectively to require that English Gaming Acts be translated into French in order to be valid in Manitoba).; see also Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.) (Gaming Act 1845, s. 18).
2. Lyman v. Kuzik (1965), 57 W.W.R. 110 (Alta. C.A.); Osorio v. Cardona (1984), 59 B.C.L.R. 29 (B.C. S.C.); De Jardin v. Roy (1910), 12 W.L.R. 704 (Sask. Dist. Ct.); Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.) (Gaming Act 1845, s. 18).
2. Breitmeier v. Batke (1966), 56 W.W.R. 678 at 682, per Legg D.C.J. (Alta. Dist. Ct.); Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.) (Gaming Act 1845, s. 18; solicitor stealing money from firm and gambling it away; club not in position of bona fide purchaser for value; firm able to recover solicitor's net gambling losses as money had and received, subject to defence of change of position); see also §§25–38.

In Ontario, no person may use civil proceedings to recover money owing to him or her as a result of participating in or betting on a lottery scheme[1] conducted in the province unless the lottery scheme is authorized under the Criminal Code.[2]

In Ontario, gambling debts are unenforceable if they result from illegal gaming activities.

1. Criminal Code, R.S.C. 1985, c. C-46, s. 207(4) [re-en. R.S.C. 1985, c. 52 (1st Supp.), s. 3; am. 1999, c. 5, s. 6(1), (2)].
2. Gaming Control Act, S.O. 1992, c. 24 [titled re-en. 1993, c. 25, s. 25], s. 47.1 [en. 1993, c. 25, s. 42]; Criminal Code, s. 207(1) [re-en. R.S.C. 1985, c. 52 (1st Supp.), s. 3].

When a gambler enters a club, the club makes him or her a revocable offer to gamble with him or her in the manner and on the terms dictated by the club.[1] The gambler accepts the club's revocable offer by staking a chip and the offer becomes irrevocable when the croupier accepts the chip as a stake.[2] However, because all contracts or agreements by way of gaming or wagering are null and void,[3] a gambling loss, whenever paid, is a completed voluntary gift from the loser to the winner.[4]

Several physical actions on the part of participants in a (legal?) gaming house are considered binding means of offer and acceptance. A gaming debt paid is a voluntary gift, as gaming contracts are unenforceable. (This seems contradictory.)

1 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 519 (H.L.).
2 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 519 (H.L.).
3 Gaming Act 1845, s. 18.
4 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 519, 522, 531 (H.L.).

The exchange of money for chips which remain the property of the club or casino is a convenient mechanism to facilitate gambling but it does not constitute valuable consideration.[1] In substance and in reality, it is simply a gratuitous deposit of money with the club or casino with liberty to the gambler to draw upon that deposit as he or she places bets, and with the casino or club promising to redeem any remaining balance in the gambler's favour.[2] The chips transaction is null and void as a contract by way of gaming or wagering whether it is regarded as part of a single contract of gambling[3] or as an agreement independent of the separate contracts that are made as the gambler places each bet.[4]

Reiteration: gaming debts are unenforceable. The exchange of money for chips does not constitute valuable consideration and is a gratuitous deposit. Any such transaction is unenforceable.

1 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.).
2 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 531 (H.L.).
3 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 519, 523 (H.L.), per Lord Templeman.

4 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 530-31 (H.L.), per Lord Goff of Chieveley.

The chance of winning and of then being paid which a gambler receives in exchange for his or her money is not valuable consideration flowing from the club or casino. Because the contract of gaming is void and binding in honour only, the casino or club is under no legal obligation to honour the bet.[1]

A gaming contract is unenforceable, and if a gaming debt is paid it is done so out of honour, and not legal obligation.

1 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 at 526, 529-31 (H.L.).

Subject to the defence of change of position, a casino or club cannot resist an action for money had and received by the true owner of stolen money because it has not given valuable consideration for the stolen money which the thief gambled away.[1]

Money acquired by a party to gaming is not received for valuable consideration. If stolen money is gambled by the thief and lost, the recipient cannot retain it as the money was not received for valuable consideration.

1 Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.) (partner stealing money from firm and gambling it away at club; firm entitled to recover partner's net gambling losses as money had and received).

[A] cheque drawn by a party to obtain money to bet or gamble is an enforceable instrument if there is no obligation on the drawer to play,[1] or if the betting is legal.[2] A cheque drawn by a party to obtain money from a non-participant to pay a gambling or betting debt is enforceable by the non-participant.[3]

Financial transactions between a person party to a gaming debt and another person who is not a party to the debt is enforceable. (Good policy: to protect the interests of parties not directly involved in gaming who would otherwise suffer a loss.)

1. Miller v. Martin, [1923] 1 W.W.R. 64 (Alta. Dist. Ct.); but see LeBlanc v. Thomas (1932), 5 M.P.R. 401 (N.B. Co. Ct.).
2. Rose v. Collison (1910), 12 W.L.R. 648 (Alta. Dist. Ct.).
3. Carr Brothers v. Abbs, [1939] 1 W.W.R. 249 (B.C. Co. Ct.).

Although a statutory defence may be raised against a co-bettor or co-wagerer suing on a note or cheque given to stay in a game or wager or to pay for a lost bet or wager,[1] illegality of consideration is not a defence against a bona fide holder of a promissory note for value in due course.[2]

A holder of a bona fide promissory note for value can enforce it despite any illegality of consideration on the part of others.

1. Goggins v. Morrison, [1925] 2 W.W.R. 75 (Sask. C.A.); Kadiuk v. Pawluk (1958), 25 W.W.R. 321 (Alta. C.A.).
2. Hammer v. Finkelstein, [1931] 1 W.W.R. 769 (Man. C.A.); Red River Forest Products Inc. v. Ferguson, [1991] 1 W.W.R. 749 (Man. Q.B.), additional reasons at [1992] 3 W.W.R. 235 (Man. Q.B.), affirmed [1993] 2 W.W.R. 1 (Man. C.A.), leave to appeal refused [1993] 3 W.W.R. lxxi (S.C.C.) (payee of gambling debt accepting demand promissory note in settlement; company purchasing discounted promissory note from payee; company not being holder in due course; court imputing knowledge to company that note represented gambling debt).

A party to a bet or wager may reclaim any money paid under that bet or wager from a stakeholder who has paid it out, if notice disputing payment has been given before the event in issue has been determined.[1] The party may also recover this money in an action for moneys had and received if the event on which the bet or wager was fixed did not occur.[2]

[As there is no valuable consideration for money wagered(?),] a party to a bet may reclaim money paid if they dispute payment by notice prior to a payout. A party may recover money wagered on an event which does not occur.

1. Sheldon v. Law (1833), 3 O.S. 85 (C.A.); Anderson v. Galbraith (1858), 16 U.C.Q.B. 57 (C.A.) (money being recoverable whether event being legal or illegal).
2. Battersby v. Odell (1864), 23 U.C.Q.B. 482 (C.A.); Wilson v. Cutten (1858), 7 U.C.C.P. 476 (deposit of money with stakeholder to await outcome of horse races; horse of one of parties required to outdistance that of other three times out of five; only two races run; right to recover money deposited).

If the stakeholder has paid the money over to the winner before notice has been given, however, the loser may not recover from either the winner or the stakeholder. The winner and the loser are in pari delicto,[1] as are the loser and the stakeholder.[2]

1. Davis v. Hewitt (1885), 9 O.R. 435 (Ont. H.C.).
2. Walsh v. Trebilcock (1894), 23 S.C.R. 695 (S.C.C.) [Ont.].

If notice is given after a payout, the money is irrecoverable.

A party to an illegal transaction whereby items are purchased on margin but no delivery is contemplated cannot recover moneys owing pursuant to the agreement as a debt or under a promissory note.[1]

Money owed from an illegal transaction is unenforceable.

1. Medicine Hat Wheat Co. v. Norris Commission Co., [1919] 1 W.W.R. 161 (Alta. C.A.) (no recovery for losses suffered by grain brokers against principal when dealing

on margin contrary to Criminal Code); Topper Grain Co. v. Mantz, [1926] 2 W.W.R. 140 (Alta. S.C.) (broker cannot recover balance due under illegal transaction); Bank of Toronto v. Sweeney, [1927] 2 W.W.R. 597 (Sask. K.B.) (promissory note given under illegal transaction cannot be enforced by endorsee before maturity who takes with knowledge of illegal consideration).

An agreement to divide the winnings from the placement of a legal bet or wager is enforceable, and should be distinguished from a bet or wager in itself[1] and an agreement to divide the winnings from an illegal bet.

An agreement to divide winnings from a legal bet is enforceable.

1. Osorio v. Cardona (1984), 59 B.C.L.R. 29 (B.C. S.C.) (agreement to pool betting tickets and divide earnings being enforceable); Lyman v. Kuzik (1965), 57 W.W.R. 110 (Alta. C.A.) (agreement to divide bingo purse between co-winners rather than playing off being enforceable); but see Breitmeier v. Batke (1966), 56 W.W.R. 678 (Alta. Dist. Ct.).

Money advanced or lent to enable the borrower to carry out an illegal purpose cannot be recovered where the purpose has been carried out wholly or to a substantial extent.[1]

If a lender knows that money being lent is to be used for an illegal purpose or to advance the commission of an illegal act, the money is not recoverable.

1. Thomas v. Parley, [1929] 2 W.W.R. 317 (Sask. C.A.); Miller v. Wall, [1933] 2 W.W.R. 574 (Man. C.A.).

In an action by a principal against an agent to recover money received by the agent from a third party on behalf of the principal, the agent cannot resist the principal's claim on the ground of illegality or criminality in the transaction on account of which the payment was made to him or her as agent, if the alleged invalidity or illegality did not enter into the relationship between the agent and the principal.[1]

An agent cannot withhold money from the principal that is derived from an illegal or criminal transaction if the illegal or criminal transaction was not part of the agreement between principal and agent.

1. Aikman v. Burdick Brothers, [1923] 3 W.W.R. 785 (B.C. C.A.); Holding v. Wood, [1932] 1 W.W.R. 612 (Sask. C.A.); Re Kern Agencies Ltd., [1932] 1 W.W.R. 660 (Sask. K.B.).

The provisions of the Criminal Code prohibiting activities related to pool-making, pool-selling and betting and wagering on horse races do not extend to a private bet on a horse race[1] or to the custodian or depository of any money, property or valuable thing staked to be paid to the owner of any horse engaged in a lawful race.[2] They also do not apply to bets made through the agency of a pari-mutuel system, in accordance with the

regulations, at a race course of an association, in a betting theatre or by telephone calls to a race course or betting theatre.[3]

A private bet on a horse race is beyond the coverage of the Criminal Code and are a matter of the Common Law. (A private bet is unenforceable.)

1. Criminal Code, s. 204(1)(b).
2. S. 204(1)(a)(ii).
3. S. 204(1)(c) [am. R.S.C. 1985, c. 47 (1st Supp.), s. 1(1); 1994, c. 38, s. 14], (2) [am. 1989, c. 2, s. 1(1)]; Ontario Jockey Club v. Canada (Attorney General) (1998), 153 F.T.R. 120 (Fed. T.D.) (club applying for amendment of pari-mutuel betting permit to include permission to accept wagers on horse races through on-line personal computer betting; proposed amendment would contravene Criminal Code, s. 204; necessary to fulfil both requirements of s. 204(1)(c)(i) and (ii); s. 204(1)(c)(ii) requiring compliance with Pari-Mutuel Betting Supervision Regulations; s. 53 of regulations forbidding acceptance of bids by any means of communication originating outside race-course; amendment of permit would not authorize approval of on-line computer betting system under statute and regulations).

The purchaser of a winning lottery ticket is only entitled to collect that ticket's share of the entire lottery pool, the share to be determined by the number of winning tickets sold. The owner of a winning lottery ticket has no reasonable expectation of entitlement to more than the ticket's share.[1]

Where a lottery scheme results in more than one winner and one of the winners fails to claim their share, the other winners have no claim to the unclaimed share.

1. Hardie v. British Columbia Lottery Corp. [1995] B.C.W.L.D. 588 (B.C. S.C.), affirmed (January 24, 1997), Doc. Vancouver CA019958 (B.C. C.A.) (one of two winning ticket purchasers prevented from collecting other purchaser's unclaimed share of lottery pool after expiration date had passed for presentation of other winning ticket).

When a lottery foundation declares a winning ticket number, the holder of the ticket is entitled under contract to claim the winnings. The obligation of the foundation is not discharged by payment to someone else who deceives the lottery foundation into believing that he or she is the ticket holder, if the payment to the wrong person is made through the foundation's own carelessness.[1]

A lottery corporation is obligated to pay the holder of a winning ticket even if it has mistakenly paid a fraudulent claimant through its own carelessness.

1. Western Canada Lottery Foundation v. Paul, [1981] 6 W.W.R. 456 (Sask. C.A.), reversing in part [1979] 1 W.W.R. 232 (Sask. Q.B.).

A contract of insurance is not a wagering or gaming contract, because it is one of the essentials of an insurance contract that the insured have an insurable interest not only at the time of making the contract but also at the time of the loss.[1]

The provision of insurance does not constitute betting or wagering. A contract for insurance is not a gaming or wagering contract and is therefore enforceable. (An insurance contract is not a gaming contract because it is for valuable consideration and there is an insurable interest at all relevant times.)

1 Howard v. Lancashire Insurance Co. (1885), 11 S.C.R. 92 [N.S.]; see also Williams v. Baltic Insurance Assn. of London Ltd., [1924] 2 K.B. 282; Sleigh v. Stevenson, [1943] O.W.N. 292 (Co. Ct.), affirmed [1943] O.W.N. 465 (C.A.); Stuart Olson Construction Ltd. v. Allan Forrest Sales Ltd. (1994), 161 A.R. 6 (Q.B.) (supplier of water coolers to construction site having no insurable interest after units shipped to site).