

Policy Implications of the LCC Study:

“The Legalization of Gambling in Canada”

Colin S. Campbell, Ph.D.

Timothy F. Hartnagel, Ph.D.

Garry J. Smith, Ph.D.

LAW COMMISSION OF CANADA:

- a federal agency created by an Act of Parliament in 1997.
- Gives advise to Parliament on law reform and modernization.

LAW COMMISSION OF CANADA

- Created “What is a Crime?” Project.
- Intended to engage Canadians in a debate regarding the use of the criminal law to deal with unwanted or undesirable behaviour.
- Published a discussion paper, “What is a a crime?” which cited gambling as an example of an area where the ambit of the criminal law had been reduced.

LAW COMMISSION OF CANADA

- Partnered with Alberta Gaming Research Institute & the Ontario Problem Gambling Research Institute to support our proposed study: “The Legalization of Gambling in Canada & Its Consequences”.

Synopsis of the Report:

- Report charts the evolution of the gambling provisions of the Criminal Code of Canada.
- 1892 – Criminal Code created – federal legislation intended to be national in scope.
- To be uniform and to serve a unifying purpose in a disparate country.

Synopsis:

- Historical transformation of gambling.
2 observations leap out:
 - a) Transition from Prohibition to Legalization.
 - b) Decrease in federal responsibility and an increase in provincial authority over gambling.
- Our report seeks to document the consequences of this transformation.

METHODOLOGY:

- multi-disciplinary literature review.
- non-random sample of: regulators, police, private sector operators, problem gambling counsellors, lawyers, gambling activists, and academics.
- informal interviews conducted in USA, UK, Australia and Canada.

Key Observations:

1. Balkanization of the Criminal Code
 - Differing provincial interpretations of the gambling provisions.
 - 2 ambiguous phrases:
 - a) "lottery schemes"
 - b) "manage and conduct"

- 4 operational & regulatory models evident under the different interpretations:
 - a) Government owned & operated model (Crown corporation model),
 - b) Hybrid model – joint venture partnerships between governments and private sector operators

c) Charity model (AB)

d) First Nation (SK, MB, OT, AB)

2. Gambling & Crime Nexus:

- Presents a typology seeking to identify the ways in which gambling and crime intersect.
- 7 types of criminality associated with gambling.
- Relationship between gambling and crime is complex.

3. Problem Gambling:

- Move to medicalize rather than criminalize the unwanted & unanticipated outcomes associated with excessive gambling.
- Deployment of armies of helping professions.
- Retention of criminal penalty for extreme cases.

Contentious Policy Issues identified:

3 examples presented here:

1. Interpretations of the Criminal Code.

e.g. Ontario Gaming Legislation Review – private law firm retained to assess legality of gaming operations and regulatory structures in Ontario.

- Report commissioned by the Ontario Lottery Corporation.

- Report argued that private sector control of major casinos did not comply with provincial requirement to “manage and conduct”.
- Report also argued the Code was breached when funds are diverted from charity and public benefit to the private sector.

- ## 2. Operation and Regulation of EGMs:
- Integrity testing issues arise over the discovery of “Easter eggs” in Canadian EGMs.
 - Harms from EGMs & consumer protection issues arise.

3. Internet Gambling
4. Bill S-11 – Canadian Senate private member's bill seeks to restrict VLTs to "dedicated gaming facilities".

Cross National Comparisons – Lessons for Canada:

National government studies undertaken in:

- Australia (1999) Productivity Commission Report
- USA (1999) National Gambling Impact Study
- UK (2001) Gambling Review Board Report (Budd Report)

- No national study undertaken in Canada.
- Why?
- No federal presence in gambling in Canada.
- Last genuine federal public hearings on gambling in Canada were in 1950s.

Policy Issues:

1. Gambling policies controlled by Executive levels of government with input from a policy elite.
 - Open debate restricted; debate kept out of legislatures.
 - Consequence: Municipal governments the locus of public dissent (e.g. municipal plebiscites in some provinces).

2. Impact of the LCC Report:

- Not holding our breaths; anticipate a studied blindness as a provincial response.
- Federal government will maintain a hands-off approach; will not seek to provoke a potential hornet's nest.
- Vain glorious hope: a National Study Commission.

- Anticipate a significant mobilization of resources and jockeying by provinces and private sector interests to lobby/influence composition and outcome of any national gambling study commission

- Barring a major political scandal involving gambling, the status quo is likely.
- Nevertheless, concern about the negative social impact of gambling continues to grow.

Conclusion:

- Delegation of authority for gambling to provinces would seem to imply that gambling is no longer a matter warranting criminal prohibition.
- Major function of the Code's provisions would seem to be to grant provinces a monopoly over gambling.
- Is this an appropriate use and function of the criminal law?

- There seems to be little legal justification for retaining the Code's provisions with respect to gambling.

- THANK YOU -