

## Overview Report: Regulation of Gaming in British Columbia

### A. Scope of Overview Report

1. This overview report outlines the history of gaming regulation in Canada and British Columbia since Confederation and sets out the current regulatory framework in the Province.

### B. Development of the Gambling Provisions of the *Criminal Code*

2. Until 1969, gambling in Canada was regulated primarily through the federal government's criminal law jurisdiction.<sup>1</sup> With limited exceptions, gambling in most forms was a crime throughout Canada, leaving little scope for provincial regulation of gaming.<sup>2</sup> While minor amendments to the *Criminal Code* resulted in slight adjustments to the scope of criminalized gambling, it remained largely prohibited throughout the first century following Confederation.<sup>3</sup>

3. In 1969, substantial amendments to the *Criminal Code* significantly broadened the scope of legal gambling.<sup>4</sup> New provisions enabled the creation of federally and provincially-regulated lottery and gaming industries.<sup>5</sup> Through a further amendment in 1985, the federal government repealed the provision enabling federally-regulated gambling, ceding authority to regulate gaming to the provinces.<sup>6</sup>

---

<sup>1</sup> Judith A. Osborne and Colin S. Campbell, "Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power between Federal and Provincial Governments", (1988) *Osgoode Hall Law Journal* 19 at 22-23 (Osborne & Campbell); Patrick J. Monahan & A. Gerald Goldlist "Roll Again: New Developments Concerning Gaming," 42:2-3 *Criminal Law Quarterly* 182 at 188-189 (Monahan & Goldlist).

<sup>2</sup> Osborne & Campbell at 22-23; Monahan & Goldlist at 188-189.

<sup>3</sup> Colin S. Campbell, Timothy F. Hartnagel & Garry J. Smith, "The Legalization of Gambling in Canada" (Law Commission of Canada, 2005) at 13-14 (Campbell, Hartnagel & Smith).

<sup>4</sup> Campbell, Hartnagel & Smith at 14-15.

<sup>5</sup> Monahan & Goldlist at 188.

<sup>6</sup> Campbell, Hartnagel & Smith at 17-18; Garry Smith and Harold Wynne, *Gambling in Canada: Triumph, Tragedy, or Tradeoff?* (Calgary: Canada West Foundation, 1999) at 7 (Smith & Wynne).

**i. Early Legislation: Confederation to the first Criminal Code**

4. Prior to the enactment of the first *Criminal Code*, Parliament passed several statutes criminalizing gambling and related conduct, adding to existing gaming-related offences received from English law or enacted prior to Confederation.<sup>7</sup> These included *An Act respecting Gaming Houses*,<sup>8</sup> *An Act respecting Lotteries, Betting and Pool-Selling*,<sup>9</sup> *An Act respecting Gambling in Public Conveyances*,<sup>10</sup> and *An Act respecting Gaming in Stocks and Merchandise*.<sup>11</sup> These developments are detailed below.

5. In 1886, existing gaming offences were consolidated in *An Act respecting Gaming Houses*, which also expanded powers of search and seizure in relation to common gaming houses and created statutory presumptions intended to facilitate prosecutions.<sup>12</sup>

6. *An Act respecting Lotteries, Betting and Pool-Selling*, also passed in 1886, made it an offence to produce or purchase lottery cards or tickets, except for the raffling of prizes worth less than \$50 at a bazaar held for a charitable purpose. The Act also prohibited the use of premises to register bets or wagers or to sell a pool. It allowed some scope for legal gambling, permitting persons to hold stakes for the winners of lawful races and sports, for the owners of horses engaged in a lawful race, and for bets between individuals.<sup>13</sup>

---

<sup>7</sup> Osborne & Campbell at 21-22; Monahan & Goldlist at 185-186

<sup>8</sup> *An Act Respecting Gaming Houses*, S.C. 1886 c. 158.

<sup>9</sup> *An Act Respecting Lotteries, Betting and Pool-Selling*, S.C. 1886, c. 159.

<sup>10</sup> *An Act Respecting Gambling in Public Conveyances*, S.C. 1886, c. 160.

<sup>11</sup> *An Act Respecting Gaming in Stocks and Merchandise*, S.C. 1888, c. 42.

<sup>12</sup> *An Act Respecting Gaming Houses*, S.C. 1886 c. 158; Osborne & Campbell at 22.

<sup>13</sup> *An Act Respecting Lotteries, Betting and Pool-Selling*, S.C. 1886, c. 159.

7. In the same year, *An Act respecting Gambling in Public Conveyances* made it an offence to obtain money by gambling in any railway car or steamboat used as a public conveyance for passengers.<sup>14</sup>

8. Two years later, in 1888, Parliament passed *An Act respecting Gaming in Stocks and Merchandise*, which criminalized gaming and wagering on the rise and fall in value of stocks and merchandise.<sup>15</sup>

## **ii. 1892: The First Criminal Code**

9. Parliament enacted the first *Criminal Code* in 1892,<sup>16</sup> incorporating the offences established by the statutes discussed above.<sup>17</sup> Accordingly, the 1892 *Code* continued to prohibit a wide range of conduct related to gambling, including keeping a common gaming house or common betting house, playing or looking on in a gaming house, gaming in stocks and merchandise, gambling in public conveyances, betting and pool-selling, and conducting lotteries.<sup>18</sup> As previously, the *Criminal Code* continued to carve out narrow exceptions to these offences, preserving limited space for legal gambling as described above.<sup>19</sup>

10. In the decades that followed, several minor amendments to these provisions, outlined below, resulted in slight shifts in the balance between legal and prohibited gambling.<sup>20</sup>

---

<sup>14</sup> *An Act Respecting Gambling in Public Conveyances*, S.C. 1886, c. 160.

<sup>15</sup> *An Act Respecting Gaming in Stocks and Merchandise*, S.C. 1888, c. 42.

<sup>16</sup> *The Criminal Code*, 1892, S.C. 1892, c. 29 (*1892 Criminal Code*).

<sup>17</sup> Osborne & Campbell at 22; Campbell, Hartnagel & Smith at 13; Monahan & Goldlist at 186.

<sup>18</sup> *Criminal Code*, 1892, ss. 196-205; Osborne & Campbell at 22; Monahan & Goldlist at 186.

<sup>19</sup> *1892 Criminal Code*, s. 205(6).

<sup>20</sup> Campbell, Hartnagel & Smith at 13.

11. In 1900, amendments to the section on betting, pool-selling and bookmaking limited on-track betting to incorporated racing association events of not more than two race-meetings per year, consisting of not more than seven continuous race-days per meeting.<sup>21</sup>

12. The *Criminal Code* was amended again in 1922 to prohibit dice games, shell games, punch boards, coin tables, and wheels of fortune.<sup>22</sup> Three years later, an exemption was created permitting games of chance at agricultural fairs and exhibitions (other than dice games, shell games, punch boards and coin tables, but permitting wheels of fortune).<sup>23</sup>

13. In 1938, Parliament further expanded legal gambling by amending the definition of “common gaming house.” The amendments excluded from the definition premises used by the following two types of organizations:

- a. An incorporated *bona fide* social club or branch, provided that the operator did not take a percentage of the amounts wagered, but received only a fee based on the time each person spent playing; and
- b. A charitable or religious organization playing games for which a direct fee is charged to the players, if the proceeds are used for the benefit of any charitable or religious object.<sup>24</sup>

---

<sup>21</sup> *An Act to Amend the Criminal Code*, S.C. 1910, c. 10, s. 3

<sup>22</sup> *An Act to Amend the Criminal Code*, S.C., 1922, c. 16, s. 11; Smith & Wynne at 6; Campbell Hartnagel & Smith at 14.

<sup>23</sup> *An Act to Amend the Criminal Code*, S.C. 1925 c. 38 s. 4; Colin S. Campbell and Garry J. Smith, “Canadian Gambling: Trends and Public Policy Issues (1998) 556 *The Annals of the American Academy of Political and Social Science* 22 at 23 (Campbell & Smith); Campbell, Hartnagel & Smith at 14; British Columbia Provincial Health Officer, *Lower the Stakes: A Public Health Approach to Gambling in British Columbia. Provincial Health Officer’s 2009 Annual Report*, (Victoria: Ministry of Health, 2013) at 10 (Lower the Stakes).

<sup>24</sup> *An Act to Amend the Criminal Code*, S.C. 1938 c. 44, s. 12; Campbell, Hartnagel & Smith at 14; Judith A. Osborne, *The Legal Status of Lottery Schemes in Canada: Changing the Rules of the Game* (LL.M. Thesis, University of British Columbia, 1989) at 46 (Osborne, 1989).

14. In 1954, three-card monte was added to the list of prohibited games of chance.<sup>25</sup>

**iii. 1969: Decriminalization and Regulated Gambling**

15. A report issued by a joint committee of the Senate and House of Commons in 1956 questioned the wisdom of the widespread criminalization of gambling.<sup>26</sup> The joint committee found that violation of the gambling provisions of the *Criminal Code* was widespread, that enforcement of the laws had become impractical and that there existed broad public support for lotteries organized for “charitable and benevolent purposes.”<sup>27</sup> The Committee recommended that Parliament expand legal gambling by permitting provinces and municipalities to establish licensing systems that would allow charitable and religious organizations to conduct lotteries.<sup>28</sup>

16. In 1969, Parliament enacted substantial amendments to the gambling provisions of the *Criminal Code*. These amendments decriminalized significant gaming activity when conducted or authorized by government. Among other changes, the new provisions authorized:

- a. The Government of Canada to conduct and manage lottery schemes;
- b. The government of a province, alone or in conjunction with another province to conduct and manage lottery schemes in accordance with any law enacted by the legislature of that province;
- c. A charitable organization to conduct and manage a lottery scheme under the authority of a licence issued by a province if the proceeds of the lottery scheme were used for a charitable or religious object or purpose, with some limits on the nature of the scheme and the amounts that could be wagered and won;

---

<sup>25</sup> *An Act Respecting the Criminal Law*, S.C. 1954, c. 51, s. 179; Campbell, Hartnagel & Smith at 14.

<sup>26</sup> *Reports of the Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment and Lotteries*, 22<sup>nd</sup> Parl., 3<sup>rd</sup> Sess. (Ottawa: Queen’s Printer, 1956) (Joint Committees Report); Monahan & Goldlist at 187; British Columbia Gaming Project Working Group, *Report on Gaming Legislation and Regulation in British Columbia* (1999) at 48 (White Paper).

<sup>27</sup> Joint Committees Report; Monahan & Goldlist at 187.

<sup>28</sup> Joint Committees Report; Monahan & Goldlist at 187.

- d. An agricultural fair or exhibition or an operator of a concession leased by an agricultural fair or exhibition or board to conduct a lottery scheme under the authority of a licence issued by a province; and
- e. Any person under the authority of a licence issued by a province to conduct and manage a lottery scheme at a public place of amusement, with some limits on the nature of the scheme and the amounts that could be wagered and won.<sup>29</sup>

17. Licences issued by the provinces as permitted by the amended *Criminal Code* provisions could contain terms and conditions relating to the management and conduct of lottery schemes.

18. The amendments also transferred responsibility for incorporated *bona fide* social clubs to the provinces and provided that a social club would not be considered a common gaming house if it charged fees for playing in accordance with the terms of a licence issued by a provincial Attorney General.

19. A further amendment in 1983 added a new provision to the *Criminal Code* that authorized the federal government, alone or in partnership with the provinces, to manage a pool system of betting on any of two or more athletic contests or events.<sup>30</sup>

#### **iv. 1985: Gambling as a Provincial Responsibility and Other Amendments**

20. The shared authority to regulate gaming created by the 1969 amendments resulted in competition and conflict between the federal and provincial governments.<sup>31</sup> In particular, provincial concerns arose from the federal government's creation of a lottery in 1973 to assist in funding the 1976 Montreal Olympics, eventually leading to the creation of a permanent federal Crown corporation, Loto-Canada, in 1976.<sup>32</sup>

---

<sup>29</sup> *Criminal Law Amendment Act*, S.C. 1968-69, c. 38, s. 13.

<sup>30</sup> *Athletic Contests and Events Pools Act*, S.C. 1980-83, c. 161, s. 33.

<sup>31</sup> Campbell, Hartnagel & Smith at 16-17; Osborne & Campbell at 24-25.

<sup>32</sup> Campbell, Hartnagel & Smith at 15-16; Osborne & Campbell at 24.

21. As part of an agreement with the provinces,<sup>33</sup> the federal government amended the gambling provisions of the *Criminal Code* again in 1985, removing the exemption for federally authorized lotteries and leaving the power to conduct and authorize lotteries and gaming exclusively in the hands of the provinces.<sup>34</sup> In exchange, the provinces agreed to contribute \$100 million to fund the Calgary Winter Olympic Games.<sup>35</sup>

22. Additional amendments made to the *Criminal Code*'s gambling provisions in 1985 alongside the removal of federal authority to regulate lotteries included the following.

23. First, s. 190(1)(g) (now s. 207(1)(g)) was added to the *Code*. This provision permits

Any person, for the purpose of a lottery scheme that is lawful in a province under any of paragraphs (a) to (f), to do anything in the province, in accordance with the applicable law or licence, that is required for the conduct, management or operation of the lottery scheme or for the person to participate in the scheme.

24. Secondly, a new offence was created under s. 190(3) (now s. 207(3)) of the *Code*:

Every one who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section

(a) In the case of the conduct, management or operation of that lottery scheme,... is guilty of an... offence

25. Thirdly, the definition of "lottery scheme" was amended. The effect of this amendment was that slot machines and electronic gambling were permitted but only if conducted and managed by a province under s. 190(1)(a) (now s. 207(1)(a)) of the *Code*.

---

<sup>33</sup> Campbell, Hartnagel & Smith at 16-17.

<sup>34</sup> *An Act to Amend the Criminal Code (lotteries)*, S.C. 1985, c. 52; Campbell, Hartnagel & Smith at 17-18; Smith & Wynne at 7.

<sup>35</sup> Osborne & Campbell at 25-26.

**v. Later Amendments to the Gambling Provisions of the Criminal Code**

26. Since 1985, significant amendments to the gambling provisions of the *Criminal Code* have included:

- a. In 1999, s. 207(4) was amended to permit dice games, if conducted and managed by the government of a province.<sup>36</sup>
- b. Also in 1999, s. 207.1 was added to the *Criminal Code*, allowing some forms of gambling on international cruise ships.<sup>37</sup>
- c. In 2018, s. 198, which created several presumptions relating to common gaming houses, common betting houses, and disorderly houses, was repealed.<sup>38</sup>

**C. Current Gambling Provisions of the Criminal Code**

27. The gambling provisions in the current *Criminal Code* are found in Part VII of the *Code*: “Disorderly Houses, Gaming and Betting,” which is comprised of ss. 197-212. Section 197 defines several terms that appear in Part VII. Section 199 sets out police powers of search and seizure related to gaming offences. Sections 201-203, 206 and 209 create a series of gambling-related offences including keeping a gaming or betting house (s. 201); betting, pool-selling and book-making (s. 202); placing bets on behalf of others (s. 203); cheating at play (s. 209); and an offence in relation to lotteries and games of chance (s. 206).

28. Exemptions from the offences created in Part VII are found in ss. 197(2), 204, 207 and 207.1. Section 197(2) creates an exception to the definition of “common gaming house” that exempts “incorporated genuine social club(s)” from the offence created by

---

<sup>36</sup> *An Act to Amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act*, S.C. 1999, c. 5, s. 6.

<sup>37</sup> *An Act to Amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act*, S.C. 1999, c. 5, s. 7.

<sup>38</sup> *An Act to Amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, S.C. 2018, c. 29, s. 16.



s. 201. Section 204 creates exceptions to the ss. 201 and 202 offences for conduct including that associated with races, sports, games or exercises, private bets “between individuals not engaged in the business of betting” and “bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races.” Section 207.1 creates an exemption for gaming on international cruise ships in some circumstances.

29. Most significantly for present purposes, s. 207 creates exemptions for lottery schemes conducted and managed or licenced by the government of a province. Section 207(1)(a) permits provinces to “conduct and manage” lottery schemes directly (the broad definition of the phrase “lottery scheme” will be discussed below). This section provides that, the other provisions found in Part VII of the *Code* notwithstanding, it is lawful:

for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province.

30. Alongside this exemption permitting the provinces to offer gaming directly, s. 207(1) also permits provincial governments to licence others to conduct and manage “lottery schemes” in some circumstances. Sections 207(1)(b-h) provide:

Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

...

- (b) for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;
- (c) for the board of a fair or of an exhibition, or an operator of a concession leased by that board, to conduct and manage a lottery scheme in a province where the Lieutenant Governor in Council of the province or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof has

- (i) designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and
  - (ii) issued a licence for the conduct and management of a lottery scheme to that board or operator;
- (d) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if
  - (i) the amount or value of each prize awarded does not exceed five hundred dollars, and
  - (ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed two dollars;
- (e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation to a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province;
- (f) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;
- (g) for any person, for the purpose of a lottery scheme that is lawful in a province under any of paragraphs (a) to (f), to do anything in the province, in accordance with the applicable law or licence, that is required for the conduct, management or operation of the lottery scheme or for the person to participate in the scheme; and
- (h) for any person to make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything relating to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing, or to send, transmit, mail, ship, deliver or allow to be sent, transmitted,

mailed, shipped or delivered or to accept for carriage or transport or convey any such thing where the destination thereof is such a place.

31. As discussed below, insight into the meaning of the terms “lottery scheme”, “conduct and manage”, “licence”, “charitable purpose,” “charitable or religious organization” and “proceeds” is provided by the *Criminal Code* and case law.

**i. The Meaning of “Lottery Scheme”**

32. Section 207 refers repeatedly to “lottery schemes.” It is that which the province is permitted to “conduct and manage” directly by s. 207(1)(a) and to licence others to do so by ss. 207(1)(b)-(f). This phrase first appeared in the *Criminal Code* in 1906<sup>39</sup> and is presently defined as follows in s. 207(4):

- (4)** In this section, *lottery scheme* means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than
- (a)** three-card monte, punch board or coin table;
  - (b)** bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any race or fight, or on a single sport event or athletic contest; or
  - (c)** for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device, slot machine or a dice game.

33. This broad definition encompasses a wide array of gaming activity going well beyond what might commonly be thought of as a “lottery,” including “bingo, sports betting and casino-style card games such as blackjack and poker.”<sup>40</sup>

34. Notably, the effect of subsection (c) is to broaden the definition further for schemes conducted and managed by a province to include “a game or proposal, scheme, plan,

---

<sup>39</sup> Campbell, Hartnagel & Smith at 14; Campbell & Smith at 23.

<sup>40</sup> Campbell, Hartnagel & Smith at 22.

means, device, contrivance or operation... that is operated on or through a computer, video device, slot machine or a dice game.” While this provision permits a provincial government to conduct and manage such schemes directly, it does not allow provinces to license others to do so.

**ii. The Meaning of “Conduct and Manage”**

35. The phrase “conduct and manage” is not defined in the *Criminal Code* but has received judicial consideration. The interpretation of this phrase limits the manner in which provinces may offer and regulate gaming.

36. In *Great Canadian Casino C Ltd v. Surrey (City of)*,<sup>41</sup> the Court considered whether the Province had illegally delegated the conduct and management of a casino to a private actor. While the Court acknowledged that the sharing of profits is a relevant factor it held that the central issue is whether the Province continues to act as the “operating mind” behind the lottery scheme.<sup>42</sup>

This arrangement clearly amounts to a profit-sharing scheme which comes dangerously close to a delegation of the provincial government's power to control and manage gaming in British Columbia. As in [*Keystone Bingo Centre Incorporated v Manitoba Lotteries Foundation et al* (1990), 3 MPLR (2d) 178 (CA)] the casino has a “very real participation in the profits of the [casino] operation”. This is not simply an agreement for the rental of space for the Lottery Corporation to operate slot machines. However, sharing in the profits does not automatically mean that the private entity has assumed “management and control” of the gaming operation. The court must examine all the indicia of control and management in the unique circumstances of each case.

A key indication of management and control is the fact of which party, the government or the private entity, is the “operating mind” of the lottery scheme. In *Keystone*, the Manitoba Court of Appeal found that the private, for-profit bingo hall was the operating mind of the lottery scheme. In particular,

---

<sup>41</sup> (1999), 53 B.C.L.R. (3d) 379, 1998 CanLII 2894 aff'd 1999 BCCA 619.

<sup>42</sup> Paras 65-69; See also Monahan & Goldlist at 211.

the bingo hall conducted and managed each and every aspect of the scheme and, as such, its elaborate arrangement with the government in which it purported to be merely the "landlord" of the operation was found to be a sham.

Similarly, in *R. v. Miller*, [1951] O.W.N. 230 (Ont. Co. Ct.), a seller of lottery tickets was found to be unlawfully "conducting" the lottery scheme because he was, in essence, the operating mind of the scheme. The court found, at 233:

He evidently has all of Canada for his territory, he is free to appoint his own agents, and collects the money from them, forwarding it to headquarters. The tickets themselves indicate this. Part of the scheme naturally was the selling of tickets and the collecting of money, and he was completely his own master in that respect in his own field.

In the case at bar, the Surrey Casino is not "its own master" with respect to the operation of slot machines, nor is the Casino the "operating mind" of those machines. The installation, technical support, monitoring, and setting of games and payouts are all controlled by the Lottery Corporation. Casino employees assist in the operation of the machines, but the Lottery Corporation manages and controls the slot machine scheme.

In the circumstances of this case, the operation of s. 4(d) of the *Lottery Corporation Act* does not constitute an unlawful delegation of the Province's power to control and manage a lottery scheme in British Columbia.

37. In this passage, the Court identified limits on the manner in which gaming may be regulated by the province and, in particular, restricted the involvement of the private sector in gaming within the province. This interpretation seems to preclude the government from satisfying its obligation to "conduct and manage" gaming by delegating entirely the right to offer gaming to private sector actors. It requires that the province remain actively involved in offering gaming activity permitted under s. 207(1)(a) and that those licensed to conduct and manage gaming under ss. 207(1)(b)-(g) do the same.

38. A similar conclusion was reached in a white paper released by the Provincial Government the following year:

Conduct and management is not simply a matter of having a dominant role. The government or licensed charity must be the "operating mind" of the lottery

scheme. It must be the party leading, directing and controlling the lottery scheme. Conduct and management is not to be shared. Those discretionary elements of the design and implementation of a lottery scheme which establish its very character or nature likely comprise conduct and management activities. Decision-making power in these respects must not be exercised by a service provider in the capacity of an independent contractor. An independent contractor should be confined to carrying out a merely functional (i.e. operational) role if the activities in question pertain to the essential character or constituent elements of the lottery scheme. That role should be performed in accordance with specifications of the operating mind of the lottery scheme. Any decision-making power left to an independent contractor in the design or implementation of the lottery scheme increases the risk that the independent contractor will be found to be, in part or in whole, conducting and managing the lottery scheme. If some element of conduct and management is in the hands of an independent contractor, the fact that the government or a licensed charity has an ownership or proprietary interest in the lottery scheme will not save it. Finally, participation in gaming profits may be indicative of conduct and management.

...

Remuneration for operational services should be designed to minimize any risk that it will be viewed as an indication of conduct and management by other than government or a licensed charity. This risk is minimized where a fee for service provides only for cost recovery. More risk is entailed in a fee for service that includes a reasonable return on investment or a profit margin. However, the key may well be the amount of the return or profit margin. Returns that are not defensible as reasonable market rates or profit margins for the services in issue (without regard to the gaming context) might adversely colour the view taken of the operational arrangements. The form adopted for the fee for service will also bear on the risk. For example, a fixed charge would less likely be viewed as indicative of conduct and management than would a percentage of the gaming revenues. Remuneration that varies with the success or volume of the gaming presents a higher risk of being seen as indicating conduct and management of the gaming by the recipient of that remuneration. If such a compensation structure is used, particular attention will be required to ensure that, when viewed as a whole, the operational arrangements do not indicate

that the independent contractor is conducting and managing the lottery scheme, in whole or in part.<sup>43</sup>

### **iii. *Licensure by the Provincial Government***

39. Section 207(2) offers insight into the nature of the authority of the provinces to “licence” other entities to conduct and manage gaming. This section provides:

**(2)** Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct, management and operation of or participation in the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by the Lieutenant Governor in Council thereof or any law enacted by the legislature of that province may prescribe.

40. This provision imposes few limits on the terms and conditions that may attach to a licence issued by a province, granting provinces broad discretion to establish licencing schemes within the limits imposed by ss. 207(1)(b)-(f).

41. Further, the *Criminal Code* does not prescribe *how* the terms and conditions attached to a licence may be set. The *Criminal Code* does not require that the provincial scheme for establishing terms and conditions be contained in provincial legislation. It is adequate if the scheme is prescribed by Cabinet (presumably through regulations) or by the provincial authority designated by Cabinet, such as a gaming commission or regulator (through its own internal policy documents).

42. The breadth of the province’s discretion to set terms and conditions was affirmed in *R. v. Hunt*.<sup>44</sup> In *Hunt*, the accused was charged under s. 207(3) of the *Criminal Code* for paying to a third party, which sold his break open tickets, commissions higher than those permitted under Ontario’s Terms and Conditions regulation. In upholding the

---

<sup>43</sup> White Paper at 64-65.

<sup>44</sup> *R. v. Hunt*, [1998] O.J. No. 359 at paras. 21-22 (Ont. Ct., Gen. Div.).

accused's committal for trial, the Court made the following observations about the statutory scheme for terms and conditions:

Section 207 of the Code gives the provinces sweeping and flexible powers for the creation, supervision and control of lotteries and, in s. 207(2), one finds a very broad power vested in the provinces to impose terms and conditions on the grant of licences. It ill behoves a court, I believe, to nit-pick at these powers which were so obviously created in the public interest.

The terms and conditions set out in these regulations were clearly *intra vires* the province and the court should allow a substantial measure of room to manoeuvre within these subordinate enactments. To me, the successive terms and conditions were legitimate experiments under the broad scheme propounded by the federal Parliament and should be enforced in their clear terms to allow the province to achieve legitimate public policy objects.

43. *Hunt* also confirmed the significance of such terms and conditions to the exemption from criminal liability. The Court held that a licensee that breaches even one of the terms and conditions applicable to its licence renders itself subject to prosecution under s. 207(3) of the *Criminal Code*.

#### ***iv. Eligible Licensees***

44. In contrast to the breadth of provincial discretion to set the terms and conditions associated with licences to conduct and manage lottery schemes, s. 207(1) of the *Criminal Code* imposes clear limits on those to whom such licences may be granted. In particular, the *Code* allows a provincial government to grant licenses:

- a. To charitable or religious organizations if the proceeds of the lottery scheme are to be used for a charitable or religious object or purpose;
- b. To the board of a fair or exhibition or an operator of a concession leased by that board;
- c. To any person to conduct and manage a lottery scheme at a public place of amusement; and
- d. To a person licensed to conduct and manage a lottery scheme in one or more other provinces.



45. Section 206(3.1) defines a “fair or exhibition” as “an event where agricultural or fishing products are presented or where activities relating to agriculture or fishing take place.” Aside from this definition, the *Criminal Code* does not define or provide other guidance as to the meanings of “charitable or religious organization”, “fair or exhibition”, or “public place of amusement.”

46. The meanings of “religious organization”, “fair or exhibition” and “public place of amusement” have also received little consideration in case law. In contrast, there is a history of judicial consideration of the meanings of “charitable purpose,” “charitable organization,” and “proceeds,” discussed below.

**a. The Meaning of “Charitable Purpose”**

47. The history of the interpretation of the phrase “charitable purpose” dates to 1601, when a list of charitable purposes was enumerated in the *Charitable Uses Act*.<sup>45</sup>

The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids, the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

48. In 1891, such purposes were classified into four categories by Lord MacNaghten in *Income Tax Special Purposes Commissioners v. Pemsel*.<sup>46</sup>

“Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

---

<sup>45</sup> *Charitable Uses Act 1601*, 43 Eliz. 1, c. 4.

<sup>46</sup> *Income Tax Special Purposes Commissioners v. Pemsel*, [1891] A.C. 531 at 538.

49. The categorization of charitable purposes set out in *Pemsel* continues to enjoy wide acceptance in Canadian law. It has been applied by the Supreme Court of Canada in *Towle Estate v. M.N.R.*,<sup>47</sup> *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*,<sup>48</sup> and in *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*.<sup>49</sup> More recently, it was accepted by the B.C. Supreme Court in *Bodner Estate (Re)*<sup>50</sup> and *Doukhobor Heritage Retreat Society #1999 v. Vancouver Foundation*.<sup>51</sup>

50. For an object to be charitable, it must not only fit within one of Lord MacNaghten's four categories, but it must also be directed to the public benefit. As explained in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, there are two elements to the 'public benefit' requirement, that there be "an objectively measurable and socially useful benefit conferred; and [that it] be a benefit available to a sufficiently large section of the population to be considered a public benefit." [Emphasis in original.]<sup>52</sup>

### ***b. The Meaning of "Charitable Organization"***

51. The above discussion of the meaning of "charitable purpose" is of assistance in identifying whether an organization qualifies as a "charitable organization" and as such may be licensed to conduct and manage lottery schemes without violating the *Criminal Code*. While "charitable organization" is not defined in the *Criminal Code*, it is defined at s. 149.1 of the *Income Tax Act* to mean:

...an organization, whether or not incorporated...

(a) constituted and operated exclusively for charitable purposes,

---

<sup>47</sup> *Towle Estate v. M.N.R.*, [1967] S.C.R. 133.

<sup>48</sup> *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10.

<sup>49</sup> *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217 at para. 26.

<sup>50</sup> *Bodner Estate (Re)*, 2019 BCSC 237, at para. 23.

<sup>51</sup> *Doukhobor Heritage Retreat Society #1999 v. Vancouver Foundation*, 2019 BCSC 54 at paras. 20-21.

<sup>52</sup> *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 at para. 41.

- (a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,
- (b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,
- (c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with
  - (i) each of the other directors, trustees, officers and like officials of the organization,
  - (ii) each person described by subparagraph (d)(i) or (ii), and
  - (iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and
- (d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever
  - (i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),
    - (A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and
    - (B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or
  - (ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i); (*oeuvre de bienfaisance*)<sup>53</sup>

---

<sup>53</sup> *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.).

52. The meaning of the requirement in subsection (a) that organizations be constituted and operated exclusively for charitable purposes was settled by the English Court of Appeal in *British Launderers' Research Association v. Central Middlesex Assessment Committee and Hendon Rating Authority*,<sup>54</sup> in which the Court held that:

It is not sufficient that the society should be instituted 'mainly' or 'primarily' or 'chiefly' for the purposes of science, literature or the fine arts. It must be instituted 'exclusively' for those purposes. The only qualification—which, indeed, is not really a qualification at all—is that other purposes which are merely incidental to the purposes of science and literature or the fine arts, that is, *merely a means to the fulfilment of those purposes*, do not deprive a society of the exemption. Once however, the other purposes cease to be merely incidental but become collateral; that is, cease to be a means to an end, but become an end in themselves; that is, become additional purposes of the society; then, whether they be main or subsidiary, whether they exist jointly with or separately from the purposes of science, literature or the fine arts, the society cannot claim the exemption. [Emphasis added.]

53. This interpretation has since been affirmed by the Supreme Court of Canada in *Guaranty Trust Company of Canada v. Minister of National Revenue*<sup>55</sup> and *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*<sup>56</sup>

### **c. The Meaning of “Proceeds”**

54. Section 207(1)(b) makes a lottery scheme lawful “if the proceeds from the lottery scheme are used for a charitable or religious object or purpose.” In *Nanaimo Community Bingo Association v. B.C. (Attorney General of)*<sup>57</sup> the B.C. Supreme Court took the view that the phrase “the proceeds” suggests that all the proceeds must be used for a

---

<sup>54</sup> *British Launderers' Research Association v. Central Middlesex Assessment Committee and Hendon Rating Authority*, [1949] 1 All E.R. 21 at 23 (C.A.).

<sup>55</sup> *Guaranty Trust Company of Canada v. Minister of National Revenue*, [1967] S.C.R. 133 at 143.

<sup>56</sup> *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 at para. 156.

<sup>57</sup> *Nanaimo Community Bingo Association v. B.C. (Attorney General of)* (1998), 52 B.C.L.R. (3d) 284 (S.C.), rev'd on other grounds 2000 BCCA 166.

charitable or religious object or purpose, and that no portion of them may be retained by the licensee for non-charitable purposes or by a third-party operator. With respect to proceeds from charitable gaming that would be diverted to the province's Consolidated Revenue Fund, the Court stated at para. 61:

Learned counsel for the [Attorney General] contends that even though the charitable and religious proceeds fall into the Consolidated Revenue Fund, they will be used primarily for charitable causes, such as health care and education. Even if this is written into the Regulation, the fact that a portion of the proceeds will not be used for charitable or religious purpose, is fatal.

55. Regarding proceeds from charitable gaming that would be diverted to for-profit companies, the Court stated at para. 63:

I find that certainly a substantial effect of the Regulation, if not its prime effect, is to put into the Consolidated Revenue Fund gaming proceeds that Parliament has decreed may only be used for charitable or religious purposes. Similarly, the impugned Regulation entitles a profit-making management company to receive such funds. This, the Regulation cannot lawfully do.

56. The *Criminal Code* is silent on the issue of whether a charitable or religious organization which is a licensee may deduct its administrative expenses in conducting and managing a lottery scheme, before directing the proceeds to a charitable or religious purpose.

#### **D. Federalism and Gaming Regulation**

57. In *R. v. Furtney*,<sup>58</sup> the Supreme Court of Canada considered whether the gaming provisions of the *Criminal Code* amounted to improper delegation of Parliament's legislative authority to the provinces. In upholding the impugned provisions, the Court concluded that while the creation of gambling-related offences is a valid exercise of the

---

<sup>58</sup> *R. v. Furtney* (1991), 66 C.C.C. (3d) 498 (S.C.C.); see also *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 S.C.R. 6 at para. 22.

federal government's criminal law powers, the regulation of gaming also falls within provincial legislative jurisdiction under s. 92 of the *Constitution Act, 1867*.<sup>59</sup>

...[T]he regulation of gaming activities has a clear provincial aspect under s. 92 of the *Constitution Act, 1867*, subject to Parliamentary paramountcy in the case of a clash between federal and provincial legislation. The appellants claim the contrary, citing *Johnson v. A.-G. Alta.* . . . That case does not decide that the province cannot legislate in relation to gaming activities; it decides that the province cannot prohibit and punish in the interest of public morality because such legislation is, in pith and substance, criminal law. The legislation in question there could find no legitimate anchor in s. 92. Altogether apart from features of gaming which attract criminal prohibition, lottery activities are subject to the legislative authority of the province under various heads of s. 92, including, I suggest, property and civil rights para. (13), licensing para (9), and maintenance of charitable institutions para. (7) (specifically recognized by the *Code* provisions). Provincial licensing and regulation of gaming activities is not *per se* legislation in relation to criminal law.

58. The Court held that the decriminalization of provincially-licenced lottery schemes did not amount to a delegation of Parliament's criminal law jurisdiction, but rather:<sup>60</sup>

...constitutes a definition of the crime, defining the reach of the offence, a constitutionally permissive exercise of the criminal law power, reducing the area subject to criminal law prohibition where certain conditions exist.

## **E. The Evolution of Gaming Regulation in British Columbia: 1970-2002**

59. Since the 1969 *Criminal Code* amendments, the Government of British Columbia has exercised its jurisdiction over gaming through legislation, regulations, and orders-in-council. In doing so, the Province has established and dissolved a succession of agencies and departmental branches with varying mandates and powers to regulate gaming.

### ***i. 1970: Ministry of the Attorney General Licensing Branch***

---

<sup>59</sup> *Furtney* at 507-508.

<sup>60</sup> *Furtney* at 510.

60. In April 1970, B.C. promulgated an Order-in-Council permitting the Province to conduct public gaming within its borders in accordance with the recent amendments to the *Criminal Code*.<sup>61</sup> A Licensing Branch was established within the Ministry of the Attorney General and began issuing licences to charitable and religious organizations to conduct lotteries.<sup>62</sup> It also began developing regulations that set out eligibility for charitable gaming licences, fees, the minimum percentage of proceeds which must be paid to a charitable or religious object, and financial accountability.<sup>63</sup>

**ii. 1974: The BC Lotteries Branch and Lottery Fund and the Western Canada Lottery Foundation**

61. In 1974, the Legislature passed the *Lotteries Act*,<sup>64</sup> which established the BC Lottery Branch.<sup>65</sup> Later that year, the Branch was transferred to the Ministry of the Provincial Secretary and Government Services.<sup>66</sup> The Act authorized the Minister to regulate and licence the conduct of lotteries.<sup>67</sup> The Licensing Branch, established in 1970 within the Ministry of the Attorney General, became part of the new Lottery Branch.<sup>68</sup>

62. Section 5 of the Act authorized the responsible Minister to, among other things:

- a. Conduct and manage lottery schemes in the Province; and

---

<sup>61</sup> OIC 1331/1970.

<sup>62</sup> Judith A. Osborne, "Licensing Without Law: Legalized Gambling in British Columbia" (1992) 35:1 *Canadian Public Administration* 56 at 61 (Osborne, 1992).

<sup>63</sup> B.C. Reg. 108/70, B.C. Reg. 4/71, B.C. Reg. 17/73.

<sup>64</sup> S.B.C. 1974, c. 51, renamed the *Lottery Act* by R.S.B.C. 1979, c. 249; British Columbia Gaming Commission, *Report on the Status of Gaming in British Columbia* (Victoria: British Columbia Gaming Commission, 1988) at III-1 (Gaming Commission).

<sup>65</sup> *Lotteries Act*, S.B.C. 1974, c. 51, s. 4; Osborne, 1992 at 61.

<sup>66</sup> Osborne, 1992 at 61; BC Reg 436/74; Margaret E. Beare, Wanda Jamieson and Anne Gilmore, *Legalized Gaming in Canada* (Ottawa: Solicitor General of Canada, 1988) at 19 (Beare, Jamieson & Gilmore).

<sup>67</sup> Gaming Commission at III-1.

<sup>68</sup> Gaming Commission at III-1 – III-2; Beare, Johnson & Gilmore at 19; B.C. Reg. 436/74; B.C. Reg. 651/76; B.C. Reg. 265/78.

- b. Regulate and licence certain persons to conduct and manage such other lotteries in the Province as are permitted under the *Criminal Code* (Canada), pursuant to the authority conferred by the *Criminal Code* (Canada) and this Act and the regulations.

63. Section 3 of the Act provided for the creation of a 'Lotteries Advisory Committee' to advise and assist the Minister in the administration of the Act and on any matter respecting the conduct of lotteries and to perform any other functions assigned by the Lieutenant-Governor in Council.<sup>69</sup> The Committee was not established until 1997<sup>70</sup> and was allowed to lapse in 1998 when it was replaced by the new Gaming Policy Secretariat within the Ministry of Employment and Investment.

64. The Act also established a Lottery Fund "into which shall be paid all proceeds from the conduct and operation of lotteries by the Province."<sup>71</sup> The Fund was to be used first to pay the costs of administering the Act, following which all revenue was to be devoted to "cultural or recreational purposes or for preserving the cultural heritage of the Province." In 1976, the permissible uses of the Lottery Fund were expanded to allow lottery revenue to also be used for "other purposes."<sup>72</sup> In 1979, the Province established the Lottery Grants Branch to administer the Lottery Fund, which was growing as a result of increased lottery revenues.<sup>73</sup> The Lottery Fund was later abolished in 1992.<sup>74</sup>

65. Also in 1974, the year in which the *Lotteries Act* was passed, British Columbia entered into an agreement with Alberta, Saskatchewan and Manitoba to create the

---

<sup>69</sup> *Lotteries Act*, S.B.C. 1974, c. 51, s.2; Osborne, 1992 at 61.

<sup>70</sup> Canada West Foundation, *Canada's Gambling Regulatory Patchwork* (Calgary: Canada West Foundation, 2999) at 18.

<sup>71</sup> Section 6(1).

<sup>72</sup> *Miscellaneous Statutes Amendment Act, 1977*, S.B.C. 1977, c. 76, s. 21; Gaming Commission at III-2; Osborne, 1989 at 201.

<sup>73</sup> Gaming Commission at III-2.

<sup>74</sup> *Budget Measures Implementation Act, 1992*, S.B.C. 1992, c.3, ss. 7-8.



Western Canada Lottery Foundation.<sup>75</sup> Under the agreement, the BC Lottery Branch assumed responsibility for marketing lotteries conducted by the Foundation in British Columbia.<sup>76</sup> In 1982, the Foundation was separated from the BC Lottery Branch and the Branch became a licensing body with an inspection staff.<sup>77</sup> British Columbia withdrew from the Western Canada Lottery Foundation agreement in 1985.<sup>78</sup>

66. Permissible gaming in British Columbia was expanded in 1978 when the Province permitted casino-type games of chance such as blackjack to be played at events conducted by charitable organizations, provided the organizations were non-profit and contributed to the public good. Bets were limited to two dollars and the number of gaming tables to six.<sup>79</sup>

67. Also in 1985, the BC Lottery Branch was renamed the Public Gaming Control Branch<sup>80</sup> and in 1986 it was returned to the Ministry of the Attorney General and renamed again, becoming the Public Gaming Branch.

### ***iii. 1984: The British Columbia Lottery Corporation***

68. The British Columbia Lottery Corporation (“**BCLC**”) was incorporated in 1984 and was continued under the *Lottery Corporation Act* in 1985 following British Columbia’s withdrawal from the Western Canada Lottery Foundation.<sup>81</sup> While the *Lottery Act*

---

<sup>75</sup> Gaming Commission at III-1 - III-2.

<sup>76</sup> Gaming Commission at III-2.

<sup>77</sup> Gaming Commission at III-2.

<sup>78</sup> Gaming Commission III-2

<sup>79</sup> Osborne, 1992 at 61; Beare, Johnson & Gilmore at 20; BC Reg 265/78; OIC 1728/1978.

<sup>80</sup> Osborne, 1992 at 62.

<sup>81</sup> *Lottery Corporation Act*, S.B.C. 1985, c. 50, s. 2; J. Peter Meekison, *Report to the Honourable Joan Smallwood, Minister of Labour on Relocation of and Changes to Existing Gaming Facilities in British Columbia, Review and Recommendations* (Victoria: Ministry of Labour, 2000) at 8; Gaming Commission at III-2; White Paper at 12.

remained in force until 2002,<sup>82</sup> BCLC was given a broad mandate with respect to gaming as evidenced by s. 4 of the *Act*, which identified the objects of BCLC as:

- a. to develop, undertake, organize, conduct and manage lottery schemes on behalf of the government;
- b. if authorized by the Minister, to enter into agreements to develop, undertake, organize, conduct and manage lottery schemes on behalf of or in conjunction with the government of Canada or the government of another province, or an agent of either of them;
- c. if authorized by the Minister, to enter into the business of supplying any person with computer software, tickets or any other technology, equipment or supplies related to the conduct of lotteries in or out of the Province, or any other business related to the conduct of lotteries;
- d. (beginning in 1993)<sup>83</sup> if authorized by the Minister, to enter into agreements with a person regarding any lottery conducted on behalf of the government; and
- e. to do such other things as the Minister may require from time to time.

69. As enacted in 1985, the *Lottery Corporation Act* required that BCLC's net profits be paid into the Lottery Fund. Following the abolition of the Lottery Fund in 1992,<sup>84</sup> profits were paid into the Province's consolidated revenue fund.<sup>85</sup>

70. The mandate of the Lottery Corporation expanded in the late 1990s. In 1997, it was given responsibility for conduct and management of all slot machines in British

---

<sup>82</sup> *Gaming Control Act*, S.B.C. 2002, c. 14, s. 112.

<sup>83</sup> *Miscellaneous Statutes Amendment Act (No. 2)*, 1993, S.B.C. 1993, c. 55, s. 18.

<sup>84</sup> *Budget Measures Implementation Act, 1992*, S.B.C. 1992, c. 3, s. 7.

<sup>85</sup> *Miscellaneous Statutes Amendment (No 2)*, 1993, S.B.C. 1993, c. 55, s. 19.

Columbia.<sup>86</sup> The following year, it assumed responsibility for all casino table games, bringing all casino gaming in the Province under BCLC's authority.<sup>87</sup>

**iv. 1987: British Columbia Gaming Commission**

71. On April 1, 1987, the British Columbia Gaming Commission was established by Order-in-Council.<sup>88</sup> The Commission, consisting of seven members, was tasked with developing gaming policy, setting the terms and conditions of licences for charities to operate bingos, lotteries and casinos, and licensing and regulating gaming at fairs and exhibitions.<sup>89</sup>

72. The Gaming Commission set the terms and conditions of licences by issuing an internally-developed document titled "Terms and Conditions Respecting Licensing of Lottery Events in British Columbia."<sup>90</sup> This document replaced a set of policy directives issued by the Ministry of the Provincial Secretary in 1986 when the government repealed existing regulations.<sup>91</sup>

73. On August 5, 1987, the Commission was authorized to issue licences to incorporate bona fide social clubs or their branches, and to prescribe the terms and conditions of those licences.<sup>92</sup>

---

<sup>86</sup> British Columbia Internal Audit and Advisory Services, *Review of: British Columbia Lottery Corporation* (Victoria: Ministry of Finance, 2014) at 9 (BC Internal Audit and Advisory Services); Lower the Stakes at 72.

<sup>87</sup> BC Internal Audit and Advisory Services at 9; Lower the Stakes at 72.

<sup>88</sup> OIC 612/1987; Gaming Commission at III-2.

<sup>89</sup> OIC 612/1987; Gaming Commission at III-2.

<sup>90</sup> British Columbia Gaming Commission, *Terms and Conditions Respecting Licensing of Lottery Events in British Columbia* (Victoria: Queen's Printer, 1987).

<sup>91</sup> Osborne, 1992 at 62.

<sup>92</sup> OIC 579/1987. Administration and enforcement was left to a police unit, the Combined Law Enforcement Unit until November 1987; Gaming Commission at III-3.

74. After the creation of the Gaming Commission, the Public Gaming Branch remained responsible for reviewing licence applications and making recommendations to the Gaming Commission, monitoring licensees' compliance with terms and conditions, and conducting audits and inspections of licensed organizations. The Public Gaming Branch remained within the Ministry of the Attorney General until 1988 when it, along with the Gaming Commission, became the responsibility of the new Ministry of the Solicitor General.<sup>93</sup> Both would eventually be transferred to the Ministry of Government Services and the Public Gaming Branch was later absorbed into the Gaming Commission in 1995.

**v. 1995: The Gaming Audit and Investigation Office**

75. Following the absorption of the Public Gaming Branch into the BC Gaming Commission, the Gaming Audit Investigation Office (GAIO) was created in 1995 as a monitoring and enforcement agency within the Ministry of the Attorney General.<sup>94</sup> GAIO inspectors were appointed as peace officers under the *Police Act*.<sup>95</sup> The formal mandate of GAIO, as authorized by the Attorney General was to:<sup>96</sup>

- a. Register individuals and companies involved in the activity of lawful gaming in British Columbia;
- b. Investigate any occurrence which may be of a criminal nature or bring into disrepute lawful gaming under either s. 207 of the *Code* or provincial enactments; and
- c. Audit and review gaming operations and organizations against standards established by provincial legislation and policy.

---

<sup>93</sup> Osborne, 1992 at 62.

<sup>94</sup> Canada West Foundation, *Canada's Gambling Regulatory Patchwork* (Calgary: Canada West Foundation, 1999) at 18 (Canada West Foundation); White Paper at 151-152; J. Peter Meekison, *Report to the Honourable Joan Smallwood, Minister of Labour on Relocation of and Changes to Existing Gaming Facilities in British Columbia: Review and Recommendations* (Victoria: Ministry of Labour, 2000) at 9.

<sup>95</sup> *Police Act*, R.S.B.C. 1996, c. 367; White Paper at 152.

<sup>96</sup> White Paper at 151-152.

76. An investigations division was formed within GAIO in 1998.

**vi. Gaming Policy Secretariat**

77. The Gaming Policy Secretariat was established within the Ministry of Employment and Investment in 1998. The role of the Secretariat was to provide policy advice to the Minister responsible for gaming and to co-ordinate the implementation of government policy related to gaming.<sup>97</sup>

**vii. 2002: The Gaming Control Act**

78. In 2002, the Legislature enacted Bill 6 – *2002 Gaming Control Act* pursuant to which it repealed the *Horse Racing Act*<sup>98</sup> and the *Horse Racing Tax Act*<sup>99</sup> (in 2003),<sup>100</sup> repealed the *Lottery Act*<sup>101</sup> and the *Lottery Corporation Act*<sup>102</sup> (in 2002)<sup>103</sup> and enacted the *Gaming Control Act* (“**GCA**”).<sup>104</sup>

79. The explanatory note to Bill 6 provided:

The *Gaming Control Act* provides a comprehensive framework for gaming in British Columbia, separates the regulation of gaming from gaming operations, eliminates duplication and clarifies the roles and responsibilities of government in provincial gaming.

This Bill continues the Gaming Policy and Enforcement Branch (“**GPEB**”)

---

<sup>97</sup> J. Peter Meekison, *Report to the Honourable Joan Smallwood, Minister of Labour on Relocation of and Changes to Existing Gaming Facilities in British Columbia: Review and Recommendations* (Victoria: Ministry of Labour, 2000) at 7.

<sup>98</sup> *Horse Racing Act*, R.S.B.C. 1996, c. 198.

<sup>99</sup> *Horse Racing Tax Act*, R.S.B.C. 1996, c. 199.

<sup>100</sup> B.C. Reg. 59/2003.

<sup>101</sup> *Lottery Act*, R.S.B.C. 1996, c. 278.

<sup>102</sup> *Lottery Corporation Act*, R.S.B.C. 1996, c. 279.

<sup>103</sup> B.C. Reg. 208/2002.

<sup>104</sup> *Gaming Control Act*, S.B.C. 2002, c. 14.

whose responsibilities include policy, legislation, standards, regulation, licensing, distribution of proceeds, registration, audit and enforcement for all gaming sectors.

This Bill expands the role of the British Columbia Lottery Corporation whose responsibilities now include the conduct and management of provincial gaming, including lotteries, casinos, and commercial bingo halls.

The lottery corporation will also assume responsibilities for horse racing as directed by the minister, will collect horse race betting fees and make payments to prescribed organizations whose objectives include the improvement of horse racing in the province.<sup>105</sup> The lottery corporation will manage the location and relocation of gaming facilities.<sup>106</sup>

80. The GCA reallocated the responsibilities of five separate agencies – the Gaming Policy Secretariat, GAIO, BCLC, the Gaming Commission and the BC Racing Commission – among two, a gaming operator, BCLC, and the Gaming Policy Enforcement Branch (“**GPEB**”), which was established in 2002.<sup>107</sup>

## **F. Current Operation and Regulation of Gaming in British Columbia**

### ***i. Gaming Policy and Enforcement Branch***

81. GPEB, an office of the provincial government, under the Ministry of the Attorney General, is continued under the GCA.<sup>108</sup>

---

<sup>105</sup> BCLC never became responsible for horse racing.

<sup>106</sup> Bill 6 – 2002, Gaming Control Act, 2002 Legislative Session: 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament, First Reading <<https://www.leg.bc.ca/Pages/BCLASS-Legacy.aspx#%2Fcontent%2Flegacy%2Fweb%2F37th3rd%2>> accessed 23 October 2019.

<sup>107</sup> GPEB was established in 2002: Gaming Policy and Enforcement Branch, *Gaming Policy and Enforcement Branch Annual Report 2004/05* <<https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2004-05.pdf>> at 4.

<sup>108</sup> GCA, s. 22.

82. GPEB carries out its regulatory activities under the *GCA* and the *Gaming Control Regulation* (“**GCR**”),<sup>109</sup> and provides assistance to law enforcement agencies with certain *Criminal Code* investigations.<sup>110</sup>

83. GPEB provides regulatory oversight of commercial gaming conducted and managed by BCLC, all gaming service providers (“**GSPs**”) and gaming workers, licensed gaming events, and horse racing. This oversight includes responsibility for the overall integrity of gaming and horseracing within British Columbia, pursuant to s. 23 of the *GCA*, and enforcement of the Act. GPEB also manages the British Columbia Responsible & Problem Gaming Program.<sup>111</sup>

84. GPEB is directed by a General Manager (“**GM**”), who typically is also an Assistant Deputy Minister. By written authorization, the GM may delegate his or her powers and duties to a staff member.<sup>112</sup>

85. The powers, duties and responsibilities of the GM are governed by the *GCA*.<sup>113</sup> Section 27 of the *GCA* identifies certain responsibilities of the GM:

(1) The general manager is the head of the branch and is responsible, under the direction of the minister and with reference to the responsibility of the branch under section 23, for the enforcement of this Act.

(2) The general manager

(a) must advise the minister on broad policy, standards and regulatory issues,

---

<sup>109</sup> *Gaming Control Regulation*, B.C. Reg. 208/2002.

<sup>110</sup> GPEB Application for Participant Status, para. 2.

<sup>111</sup> Gaming Policy and Enforcement Branch, *Gaming Policy and Enforcement Branch Annual Report 2018/2019* <<https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2018-19.pdf>> at iii-iv and 3.

<sup>112</sup> *GCA*, s. 24.

<sup>113</sup> *GCA*, see, for example, ss. 26-29, 78-81.

(b) under the minister's direction, must develop, manage and maintain the government's gaming policy,

(c) may establish criteria necessary for considering, reviewing and evaluating proposals for new or existing gaming facilities, and

(d) may establish public interest standards for gaming operations, including but not limited to extension of credit, advertising, types of activities allowed and policies to address problem gambling at gaming facilities.

(3) The general manager may

(a) direct that the branch conduct an investigation respecting

(i) the integrity of lottery schemes or horse racing, or

(ii) the conduct, management, operation or presentation of lottery schemes or horse racing,

(b) refer a complaint from a gaming patron to the branch if the general manager believes it is likely that the patron or another person has been adversely affected by an irregularity in the conduct, management, operation or presentation of gaming or horse racing,

(c) make inquiries or carry out research into any matter that affects or could reasonably be expected to affect the integrity of gaming or horse racing, and

(d) do other things relating to gaming or horse racing that are authorized or directed by the Lieutenant Governor in Council.

(4) In carrying out the responsibilities under this section, the general manager must not

(a) conduct, manage, operate or present gaming or horse races,

(b) enter into an agreement with Canada or the government of another province with respect to the conduct, management, operation or presentation of lottery schemes or horse races, or

(c) enter into an agreement with a gaming services provider.

86. Under section 28(1) of the *GCA*, the GM may issue directives applicable to GPEB, BCLC or both as to the carrying out of responsibilities under the Act. BCLC is required to



comply with directives, and they must be made public in one issue of the Gazette and on the branch's website over a period of at least 12 months.<sup>114</sup>

87. In November 2018, the GCA was amended to eliminate the requirement for the GM to seek ministerial approval prior to issuing a directive applicable to BCLC.<sup>115</sup>

88. As the branch of government responsible for BC's provincial gambling policy, GPEB is also responsible for:

- Providing advice to the minister on all gambling policy matters, including both regulatory matters and certain BCLC operational matters, such as reviewing BCLC's Operational Service Agreements with gaming service providers, requests for approval of new lottery schemes, and Service Plans and Annual reports.
- Managing the distribution of gaming proceeds to communities and community organizations, including reviewing BCLC's financial statements, distributing funding, and making payments to local governments and the horse racing industry and the payments made under the Province's Community Gaming Grant program;<sup>116</sup> and
- Delivering the province's Responsible and Problem Gambling Program, which includes arranging for contracted third parties to provide prevention services through education and training in schools and the community, early intervention and harm reduction services, and clinical counselling for individuals and families negatively impacted by gambling products.

---

<sup>114</sup> GCA, ss. 28(2) and 28(4); GCR, s. 16.

<sup>115</sup> *Attorney General Statutes Amendment Act, 2018*, S.B.C. 2018, c. 49, ss. 22-24. At the same time, the GCA was also amended to provide authority to the GM to ban from a gaming facility, persons whose presence is undesirable and extend an offence provision to BCLC for non-reporting of section 86 matters.

<sup>116</sup> The Community Gaming Grant (CGG) program distributes funds from commercial gambling revenues to community groups, providing them with the funding to deliver programs to their communities. OIC 213/2017 assigns Part 6 of the GCA, the section dedicated to the CGG program, to the Minister of Municipal Affairs and Housing. The Attorney General is responsible for the rest of the GCA. GPEB is responsible for monitoring compliance through audits and investigations. It also provides IT and financial support to CGG Program.

89. Seven Executive Directors (“EDs”) report to the GM. The EDs lead the following divisions: Licensing, Registration and Certification; Compliance; Enforcement; Community Supports; Strategic Policy and Projects; Operations;<sup>117</sup> and the Compliance and Enforcement Collaborative.<sup>118</sup>

90. The Licensing, Registration and Certification Division is responsible for the registration and certification of the gambling industry, and for licensing charitable gambling events. The Division consists of a number of units. The Registration and Certification Units are responsible for registering companies and individuals involved in gambling, and for certifying gambling supplies and equipment respectively. Their objective is to ensure the integrity of the companies, individuals, supplies and equipment involved in gambling. The Licensing Unit administers the gambling event licence program, which issues gambling event licences to eligible organizations raising funds and dispersing them in an approved manner.<sup>119</sup>

91. GPEB's Compliance Division works to ensure regulatory compliance with the *GCA* and *GCR*. The Division conducts inspections and audits of gambling in British Columbia to ensure compliance with legislation, regulation, public interest standards and directives. GPEB staff make inquiries into complaints or violations to determine if there is a need for education or training or a resolution through an administrative sanction. The Division conducts both commercial and charitable gambling audits. It also provides assistance to the Ministry of Municipal Affairs and Housing in auditing and investigating the use of grants provided under the Community Gaming Grants program as per the *GCA*. The

---

<sup>117</sup> The Operations Division provides financial, IT, workforce planning, and administrative support for the branch.

<sup>118</sup> The C&E Collaborative is a cross-government agency working group and community of practice with a mandate to enhance the effectiveness and efficiency of the compliance and enforcement sector in BC.

<sup>119</sup> Gaming Policy and Enforcement Branch, *Gaming Policy and Enforcement Branch Annual Report 2018/2019* <<https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2018-19.pdf>> at 6.

Division's Racing Unit develops and enforces rules and policies for horse racing, regulates horse racing events and registers all racing participants.<sup>120</sup>

92. As part of enhancing GPEB's enforcement capacity, the Enforcement Division was created in late 2018 and includes the investigations and intelligence teams. The investigation teams respond to instances of any conduct, activity or incident occurring in connection with gaming that could threaten the integrity of the gaming sector. In support of their regulatory responsibilities, this Division enforces provisions of the *GCA* and the *GCR* and provides assistance to law enforcement agencies with certain *Criminal Code* investigations. The intelligence unit provides government and its policing partners with information and situational awareness on organized crime and illicit activity impacting the integrity of gambling in BC. Four investigators, along with a manager from GPEB's Enforcement Division work as part of the Joint Illegal Gaming Investigation Team's ("JIGIT") two operational units.<sup>121</sup>

**a. Registration of GSPs and Gaming Workers**

93. Section 56(1) of the *GCA* requires the GM to, among other things, "maintain a register of persons who are registered as gaming service providers or gaming workers". Section 56(3) of the Act grants the GM the discretion to attach conditions to such registrations.

---

<sup>120</sup> Gaming Policy and Enforcement Branch, *Gaming Policy and Enforcement Branch Annual Report 2018/2019* <<https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2018-19.pdf>> at 5.

<sup>121</sup> Gaming Policy and Enforcement Branch, *Gaming Policy and Enforcement Branch Annual Report 2018/2019* <<https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2018-19.pdf>> at 5.

94. Registration requirements for GSPs<sup>122</sup> and Gaming Workers<sup>123</sup> are set out in Part 8 of the GCA.

95. The Act contemplates the registration of corporations,<sup>124</sup> partnerships<sup>125</sup> and individuals,<sup>126</sup> each with identified limitations, as GSPs. Applicants for registration as GSPs are subject to background investigations, the costs of which the applicants are required to pay.<sup>127</sup> The GM may issue (or renew) the registration of a GSP if four conditions are met:<sup>128</sup>

- a. The applicant has paid the required application fee;
- b. The applicant has paid a deposit towards the cost of the background investigation;
- c. The applicant has submitted to a background investigation and a written report of that investigation is on file with GPEB; and
- d. The GM considers it appropriate to issue or renew the registration, taking into account the information provided in the application, the report of the

---

<sup>122</sup> The GCA defines “Gaming Services Provider” as “a person who (a) provides gaming services, (b) provides gaming supplies, or services or tests gaming supplies, (c) provides or trains gaming workers, or (d) provides a facility for gaming and includes persons in a class of persons prescribed for the purpose of this definition, but does not include a person in a class of persons excluded from this definition by regulation of the Lieutenant Governor in Council”. The broad category “gaming service provider” is also broken down into a number of classes in s. 29(1) of the GCR. In this report, the phrase “gaming service provider” or “GSP” refers primarily (unless the context otherwise specifies) to the classes of gaming service providers who are responsible for the operations of a gaming facility or community gaming centre (the classes set out in ss. 29(1)(a) through (b.1) of the GCR).

<sup>123</sup> The GCA defines “Gaming Worker” as “an individual (a) who is paid to assist in the conduct, management, operation or presentation of a lottery scheme or of horse racing, or (b) who is in any class of individuals connected in any capacity with the gaming industry or its regulation and is prescribed for the purpose of this definition but does not include an individual in a class of individuals excluded from this definition by regulation”.

<sup>124</sup> GCA, s. 59.

<sup>125</sup> GCA, s. 60.

<sup>126</sup> GCA, s. 61.

<sup>127</sup> GCA, ss. 62-64.

<sup>128</sup> GCA, s. 65(1).

background investigation and any other information and documents that the GM considers are relevant to the application.

96. The conditions of registration for GSPs are set out in s. 34 of the *GCR*. The GM has the discretion to attach additional conditions so long as they are consistent with those in the *GCR*.<sup>129</sup> The term of registration for a GSP may not exceed five years.<sup>130</sup>

97. The GM may issue (or renew) the registration of Gaming Workers if the following conditions are satisfied:<sup>131</sup>

- a. The applicant has paid the required application fee;
- b. The applicant has submitted to a background investigation conducted by GPEB and GPEB has reported the results to the GM; and
- c. The GM considers it appropriate to register the applicant (or renew the applicant's registration), taking into account the information on the application, the report of the background investigation and any other information and documents the GM considers relevant to the application.

98. The conditions for registration of gaming workers are set out in s. 35 of the *GCR*, and the General Manager has the discretion to attach additional conditions so long as they are consistent with those in the Regulation.<sup>132</sup> As with GSPs, the term of a Gaming Worker's registration may not exceed five years.<sup>133</sup>

99. The *GCA* grants the GM the authority to refuse, suspend or cancel the registration of GSPs and gaming workers and may do so if the applicant or registrant:<sup>134</sup>

---

<sup>129</sup> *GCA*, s. 56(3).

<sup>130</sup> *GCA*, s. 65(2).

<sup>131</sup> *GCA*, s. 67(1).

<sup>132</sup> *GCA*, s. 56(3).

<sup>133</sup> *GCA*, s. 67(2).

<sup>134</sup> *GCA*, ss. 68-69.

- a. is considered by the General Manager, on reasonable grounds, to be detrimental to the integrity or lawful conduct or management of gaming;
- b. no longer meets a registration requirement or did not meet a registration requirement at the time of registration;
- c. has breached or is in breach of
  - i. a condition of the registration, or
  - ii. a contract with the lottery corporation
- d. has made a material misrepresentation, omission or misstatement in the application for the registration or renewal or in reply to an inquiry by a person conducting an audit, inspection or investigation under the *GCA*;
- e. has been refused a similar registration, licence or authority in British Columbia or in another jurisdiction;
- f. has held a similar registration, licence or authority in British Columbia or another jurisdiction and the similar registration, licence or authority has been suspended or cancelled; or
- g. has been convicted of an offence, inside or outside British Columbia, that in the opinion of the GM calls into question the honesty or integrity of the applicant.

100. With respect to those already registered, the circumstances listed above are also grounds upon which the GM may issue a warning to a registrant, suspend or cancel a registration, impose new conditions on a registrant or vary existing conditions, or impose an administrative fine.<sup>135</sup>

101. If the GM refuses an application to issue or renew a registration, issues a warning, imposes an administrative fine, suspends or cancels a registration or varies or imposes new conditions on a registrant, the GM must provide reasons for the decision. The

---

<sup>135</sup> *GCA*, s. 69.

applicant or registrant may submit a reply, following which the GM must confirm or vary the initial decision.<sup>136</sup>

102. The GM may make inquiries and require information from an applicant or registrant before making certain decisions under the Act and may require an applicant or registrant to submit to a background investigation.<sup>137</sup>

**ii. British Columbia Lottery Corporation**

103. BCLC is a Crown corporation controlled by the Province of British Columbia.<sup>138</sup> BCLC is, for all purposes, an agent of the provincial government.<sup>139</sup> Members of BCLC's board of directors are appointed by the Lieutenant Governor in Council.<sup>140</sup> Under s. 6 of the Act, the Minister may issue written directives to BCLC on matters of general policy, with which BCLC is obliged to comply. The Minister issues BCLC an annual mandate letter providing high level policy direction.

104. The mandate of BCLC is set out in s. 7 of the GCA. Section 7(1) reads:

(1) The lottery corporation is responsible for the conduct and management of gaming on behalf of the government and, without limiting the generality of the foregoing,

(a) may develop, undertake, organize, conduct, manage and operate provincial gaming on behalf of the government, either alone or in conjunction with the government of another province,

(b) [Repealed 2010-21-90.]

(c) subject to first receiving the written approval of the minister, may enter into agreements, on behalf of the government of British Columbia, with the government of Canada or the governments of

---

<sup>136</sup> GCA, s. 70.

<sup>137</sup> GCA, s. 71.

<sup>138</sup> BCLC Application for Participant Status at para. 6.

<sup>139</sup> GCA, s. 3.

<sup>140</sup> GCA, s. 2(1)

other provinces regarding the conduct and management of provincial gaming in British Columbia and in those other provinces,

(d) subject to first receiving the written approval of the minister, may enter into the business of supplying any person with operational services, computer software, tickets or any other technology, equipment or supplies related to the conduct of

(i) gaming in or out of British Columbia, or

(ii) any other business related to gaming,

(e) may enter into agreements with persons, other than registered gaming services providers, respecting provincial gaming or any other business related to provincial gaming,

(f) subject to subsection (1.1), may enter into agreements with registered gaming services providers for services required in the conduct, management or operation of provincial gaming,

(g) may set rules of play for lottery schemes or any class of lottery schemes that the lottery corporation is authorized to conduct, manage or operate,

(h) may monitor the operation of provincial gaming and the premises and facilities in which provincial gaming is carried on,

(i) must monitor compliance by gaming services providers with this Act, the regulations and the rules of the lottery corporation, and

(j) must do other things the minister may require and may do other things the minister may authorize.

105. Gaming conducted by BCLC includes casino, lottery, bingo, and sports betting through multiple channels of distribution.<sup>141</sup> Commercial gaming in the Province operates under BCLC's conduct and management. BCLC also manages the GameSense responsible gaming program.<sup>142</sup> It is not involved in the conduct or management of

---

<sup>141</sup> BCLC Application for Participant Status at para. 6.

<sup>142</sup> See: <https://corporate.bclc.com/social-responsibility/player/responsible-gambling/gamesense.html>.



licenced (charitable) gaming, which is provided for in Part V of the *GCA*, or of horse racing.

106. The Minister of Finance is BCLC's fiscal agent.<sup>143</sup> The *Business Corporations Act*<sup>144</sup> does not apply to BCLC,<sup>145</sup> although the *Financial Administration Act*<sup>146</sup> does.<sup>147</sup> The responsible minister, presently the Attorney General, may issue written directives to BCLC "on matters of general policy" and BCLC must comply with those directives.<sup>148</sup>

107. Like GPEB, BCLC falls under the responsibility of the Ministry of the Attorney General.<sup>149</sup>

108. Section 7 of the *GCA* grants BCLC the authority, subject to Ministerial approval in some instances, to enter into agreements with the federal and other provincial governments, GSPs and others. BCLC may, with Ministerial approval, enter into the business of supplying any person with operational services, computer software, tickets or any other technology, equipment or supplies related to the conduct of gaming inside or outside of British Columbia or any other business related to gaming.

109. The GM and BCLC have distinct roles under the *GCA*. BCLC's power and authority to conduct and manage gaming arises directly from the *GCA*, not from GPEB. BCLC is not a registrant or licensee under the *GCA*, although its employees and Board members are registered. Section 78(2) of the *GCA* gives the GM the authority to conduct audits and

---

<sup>143</sup> *GCA*, s. 3(2)

<sup>144</sup> *Business Corporations Act*, S.B.C. 2002, c. 57.

<sup>145</sup> Except for parts of the *Business Corporations Act* declared to apply to BCLC by the Lieutenant-Governor in Council: *GCA*, s. 2(4).

<sup>146</sup> *Financial Administration Act*, R.S.B.C. 1996, c. 138.

<sup>147</sup> With the exception of the sections identified in s. 14.6 of the *GCA*.

<sup>148</sup> *GCA*, ss. 6(1) and (2).

<sup>149</sup> OIC 213/2017.

investigations for the purposes of, among other things, “monitoring compliance of the lottery corporation with this Act and the regulations”.

**a. Roles and Responsibilities for AML**

110. As the entity responsible for the conduct and management of gambling in BC, BCLC is the reporting entity to the Financial Transactions and Reports Analysis Centre (“**FINTRAC**”) under s. 5(k) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.<sup>150</sup> FINTRAC is the federal government’s “financial intelligence unit” and Anti-Money Laundering and Anti-Terrorist (“**AML/ATF**”) Regulator, tasked with facilitating the detection, prevention and deterrence of money laundering and the financing of terrorist activities.

111. Entities responsible for the conduct and management of gaming in a given province are responsible for meeting the obligations of casinos under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“**PCMLTFA**”). These obligations include providing FINTRAC with certain transaction reports, such as Suspicious Transaction Reports (“**STRs**”), Large Cash Transaction Reports (“**LCTRs**”) and Casino Disbursement Reports (“**CDRs**”), implementing a compliance program, and keeping records that may be required for law enforcement investigations. Thus, in British Columbia, BCLC and not the casino operators, is obligated to report under the federal *PCMLTFA*.

112. The *PCMLTFA* obligates reporting entities like BCLC to:

- a. verify client identity (“Know Your Client”) and conduct ongoing monitoring of business relationships and high-risk clients;
- b. comply with record-keeping requirements;
- c. comply with all transaction reporting requirements, including STRs, applicable electronic funds transfers, LCTRs and CDRs;

---

<sup>150</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

- d. maintain a comprehensive compliance program which includes the following components, set out in s. 71 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.<sup>151</sup>
  - i. appointing a person... who is to be responsible for the implementation of the program;
  - ii. developing and applying written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer;
  - iii. assessing and documenting, in a manner that is appropriate for the person or entity, the risk of money laundering and terrorist activity financing offences;
  - iv. developing and maintaining a written, ongoing compliance training program for employees, agents and/or mandataries or other persons; and
  - v. instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is to be carried out every two years...

113. Gaming service provider personnel handle transactions with casino patrons and are responsible for monitoring the activities of gamblers as those activities take place at gaming facilities. GSPs are responsible to report information generated through these monitoring activities to BCLC. Monitoring and reporting obligations of GSPs include:

- a. Identification and reporting to BCLC of Unusual Financial Transactions (“**UFTs**”) through consideration of risk factors and circumstances including the amount of funds involved, patterns of patron play, locations of patron play, time of day of transactions, use of cash, identity and affiliations of patrons;
- b. Reporting of LCTRs and CDRs to BCLC and consideration of whether property used for play is terrorist property; and

---

<sup>151</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, S.O.R/2002-184.

c. Collection of personal identification information and personal details.

114. The Casino and Community Gaming Centre Standards, Policies, and Procedures published by BCLC (the “**BCLC Standards**”) establish, among other requirements, reporting practices and procedures with which each GSP is required to comply. BCLC is responsible for the on-going monitoring of customers and transactions and for implementing controls intended to detect indicators of money laundering.

115. BCLC reviews UFTs and prepares STRs upon establishing reasonable grounds to suspect that one or more transactions are related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence. BCLC submits STRs to FINTRAC. As BCLC is the operator of PlayNow.com, it is responsible for preparing and submitting all reports related to online gaming directly to FINTRAC.

116. GPEB and JIGIT receive all UFT and STR information through reports made under section 86(2) of the *GCA* and section 34(1)(t) of the *GCR*. Section 86(2) requires BCLC, registrants and licensees to notify the GM of any conduct or activity connected to a lottery scheme or horse racing that may involve commission of an offence under the *Criminal Code* or the *GCA*. Section 34(1)(t) requires gaming service providers to immediately report to the GM any conduct or activity at or near a gaming facility that is or may be contrary to the *Criminal Code*, the *GCA* or any regulation under the *GCA*.<sup>152</sup>

**iii. Host Local Governments<sup>153</sup>**

117. The *GCA* provides for a limited role for local government in the regulation of gaming.

---

<sup>152</sup> With the exception of lottery and hospitality retailers as defined in the *GCR*.

<sup>153</sup> Section 17.1 of the *GCA* defines “host local government” to mean the municipality, regional district or first nation that has authority over land use planning at the place where, under s. 18(1)(a) a facility is proposed to be developed, used or operated as a gaming facility, where, under s. 18(1)(b) an existing gaming facility is proposed to be relocated, or where, under s. 18(1)(c), a substantial change referred to in that provision is proposed to be made.

118. Section 19 of the *GCA* does not allow BCLC to “develop, use or operate a facility... as a gaming facility, relocate an existing gaming facility or substantially change the type or extent of lottery schemes or horse racing at a gaming facility” unless BCLC:

- a. First receives the approval, in the prescribed form and manner, from the host local government;
- b. Is satisfied that the host local government has consulted with each potentially affected local government with respect to the subject matters prescribed by regulation; and
- c. Is satisfied, the case of the location of relocation of a gaming facility, that any applicable requirements... respecting the registration of any proposed GSP have been complied with.

119. Section 13.1 of the *GCR* also requires that BCLC must receive approval from a host local government before increasing the number of slot machines in a gaming facility beyond a maximum established by the host local government.

120. Host local governments receive 10% of net casino gambling revenue from casinos and community gaming centres within their jurisdiction.<sup>154</sup>

#### ***iv. Commercial Gaming Service Providers***

121. BCLC conducts and manages commercial land-based casino gaming in the Province in part through operational services agreements (“**OSAs**”) with certain private sector GSPs (each a “Service Provider”).<sup>155</sup> As of March 31, 2019, BCLC had OSAs in respect of 15 casinos, two racecourse casinos, 18 community gaming centres, and three commercial bingo halls.<sup>156</sup>

---

<sup>154</sup> Province of British Columbia, “Gambling Revenue Distribution” <<https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/gambling-in-bc/where-money-goes>> accessed 10 February 2020.

<sup>155</sup> BCLC also manages all gaming agreements with other provinces and the federal government: Ministry of Housing and Social Development, “Roles and Responsibilities of Participants in British Columbia’s Gaming Industry,” (February 22, 2019), online: <<https://www2.gov.bc.ca/assets/gov/sports-recreation-participants.pdf>> at 2.

<sup>156</sup> BCLC Application for Participant Status at para. 7.

122. The contractual relationships between BCLC and GSPs are contained within OSAs. Through the OSAs, BCLC permits the GSPs to provide operational services to BCLC in respect of commercial gaming while maintaining its mandated role for the conduct and management of commercial gaming in British Columbia. The precise terms of OSAs vary, but standard terms include:<sup>157</sup>

- a. GSPs are paid a fee for service under the OSAs, equal to certain percentages of the “net win” (as defined in the OSAs) from different games. GSPs are also entitled to reimbursement for certain capital investments made to gaming facilities.
- b. GSPs are responsible for the general operation of gaming facilities, including surveillance and security, and are restricted from subcontracting certain activities without the consent of BCLC.
- c. Casino employees are employed by the GSPs and the real property used for the physical gaming facilities are typically owned or leased by the GSPs, however gaming supplies (as defined in the GCA and including slot machines) are provided and maintained by BCLC.
- d. GSPs are subject to notice and reporting requirements under the OSAs and are restricted from completing any significant corporate or partnership changes without BCLC approval. Specifically, shareholder changes for corporate GSPs of greater than 5% are restricted and notice is required of any change in directors or officers of a GSP.
- e. GSPs are required to fulfill reporting and data collection functions.
- f. GSPs are restricted from entering into real property leases relating to gaming facilities, financing arrangements, or contracts relating to equipment at gaming facilities without providing notice to BCLC.

123. Pursuant to s. 7(1)(i) of the GCA, BCLC monitors Service Provider compliance with BCLC rules, the OSA, and the GCA and its regulations. Pursuant to s. 34(1)(f) of the

---

<sup>157</sup> See, for example, Operational Services Agreement: Grand Villa Casino, February 14, 2018 [BCLC0003643]; Operational Services Agreement, Starlight Casino, February 14, 2018 [BCLC00003644]; Operational Services Agreement, River Rock Casino Resort, June 3, 2018 [BCLC0003650]; Operational Services Agreement, Hard Rock Casino Resort, June 3, 2018 [BCLC0010239]; Operational Services Agreement, Parq Vancouver – Vancouver, May 17, 2018 [BCLC00003649].

GCR, and pursuant to the OSAs, GSPs are required to comply with the standard operating procedures and rules of play established by the GM and BCLC as a condition of their registration with GPEB.

124. BCLC issues standards and directions to GSPs under the GCA and OSAs, with which GSPs must comply. BCLC does not have the authority to impose penalties,<sup>158</sup> but contractual remedies are available to BCLC in the event that a Service Provider does not meet its obligations under its OSAs. Service Provider personnel handle transactions with casino patrons and are responsible for monitoring the activities of patrons as those activities take place at gaming facilities. BCLC is responsible for the on-going monitoring of customers and transactions and for implementing controls intended to detect indicators of money laundering. GSPs are responsible for completing various reports for their respective facilities which are automatically provided to BCLC through its electronic reporting system (iTRAK) and which must, for certain types of records, also be provided to GPEB.

125. There are three GSPs that provide operational services to BCLC at the six largest<sup>159</sup> Lower Mainland casinos (River Rock Casino Resort, Hard Rock Casino Vancouver, Grand Villa Casino, Starlight Casino, Cascades Casino Langley, and Parq Vancouver).

#### Great Canadian Gaming Corporation

126. Great Canadian Gaming Corporation (“**GCGC**”) was founded in British Columbia in 1982. It is a publicly traded corporation operating properties in British Columbia, Ontario, Nova Scotia, and New Brunswick.<sup>160</sup>

---

<sup>158</sup> *Haghdust v. British Columbia Lottery Corporation*, 2014 BCSC 1327 at para. 109.

<sup>159</sup> Based on casino revenue. For a summary of fiscal year 2018/19, see BCLC Community Impact Report 2018/19, p.6: <<https://corporate.bclc.com/content/dam/bclc/corporate/documents/community-impact-reports/2018-19-community-impact-report.pdf>>.

<sup>160</sup> German #1 at paras. 24, 262; GCGC Application for Participant Status at para. 4.

127. GCGC through its wholly-owned subsidiaries including Great Canadian Casinos Inc., Hastings Entertainment Inc., Orangeville Raceway Limited, Great Canadian Entertainment Centres Ltd., and Chilliwack Gaming Ltd., currently provides operational services to BCLC at ten properties in British Columbia:

- a. River Rock Casino Resort (Great Canadian Casinos Inc.);
- b. Hard Rock Casino Vancouver (Great Canadian Casinos Inc.);
- c. Hastings Racecourse & Casino (Hastings Entertainment Inc.);
- d. Chances Maple Ridge (Great Canadian Entertainment Centres Ltd.);
- e. Chances Chilliwack (Chilliwack Gaming Ltd.);
- f. Chances Dawson Creek (Great Canadian Entertainment Centres Ltd.);
- g. Elements Casino Surrey, which includes the Fraser Downs racetrack (Orangeville Raceway Limited);
- h. Elements Casino Victoria (Great Canadian Casinos Inc.);
- i. Casino Nanaimo (Great Canadian Casinos Inc.); and
- j. Bingo Esquimalt (Great Canadian Casinos Inc.).<sup>161</sup>

128. Together these properties constitute more than one-quarter of the gaming facilities in British Columbia, two of the largest casinos in British Columbia (River Rock Casino Resort and Hard Rock Casino Vancouver), and the only two racetracks in British Columbia that continue to host live horse racing.<sup>162</sup>

129. GCGC, through its subsidiaries, provides operational services to BCLC pursuant to OSAs entered into with BCLC for each facility. GCGC provides premises to host the gaming operations conducted and managed by BCLC and provides certain equipment

---

<sup>161</sup> GCGC Application for Participant Status at para. 5; German #1 at para. 263.

<sup>162</sup> GCGC Application for Participant Status at para. 1.



and supplies and other services, such as supplying security and surveillance and gaming personnel to operate the casinos.<sup>163</sup>

Gateway Casinos & Entertainment Ltd.

130. Gateway Casinos & Entertainment Ltd. (“**Gateway**”) has operated within the British Columbia gaming sector since April 1992, when it acquired two casino operations in the Vancouver area: the Mandarin Centre in Vancouver and the top floor of the Royal Towers Hotel in New Westminster.<sup>164</sup>

131. Gateway currently provides operational services to BCLC at three of the largest gaming and entertainment facilities in the Lower Mainland:

- a. Grand Villa Casino in Burnaby,
- b. Starlight Casino in New Westminster, and
- c. Cascades Casino in Langley.<sup>165</sup>

132. Gateway also provides operational services to BCLC at 11 additional gaming sites across metro Vancouver, Vancouver Island, and the Okanagan. Gateway has approximately 3,900 employees in British Columbia, most of whom are registered gaming workers.<sup>166</sup>

133. Outside of British Columbia, Gateway operates facilities Alberta and Ontario. Gateway’s operations are regulated in those provinces by the Alberta Gaming, Liquor and

---

<sup>163</sup> GCGC Application for Participant Status at para. 6.

<sup>164</sup> German #1 at para. 257.

<sup>165</sup> Gateway Application for Participant Status at para. 2.

<sup>166</sup> Gateway Application for Participant Status at para. 2.

Cannabis Commission and the Alcohol and Gaming Commission of Ontario and Ontario Lottery and Gaming Corporation, respectively.<sup>167</sup>

### Parq Vancouver

134. Parq Vancouver, an integrated resort located in downtown Vancouver, opened in September 2017.<sup>168</sup> The resort comprises two hotels, multiple food and beverage outlets, conference and meeting space, and a gaming facility.

135. Prior to the opening of Parq Vancouver, the Edgewater Casino located in downtown Vancouver, was operated by Edgewater Casino ULC, as General Partner and on behalf of Edgewater Casino Limited Partnership. Paragon Gaming, a gaming company with headquarters in Las Vegas, Nevada provided asset management for Edgewater Casino prior to the opening of Parq Vancouver.

136. Paragon Gaming ceased to be involved with Parq Vancouver effective February 2019. The OSA applicable to Parq Vancouver, dated 17 May 2018, is between BCLC and Parq Vancouver ULC, as General Partner and on behalf of Parq Vancouver Limited Partnership.<sup>169</sup>

### **v. Licensed (Charitable) Gaming**

137. Part V of the *GCA* governs licensed gaming in British Columbia. Section 30 of the Act grants the authority to “licence persons to conduct and manage gaming events” in the Province to the Lieutenant-Governor in Council and permits the delegation of this discretion to the GM.

---

<sup>167</sup> Gateway Application for Participant Status at para. 3.

<sup>168</sup> Joanne Lee-Young, “Vancouver’s Parq Casino Refinances Debt and Secures New Equity Partner,” *Vancouver Sun* (13 May 2019), online: < <https://vancouver.sun.com/business/local-business/parq-casino-refinances-debt-and-secures-new-equity-partner>>.

<sup>169</sup> Operational Services Agreement, Parq Vancouver – Vancouver, May 17, 2018 [BCLC00003649].

138. The responsibilities of the GM with respect to the issuance of licenses are set out in s. 31:

(1) The general manager

(a) may specify the fairs or exhibitions at which gaming events or categories of gaming events may be conducted,

(b) in the exercise of the licensing discretion delegated to the general manager under section 30 (2), is responsible for gaming event licences, including but not limited to licences issued to eligible charitable or religious organizations in respect of all forms of bingo events the conduct and management of which is lawful under the *Criminal Code*,

(c) may assign gaming event licensees to premises or gaming facilities for the purpose of participating in gaming events,

(d) must monitor compliance by gaming event licensees with this Act, the regulations and the rules of the general manager,

(e) must monitor compliance by eligible organizations that receive grants under section 41,

(f) may audit and inspect the operation of gaming events and the premises and facilities where gaming events are carried on,

(g) may audit and inspect the books, records and accounts of a gaming event licensee, an organization that receives a grant under section 41 or a gaming services provider, and

(h) must do other things relating to gaming events that the Lieutenant Governor in Council may require.

(2) However, the general manager must not

(a) implement, or permit a gaming event licensee to implement, a new type of lottery scheme that was not in operation on the date this section comes into force, without first receiving the written approval of the minister, or

(b) license a charitable or religious organization to conduct and manage casino gaming other than a social occasion casino or casino games conducted and managed by the board of a fair or exhibition.

139. Gaming event licences issued by the GM allow eligible organizations to fundraise by holding a single gaming event or a series of events. Gaming events include raffles, bingos, poker, social occasion casinos, and wheels of fortune.

140. Applicants must apply for a specific class of licence. The applicable class of licence depends on how a group or organization is structured, how much money is expected to be raised, the value of prizes and the price of tickets.<sup>170</sup>

141. The GM determines an applicant's eligibility for a licence on the basis of the type of organization, type of gaming event proposed and location, and the proposed use of proceeds raised through the event.

142. Licensees are responsible for, among other things, following the guidelines and standard procedures related to the gaming event and for using the proceeds to support the eligible programs stated in the licence.<sup>171</sup>

---

<sup>170</sup> *Gaming Control Regulation* section 18(1).

<sup>171</sup> Guidelines and standard procedures for different classes licensees can be found at <https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/gambling-licence-fundraising/documents-forms>